

TRIENNIAL REVIEW OF IRRIGATION IN INDIA. 1921-21.

CHAPTER I.

Results of irrigation operations during the Triennium.

The monsoon of 1921-22 broke at or before the usual time and although the rainfall of the period over the country as a whole was nearly normal, its distribution was somewhat unequal. There was a deficiency over the greater part of the peninsula but in the United Provinces, the North-West Frontier Province, Gujarat and south-east Madras there was an excess of about 20 per cent., while Baluchistan and the south-west Punjab recorded an excess of about 40 per cent., and Sind received double its usual amount. Character of the monsoon.

During 1922-23 the monsoon conditions were generally favourable. The rains broke at the normal time and throughout the season the currents were on the whole vigorous, if fitful. Averaged over the plains of India, the rainfall was 5 per cent. above normal. In the tract of country extending from the the precipitation was in excess over the Peninsula excluding west India.

In 1923-24, the monsoon broke somewhat after the normal date. In the earlier weeks it was vigorous in Burma and Assam and fairly so in Bengal but weak in north-west India. It was not until the beginning of July that the monsoon penetrated effectively into the interior of the country; thereafter, till the 23rd, there was well distributed rain over the greater part of it. In the last week of July the monsoon weakened in the Peninsula but continued active in northern India and gave heavy rain on the Burma coast. The weakness in the Peninsula persisted throughout August but there was heavy rain in north-east, north-west and central India. September was a striking contrast to August in that the monsoon displayed its activity mainly in the Peninsula and the central parts of the country and extended but seldom into north-west India. Averaged over the plains of India as a whole, the aggregate fall of the season was 8 per cent. above normal, and was well distributed over most of the country.

The introduction of the Reforms Scheme led to a complete revision of the general structure of the accounts of the Government of India and, in consequence, changes became necessary in the accounts of the transactions of the Public Works Department. Irrigation works were previously divided into two main classes, viz., major and minor works, Revised classification of irrigation works.

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Works in progress. The following were among the larger works in progress during the triennium :—

Gandamuddu.

- (1) Restoration of the Kovvur Mangir Junction Canal—(estimate Rs. 1,37,000)
- (2) Improvement of the upper portion of the Yennamaddur drain—(estimate Rs. 9,71,000)

Kistna d. P.

- (3) Replacing the existing 3 ft. slutters of the Kistna arc cut at Bezwada by slutters 6' high—(estimate Rs. 3,40,000)
- (4) Diversion of the Nallamaddu drain—(estimate Rs. 7,75,000)

Cauvery d. P.

- (5) Reconstructing the Thoppaduvachi dam—(estimate Rs. 1,11,000)
- (6) Improvements to the lower reaches of the Cauvery from the infall of the Ayyanayamar to the sea—(estimate Rs. 2,12,000).

Projects under consideration.

Several large projects were under consideration during the triennium, the most important being the Cauvery Reservoir project which was referred to in the previous triennial report. In February 1921 negotiations were concluded with the Mysore State defining the respective rights of Madras and Mysore to the waters of the Cauvery. The estimate of the Cauvery Project, revised in accordance with the current schedule of rates, amounts to Rs. 6·12 crores. The project will improve the existing fluctuating water supplies for the Cauvery delta irrigation of over a million acres, and will extend irrigation to a new area of 301,000 acres, which will, it is estimated, add 15,000 tons of rice to the food supply of the country. It is expected to yield a net revenue of Rs. 47 lakhs, which represents a return of 7·6 per cent. on the estimated capital cost. The project has, since the close of the triennium, been sanctioned by the Secretary of State. The Vengalapuram project in the Nellore district was under examination; it contemplates the irrigation of some 50,000 acres and is estimated to cost about Rs. 10 lakhs. Proposals for a storage project on the Kistna river were revived and preliminary investigations of the dam site started, but these had to be discontinued pending negotiations with the Hyderabad Darbar. This project involves a reservoir on the Kistna at Sangameswaram to store 125,200 million c. ft. at a cost of Rs. 25·33 crores for the irrigation of 1½ million acres in the Kistna, Guntur, Nellore, Kurnool and Chingelput districts.

In view of the desirability of extending the irrigation resources of the Presidency, a general re-examination of the possibilities in this direction

earlier. The latest constructional methods are being made use of in this work, and it is expected that the new storage will provide sufficient head and discharge for the development of about 3,000 E. H. P.

Experiments are being carried out on these canals with a view to entrusting the cultivators with the distribution of water to their fields.

The following were the more important projects under consideration:— Projects under consideration.

- (1) The Dahitna tank for supplementing the supply of water from the Ekruk tank at Sho'apur;
- (2) A scheme for the remodelling of the Mutha Canals;
- (3) The Gokak Canal Extension project; and
- (4) The Nira Valley Development scheme, which provides for the widening and remodelling of the Nira Left Bank Canal as well as for the construction of a new dam at Vir to supplement the supply from the Bhatghar dam.

In regard to item (4) it may be explained that the general proposals for the full development of the irrigational possibilities of the Nira Valley, as described in the "Triennial Review of Irrigation in India for 1918-21", have since been somewhat modified. An additional storage work on the Nira at Vir is now projected to supplement the supply from Bhatghar. The proposed dam site is adjacent to the present pick-up weir at Virwadi. The capacity of this reservoir above the level that is required to supply the canals will be 8,334 mill. c.ft., and it will also serve as a balancing reservoir during the period June to October. The fact that the site is below the confluence of all the main tributaries of the Nira will ensure that the run-off from the whole available catchment area can be utilised for the supply of both the Nira Left Bank and Nira Right Bank canals, a very important consideration in years of scanty rainfall. The Left Bank Canal will be remodelled so that certain suitable areas on the lower reaches of that canal can be brought under perennial irrigation. The new works proposed will bring under irrigation an additional area of 35,500 acres in a very precarious tract.

(b) SIND.

The inundation of 1921 was on the whole very satisfactory, that of 1922 was an exceptionally good one, marked by a steady rise in the river from the very commencement of June, while that of 1923 was also fairly good. The highest readings on the Bukkur and Kotri gauges respectively were 16·8 feet and 22·1 feet in 1921, 15·5 feet and 20·4 feet in 1922 and 14·1 feet and 21·9 feet in 1923. The fair irrigating level of 17 feet or above on the Kotri gauge was maintained in 1923 for a period of 76 days as compared with 102 days in 1922, 55 days in 1921 and 69 days, the average of the previous triennium. The rainfall was general and beneficial to cultivation in 1921, but scanty in 1922 and 1923. Character of the seasons.

BENGAL.

(a) *Irrigation.*

The two irrigation canals in Bengal are the Midnapore and Eden Canals and the average rainfall in the areas served by these canals is about 55 inches. In 1921 the rainfall was normal. In 1922 there was considerable excess all over the tract, more especially in July and August, which led to severe floods in some of the rivers. In 1923 the rainfall was somewhat below normal, particularly in October, but in no year was there shortage of water in the canals. The flood of 1922 in the Cossye, Selye and Darkeswar rivers was unusually high and caused a large amount of damage by breaching various Government embankments. In the Damodar, which supplies the Eden Canal, the floods were of moderate intensity only.

Character of the season.

Towards the end of the triennium the water rates on both the canals were raised by 50 per cent. On the Midnapore Canal the cultivators refused in some cases to renew leases which had lapsed, with the result that the total area irrigated during the year was below normal, and the average for the triennium fell from 108,618 acres to 100,492 acres.

Results.

No new works were undertaken during the period.

Works in progress, or completed.

A project for the construction, at an estimated cost of Rs. 70 lakhs, of a canal from the Damodar River was sanctioned by the Secretary of State in 1921. It was designed to irrigate 196,000 acres in the Burdwan and Hooghly districts, including the area to be irrigated by an additional supply to be given to the Eden Canal. Owing to the rise in the price of labour the project estimate is being recast with a view to seeing whether the canal will still prove a productive work. A considerable demand for small irrigation works has arisen in the western part of the province, in the Midnapore, Bankura and Birbhum districts. These works entail the construction of weirs across the small streams which intersect these districts. Four such weirs were constructed during the triennium and projects are ready for several others; there is a prospect of a considerable number of such schemes being taken up in the near future. The country to be dealt with is undulating and the supply of water in some of the streams is perennial. With an increase in the number of these works the liability to famine will decrease.

Projects under consideration.

(h) *Sanitary Drainage.*

Of the schemes undertaken for the improvement of the sanitation and drainage of the country several were either completed or nearly completed, e.g., the Aranch Project, the Veragachi-Madanpur and Manikhal Drainage projects in the 24-Parganas district and the Saraswati project in the Howrah district. Investigations have been made into many similar cases in the deltaic portion of the province and, for some, projects have been prepared and it seems probable that a good deal of work will be taken up in the near future. The largest scheme is the Hili Drainage

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Work on the Grand Trunk Canal was taken up during the triennium but was stopped on account of financial stringency and other reasons. Certain realignments of the canal were made and the works were reviewed in full detail, which resulted in a reduction of the estimated cost from Rs. 302 lakhs to Rs. 279 lakhs. The total expenditure up to the end of 1923-24 amounted to Rs. 68,17,997 which was mostly incurred on the acquisition of land and on the purchase of a new and improved suction dredger "Ronaldshay". On the Calcutta and Eastern Canal, considerable expenditure is being incurred in reconstructing the bridges over the locked lengths and over Tolly's Nala. On the latter, the construction of a lock and sluice at the head of the Knorapukur Khal is nearing completion, which will give access to the channels in the 24 Parganas district to the south of Calcutta; it is possible that in future this route will be considerably used by boats trading with Calcutta. The dredging of the Bidyadhari river, which is the outfall for the Calcutta sewage and storm water, has been nearly completed. This river has shown very rapid deterioration and threatens to close entirely within the next few years and it appears probable that Calcutta will have to seek a new outfall for its drainage. In connection with the Madaripur Bhil Route the channel is being widened from a bed width of 175 feet to one of 275 feet and about 8 miles out of the 20 miles have been completed. The Lower Kumar river which forms the eastern approach to the Madaripur Bhil silted very rapidly in 1922 due to excessive and prolonged floods, and it has therefore been necessary to dredge the whole of that river.

The position in the western Sunderbans along the steamer route is fast becoming impossible: owing to reclamation of the forests the tidal spill has now been entirely excluded from some of the rivers with the result that the silt carried up by the flood tide is deposited on the beds of the rivers and the ebb tide is too weak to remove it. Of the three routes which were open a few years ago between Channel Creek and the Sabtamukhi only one, the Doagra, is now navigable, and that with difficulty. The Sabtamukhi river itself is fast filling up and the crossing is becoming year by year more confined; it appears inevitable that, unless a very heavy recurring expenditure is incurred on these rivers, they must die shortly. It is this point more than any other that makes the Grand Trunk Canal a matter of considerable urgency. Attempts have been made to find a solution to this difficulty, but

Scheme in the Midnapore district which will deal with about 651 sq. miles of country. It will be carried out on the lines of the Magadh Drainage Scheme and will cost about 50 lakhs of rupees. A portion of the work has been executed in the opening of the Pichandi Khai and a very marked improvement in the drainage has already taken place. In the southern portion of the delta enquiries are being made to ascertain whether some of the old river beds cannot be revived and a spill of silty water induced so as to prevent stagnation and to destroy the breeding grounds of the anopheles.

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Owing to the silting of the Lower Kumar river a project has been prepared for controlling all the side channels on the south bank of this river to prevent the loss of water which now flows into the local depressions known as *dhils*, and which is consequently not available for scouring the river bed. On the Calcutta and Eastern Canals several projects are under preparation with the object of reviving some of the cross channels which have silted up by converting them into locked lengths.

In the Midnapore district, where most of the embankments were breached by the Co-sye, Selce and Darke-war floods in 1922, the construction of spill escapes in the embankments to pass the highest stages of floods has been proposed, the water allowed to flow over the country being discharged at a point further down the river through large sluices. If this system is adopted it will lead to a considerable reduction in the amount of distress and damage to crops which now occurs.

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UNITED PROVINCES.

Character of the seasons.

The triennium 1921-21 was, on the whole, a prosperous one. 1921-22 started under adverse conditions resulting from the failure of the previous monsoon and indifferent winter rains. River supplies were consequently reduced to a minimum, which rendered equitable distribution a matter of great difficulty. Intense hot weather conditions prevailed up to the middle of June and the critical position was only relieved by the advent of the rains during the latter part of the month, which enabled the cultivator to commence his *khari* sowings. The monsoon was both copious and generally well distributed and timely rain was received during January and February. The year 1922-23 opened with normal conditions. The season from April to the end of June was hot and dry and the demand for canal water intense, but the supplies in the rivers were sufficient to meet all requirements. The monsoon rainfall was sufficient and generally well distributed and lasted till the end of September; the *rabi* sowings were thus mostly completed without the aid of canal water. Good rain also fell towards the end of December and in February. In 1923-24 the seasonal conditions were very similar to those of the preceding year.

Results.

The favourable conditions of the seasons during the three years of the triennium are reflected in the results obtained from irrigation. The area irrigated (excluding on an average some 14,000 acres irrigated in Indian States) during the triennium compares as shown below with the average of the previous triennium :—

	Acres.
Average of the triennium 1918-21	3,501,818
During 1921-22	2,673,120
During 1922-23	2,618,643
During 1923-24	1,979,021
Average of the triennium 1921-21	2,433,595

The decrease in the area irrigated is attributable to the low river supplies and timely winter rain described above.

Works completed.

The area
construct
1921-22. The Kitham reservoir, which will assist in supplementing the water supply of Agra when the river Jumna runs low, was completed during 1923-24.

Works in progress.

Excellent progress has been made on the Sarda Kichha Feeder and the Sarda Oudh Canals during the triennium, despite the difficulties encountered in respect of the notoriously unhealthy climate of the country operated in. The operations carried out on these works up to the end of 1923-24 involved an expenditure of over 2 crores of rupees. Owing

to difficulties encountered in dealing with water in the foundations, progress on the headworks has not been so satisfactory as was expected. The river springs proved much stronger than anticipated and the pumping plant gave considerable trouble. It has now been finally decided that the only way to overcome the difficulties is to put in a central electrical power station, and arrangements are being made accordingly. The headworks are now the critical factor of the whole Sarda Canal construction, and strenuous efforts will be necessary to complete them in time to supply water to the canals which are progressing most satisfactorily. The right and left bank training bunds have been all but completed and some work has also been done on the main barrage. The Deoha Barrage consisting of 11 spans of 40 feet each with 12' high gates has been nearly completed and the steel work and gates erected. Remarkable progress has been made on the excavation of the main canal, branches, distributaries and other smaller channels.

No new large projects other than those enumerated at page 171 of the Triennial Review of Irrigation in India, 1918-21, were under consideration. Of these, the Oben and Paisuni canal projects in the Kon Kan Division, have been indefinitely postponed. The project for a third reservoir on the Betwa river near Kaprar to supplement the supply of the Betwa Canal has been sanctioned but the design of the weir requires re-examination and revision. The scheme for the extension of the Dhasan canal across the Barma river has been dropped for the present.

PUNJAB.

Character of the seasons.

The year 1921-22 started under conditions unfavourable to the sowing of *kharif* crops and the monsoon came too late to enable any large addition to the *kharif* sowings to be made. But full advantage was taken of the monsoon to sow as large an area of *rabi* crops as possible. Although there was no rain during November, December and January, river supplies were well maintained with the result that the *rabi* area irrigated exceeded that of the corresponding season of the previous year by about 1,000,000 acres. The rain which fell in February and March was well distributed, benefited the standing *rabi* crops, and assisted the early *kharif* sowings of the following year. In April and May of the year 1922-23 the weather was much drier than usual and the rainfall in moderate to large defect. The monsoon was fitful till about the end of August when it strengthened and continued to be vigorous during the first half of September, giving good and general rainfall throughout the Province. It ended on the 22nd September and the total rainfall during the period June to September was slightly in excess of the normal. The September rains were followed by light showers in the first and second weeks of October which enabled good *rabi* sowings to be made, and the rains which fell during the winter proved useful for the maturing of the crop, the *rabi* irrigation being a record. In contrast to the previous two years the year 1923-24 opened with favourable conditions for the *kharif* crop while the early *rabi* sowings were greatly helped by good and general rainfall during the months of August and September, followed by light rain in March which benefited the standing crops.

Results.

The average area irrigated in the Province by Government works of all classes was 10½ million acres as compared with 9½ million acres, the average of the previous triennium. In addition to this, an average area of 695,000 acres was irrigated from channels, which although drawing their supplies from British canals, lie wholly in Indian States. The area irrigated in 1922-23 was the largest on record and exceeded the average of the triennium ending 1918-21 by 1,454,964 acres.

Taking productive works only, the area irrigated during each of the three years showed an improvement on the figures of the previous triennium and the average of the triennium was over a million acres more than that of the previous period. This increase was shared by all the canals without exception and was due to the favourable climatic conditions obtaining and to the steady development on the canals of the Triple Project, especially the Lower Bari Doab.

The canals in operation (Productive and Unproductive) paid 14½ per cent. in 1921-22, 15½ per cent. in 1922-23 and 17½ per cent. in 1923-24 on a total capital expenditure of Rs. 2,327 lakhs incurred on them.

Works completed.

The Lower Jhelum canal at weir at Tajawala, the head-canal, were completed.

The Sutlej Valley project, to which the sanction of Secretary of State for India was received in the year 1921-22, has been fully described on pages 170 to 172 of the Triennial Review of Irrigation in India, 1918-21. In addition to preliminary work, which included extensive surveying and the selection of the sites for the headworks and the construction of railways, constitution of a committee to estimate the large quantity of stone required, good progress was made on the manufacture of bricks and lime and on the collection of stone, and a large quantity of earthwork was executed on the canals and at three of the four headworks. A notable feature of this great scheme is the introduction of machinery on a large scale. Mechanical excavators of various types are being employed for excavation purposes, while pumps, concrete mixers, etc., driven by electric power generated in large power stations equipped with the latest modern machinery, are in use at the headworks and elsewhere. A sum of Rs. 430 lakhs, including expenditure debitable to the Indian States concerned, was spent on the construction of the work to the end of the period.

Works in progress.

No new projects other than those mentioned in the Triennial Review of Irrigation in India, 1918-21, were under consideration.

New projects.

Many of the towns in the Irrawaddy Delta have large low-lying swampy areas, which form a menace to the health of the population; by raising these areas with sand dredged from the bed of the river the sanitary conditions are improved and valuable sites are made available for dwelling purposes.

In the Mandalay district surveys were carried out and a preliminary estimate prepared for the Yenatha canal project. This canal will take off the right bank of the Madaya river opposite the existing Mandalay canal and will irrigate 19,000 acres. It is estimated to cost Rs. 11,44,000 and to bring in a return of about 3 per cent. The Yenatha canal was becoming less efficient year by year owing to silt caused by excessive velocities in the main channels and consequent silting of minor channels and water courses. Command has been bestowed to the deepening and widening of the channels, and maintenance has become difficult and expensive as a result of heavy silt clearances and general deterioration of many of the channels. It has accordingly been decided to remodel the system in order to improve the working of the canal. The preliminary estimate was prepared for a total cost of Rs. 13,37,000 and includes an extension of the existing system; the work will bring in an additional area of 35,000 acres and a return of 1.28 per cent. In the Mawla district surveys were in hand for remodelling the Sahn canal system, constructing a branch from the North Mon canal, and remodelling the Mawla canal system; these three projects are roughly estimated to cost 10 lakhs of rupees and to bring under irrigation an area of 37,000 acres of new land. In the Kyaukse district the preliminary estimate for remodelling the Pabok canal of the Zawgyi canal system was prepared, the antiquated cost being Rs. 1,15,845; this is an old Burmese work, and the remodelling is expected to bring an area of 5,500 acres of new land under irrigation and to produce a return of 5.8 per cent on the capital outlay. The question of the best method of controlling the floods in the Pandung river which has been under consideration for a number of years is at last in a fair way to be solved by the decision to construct a masonry dam, 120 feet high, to form a flood modulating reservoir on the river. This project is known as the Panalaung improvement Scheme; the preliminary estimate has been prepared for a sum of Rs. 31 lakhs for works outlay.

BIHAR AND ORISSA.

In the areas commanded by the Orissa canals, the rainfall during the triennium was, excepting in the year 1922-23, below the normal, but being favourable and well-distributed, good crops were harvested. The demand for canal water during the period of scanty rainfall was heavy and was well met on the leased areas. In the areas commanded by the Son and Champaran canals the rainfall was seasonable and beneficial to the crops, although irrigation from the canals was much hampered by the extraordinarily high floods in the rivers Son, Ganges, Gogra and Gandak in August and September 1923, which caused extensive damages to the Son and Tribeni canal works, particularly to the aicut on the river Son at Dehri.

The average area irrigated was 960,505 acres, as compared with 988,368 acres, the average of the previous triennium. The decrease of 27,863 acres occurred mainly in the years 1922-23 and 1923-24, and was due to the fact that a number of leases, the term of which expired on the 31st March 1922 and 1923, respectively, were not renewed. The enhancement of water-rates in 1922 may have had some effect, but the chief cause was the favourable rainfall.

The construction of certain distributaries and permanent outlets was completed.

No important irrigation project was taken up during the triennium.

Detailed contour surveys in connection with the reservoir on the Kuara river in the Shahabad district, and the Derjang irrigation scheme in the Angul district were taken up, the former being nearly completed during the year 1923-24. The reservoir scheme in the Butana valley, the Kutkuli reservoir scheme for supplementing the supply of the Son river in the Palamau district and the Kiul river irrigation scheme in the Monghyr district were at different stages of investigation. Preliminary investigations regarding some possible minor irrigation schemes in the Bhagalpur district were also made.

CENTRAL PROVINCES.

Character of the seasons.

In 1921, though the monsoon was on the whole favourable and the rainfall well distributed, it ended before the rice crop had matured and there was consequently a heavy demand for irrigation both to mature the rice crop and to enable *rabi* sowing to be undertaken. In 1922, it was also favourable but there was a long break over most of the province in August and very little rain fell in October; the demand for irrigation for rice was good, but for *rabi* it was slight as there was rain in most districts in each month of the cold weather. In 1923 the rainfall was generally good in all the monsoon months, but there was a considerable demand for irrigation towards the end of July and early in August as also during the months of September and October; good general rain fell at the end of October and made the irrigation of *rabi* unnecessary. With the exception of 1921, the rainfall conditions of the triennium have not been such as to induce any exceptional demand for the irrigation either of rice or *rabi*, and indeed in the last two years of the triennium there has been very little demand for *rabi* irrigation at all.

Results.

During the triennium the average area of irrigation increased from 331,551 acres to 431,579 acres, the maximum area being 433,838 acres in 1921-22. The long term agreement system continued to work satisfactorily and, in areas where agreements have expired, they have mostly been renewed at higher rates. No new works of any importance have come into operation during the triennium and the increase in the area irrigated is therefore due to the development of works that were previously in operation. Much has to be done to secure the full development of these works but, except under the Mahanadi canal, there is not much scope for an immediate increase in the area irrigated. The gross revenue has increased from Rs. 5.72 lakhs in 1921-22 to Rs. 11.72 lakhs in 1923-24. It was Rs. 12.26 lakhs in 1922-23 but this high figure was due largely to the recovery in that year of large amounts of arrears. The revenue now exceeds slightly the costs of maintenance and working expenses.

Works completed.

The following works were completed during the triennium.

1 Jamuna Tank	..	..	Balasghat District.
2. Kattanbehri Tank	..	..
3 Wainganga Canal	..	..
4. Tandula Canal	..	..	Drug District.
5. Bodalkassa Tank	..	..	Bhandara District.
6. Chorkamara Tank	..	..
7. Ghorajheri Tank	..	..	Chanda District.
8. Naleswar Tank	..	..
9. Borina Tank	..	..	Jubbulpore District.

Wor

In all cases a certain amount of work remains to be done and in some cases, e.g., the Tandula canal, some remodelling will be necessary before the full area that the work should irrigate can be obtained.

In addition to the works mentioned above, the following were the more important works in progress during the triennium. Works in progress.

Mahanadi Canal.—The construction of the Maramasili Reservoir, which acts as a feeder to this Canal, was completed in 1923. In connection with this work a syphon spillway consisting of 31 syphons (8 feet by 8 feet each) of reinforced concrete has been constructed. This installation is the first of its kind to be erected in India on a large scale and it is technically of considerable interest. Fair progress has been made on the distribution system, but a good deal remains to be done to complete it.

Kharung Canal.—A commencement was made on the construction of the Kharung canal in 1921. Moderate progress has been achieved on the headworks and a fair start has been made on both the right and the left bank canals.

Maniari Reservoir.—An estimate for the construction of the Maniari reservoir in Bilaspur, which is intended to irrigate 80,000 acres of rice, was sanctioned in March 1921 and work on it is in progress.

Other works.—The headworks of the Pariat tank were practically completed. Work was also in progress on nine other small projects mentioned below:—

Kusserla tank in the Chanda district.

Amari

Jagwa

Boharibund

} tanks in the Jubbulpore District.

Mala tank in Damoh.

Kumhari tank in Raipur.

Masonry dam for the Chandia nala tank in the Shahgarh tract of the Saugor district.

Chhoti Deori tank in Damoh.

Ratona tank in Saugor.

During 1922-23 a programme of construction of new works was prepared. This programme contemplates the construction during the next 13 years of the following nine new works and the completion of all works that are in progress at a cost of about Rs. 5 crores. Projects under consideration.

Bilaspur District.—Maniari, Arpa and Agar Hap projects which will irrigate about 80,000, 160,000, and 80,000 acres of rice, respectively.

Jubbulpore District.—Katni river and Umar nala projects which will irrigate about 16,600 and 25,000 acres of rice, respectively, and some area of rabi.

Seoni District.—Bori, Ari and Chichbund tanks which will irrigate about 9,000, 11,000 and 5,000 acres of rice respectively.

Balaghat District.—Muram Nala tank, which will irrigate about 6,000 acres of rice.

Work has been started on the Manisari and Bori projects and an estimate for the Katni river project is under the consideration of the local Government. Considerable progress has been made on the investigation of all the other works that are included in the programme.

In addition to these works some further investigation has been made during the triennium of the Hasdeo project, to irrigate about 250,000 acres in the east of the Bilaspur district. A considerable number of comparatively small works, which might in certain circumstances be undertaken to relieve distress, has also been investigated.

NORTH-WEST FRONTIER PROVINCE.

The 1921 *kharif* season was an exceptionally dry one, especially over the Lower Swat and Kabul River Canal tracts. The remaining seasons of the triennium were more or less normal ones. Character of the seasons.

The Paharpur Canal was transferred to the District authorities in 1923; the areas irrigated by the other canals are noted below:— Results.

		1921-22.	1922-23.	1923-24.
Lower Swat Canal	..	175,744	170,456	168,763
Kabul River Canal	..	51,328	47,936	46,215
Upper Swat Canal	..	185,835	181,833	151,436
<hr/>				
Total	..	412,907	400,225	359,414

These results indicate a considerable decrease in irrigation but the worst year 1923-24 was better than the average, 341,809 acres, for the previous triennium. Conditions in 1921-22 were very favourable for irrigation, grain was fetching high prices and the rainfall was very light, record areas were irrigated on the Kabul River Canal in both seasons and on the Lower Swat Canal in the *kharif* season. The irrigation in 1923-24 was seriously affected by plague, good rains and the drop in the price of grain, the Mohmands and other border tribesmen declined to lease land when wheat and barley fetched only about one-half the prices that prevailed in 1921 and 1922.

The zamindari water-courses along the banks of the river in the Swat valley have been linked up to their parent channels; this work materially reduces the cost of building kacha bunds in the river bed to force the supply (reduced by the construction of the Upper Swat Canal) into these water-courses. Works in progress.

The construction of a bund, costing Rs. 14 lakhs, to protect the Dera Ismail Khan city and cantonments from erosion by the Indus river was undertaken by the Irrigation Department and is expected to be completed during 1925-26.

Some minor schemes for irrigation in the Hazara district were investigated but found to be impracticable. The possibility of a canal taking out of the Indus at Kalabagh to irrigate the Dera Ismail Khan district is also being examined. Projects under consideration.

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**Statements showing the Financial Results of
Productive and Unproductive Irrigation
Navigation, Embankment and Drainage
Works for and up to the end of the year
1923-24.**

STATEMENT

PRODUCTIVE

Financial results of Productive Irrigation, Navigation, Embank

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirectly)	Accumulated greans of interest.	Accumulated surplus revenue.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
IRRIGATION WORKS.	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
MADRAS.						
Ganjam Minor River System .	110	225	2,78,873	..	10,53,212	2,78,873
Godavari Delta System .	511	1,995	1,03,22,020	..	0,89,42,663	1,03,22,020
Kistna Delta System .	349	2,186	1,08,61,270	..	7,30,00,629	1,08,61,270
Divi Pumping System .	50	121	25,15,627	2,70,222	..	27,85,849
Fenner River Canal System .	31	477	67,42,604	..	62,22,176	67,42,604
Arkenkota Channel .	24	..	1,44,445	..	17,685	1,44,445
Thadapalli Channel .	83	..	1,75,805	..	11,81,762	1,75,805
Kalingarayan Channel .	61	..	1,80,486	..	3,29,796	1,80,486
Palar Anicut System .	156	139	24,56,649	4,01,664	..	28,58,313
Chambarsambakkam Tank .	11	2	7,64,143	..	3,38,740	7,64,143
Vellur Anicut System .	6	8	76,282	18,908	..	95,190
Ponney Anicut System .	104	78	3,03,498	..	11,08,578	3,03,498
Cheyyar Anicut System .	61	129	5,92,221	..	1,94,334	5,92,221
Thiruk Kolur Anicut System .	137	28	3,85,813	..	5,24,618	3,85,813
Ebathalope Anicut System .	41	149	9,72,642	..	35,53,173	9,72,642
Toludur Project .	..	..	25,88,619	5,42,267	..	31,30,886

No. I.

PUBLIC WORKS.

ment and Drainage Works for, and up to the end of, 1923-24.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay. column 4.	Interest.	Net profits.	Net loss.	Balance
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	At 100.
70,052	49,160	20,892	7.49	9,039	11,853	..	20,688
42,57,145	9,14,391	33,42,754	20.48	5,01,052	28,41,702	..	837,109
39,27,121	6,81,183	32,45,938	19.23	5,35,141	27,10,797	..	689,999
2,02,683	1,48,528	54,155	2.15	82,497	..	28,312	25,662
5,54,315	1,21,285	4,33,030	6.42	1,91,321	2,41,709	..	60,207
18,796	4,417	14,379	9.95	4,681	9,698	..	2,314
63,899	12,441	51,458	29.27	5,478	45,980	..	6,511
51,801	9,043	42,763	23.69	5,852	36,911	..	6,103
1,14,825	62,741	52,084	2.12	78,185	..	26,101	16,922
51,339	4,253	50,086	6.55	21,944	28,142	..	8,411
—294	624	—918	..	2,727	..	3,645	623
4,957	18,522	—13,565	..	11,430	..	24,095	222
54,296	36,074	17,622	3.51	17,194	423	..	9,753
79,209	21,399	57,870	14.99	12,731	45,139	..	16,770
1,47,674	35,344	1,12,730	11.54	30,441	61,489	..	32,051

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenues.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
IRRIGATION WORKS— <i>contd.</i> MADRAS— <i>contd.</i>	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
Mehamathur Anicut System .	15	9	75,381	..	2,00,613	75,381
Vriddhachalam Anicut System	33	16	80,685	..	4,53,631	80,685
Lower Coleroon Anicut System	486	020	19,42,892	..	1,23,54,033	10,42,892
Cauveri Delta System . . .	1,507	1,971	49,20,143	..	4,01,30,592	49,20,143
Nandiyar Channel System .	31	..	65,715	20,175	..	85,890
Penyar System	145	106	1,07,33,528	..	2,44,268	1,07,33,528
Srivakuntam Anicut System .	28	46	17,75,011	..	12,42,367	17,75,011
Marudur Anicut System .	29	7	51,806	..	32,94,992	51,806
Total Madras .	4,018	8,303	7,09,22,167	12,53,236	24,46,86,704	7,21,75,403
BOMBAY (SIND).						
Desert Canal	289	32	27,38,014	..	36,48,054	27,38,014
Unharwah	116	5	7,91,716	..	27,37,907	7,91,716
Begari Canal	192	52	24,75,610	..	93,68,355	24,75,610
Eastern Nara Works . . .	666	..	85,10,072	..	31,61,400	85,10,072
Jamrao Canal	226	503	93,02,292	..	5,05,921	93,02,292
Sukkur Canal	128	15	14,84,574	..	4,77,214	14,84,574
Ghar Canal	105	146	6,78,303	..	2,44,30,059	6,78,303
Alimtai Kachhi Canal . .	53	..	1,07,169	..	2,35,588	1,07,169

No. I—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect)	Working expenses (direct and indirect)	Net revenue	Percentage on Capital outlay. column 4.	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent	Rs.	Rs.	Rs.	Acres.
21,505	6,535	14,970	19.83	2,502	12,468	..	4,000
31,716	8,571	23,145	26.70	2,799	20,346	..	6,036
4,37,120	1,86,433	2,50,687	12.90	62,260	1,88,407	..	72,196
18,57,578	7,02,281	11,55,297	23.48	1,66,225	9,89,072	..	101,170
5,782	5,069	113	0.17	2,140	..	2,927	2,736
8,61,285	1,93,181	6,68,101	6.22	3,44,939	3,23,162	..	99,970
1,50,311	1,03,772	46,539	2.62	56,915	..	10,406	22,222
99,960	18,781	81,579	7.47	1,680	79,899	..	14,339
1,30,66,140	33,17,574	97,18,566	13.70	22,58,303	76,67,002	2,07,341	2,149,699
					+74,60,261		
5,06,528	2,12,628	2,93,900	10.73	88,747	2,05,153	..	212,113
2,32,965	80,057	1,52,908	19.31	25,698	1,27,210	..	88,491
7,32,848	2,47,538	4,85,310	19.60	79,982	4,05,328	..	253,007
5,51,385	3,83,657	1,67,728	1.97	2,96,736	..	1,29,003	222,337
8,50,575	5,73,316	2,97,259	3.03	3,32,091	..	34,832	222,395
2,03,918	1,33,472	70,446	4.74	48,518	21,928	..	80,072
8,98,579	2,82,482	6,16,097	9.62	23,331	5,92,766	..	254,576
11,276	—357	11,633	10.83	5,237	6,296	..	12,874

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Increase in operation		Total Capital outlay (direct and indirect)	Accumulated amount of interest.	Accumulated surplus revenues.	Total sum at balance (column 1 + column 2)
	Miles canals and branches	Miles distributaries				
1	2	3	4	5	6	7
	Miles	Miles.	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS						
<i>—contd—</i>						
Boxer (Sind)—contd.						
Great Marsh Canal	170	..	4,58,028	..	22,50,019	4,58,028
Fariazwah	115	..	1,24,680	..	4,38,294	1,24,680
Fuleh Canal	1,003	..	29,88,335	..	1,09,25,548	29,88,335
Hasanalwah	99	..	3,06,546	..	1,19,008	3,06,546
Naulsah	109	15	1,35,671	..	1,81,588	1,35,671
Katra Canal	89	..	76,910	10,821	..	87,731
Punjab Canal	400	..	9,09,791	..	1,37,374	9,09,791
Indus Canal's Right Bank . .	109	..	88,760	..	64,077	88,760
Indus Canal's Left Bank . . .	194	..	2,58,938	..	73,661	2,58,938
Small Canals and Branches . .	23	..	8,33,228	..	3,28,495	8,33,228
Rajib, Choti and Gatang . . .	23	..	2,76,331	..	1,31,110	2,76,331
Canals in Rohri	119	..	1,84,918	..	41,087	1,84,918
Western Nara and Pritchard .	468	9	20,82,928	..	3,04,475	20,82,928
Phitta	37	..	26,136	..	3,728	26,136
Marviwah	15	..	9,737	1,437	..	11,174
Charo Mahmuda	225	..	1,09,785	..	80,281	1,09,785
Kari Bhomali	165	..	15,793	..	34,523	15,793
Nadriwah	130	..	47,157	..	42,779	47,157
Indus Canals (other Canals Fuleh Div.)	129	..	1,14,548	..	29,635	1,14,548

No. I—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect)	Net revenue	Percentage on Capital outlay. column 4	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent	Rs.	Rs.	Rs.	Acrea.
1,07,020	45,683	61,917	13.51	19,810	42,118	..	67,455
36,139	29,764	15,375	12.33	3,912	11,433	..	28,935
7,59,579	2,91,670	4,61,009	15.45	1,08,890	3,53,919	..	497,000
43,387	33,912	9,475	3.09	9,688	..	213	18,452
1,43,983	48,819	91,273	6.93	5,138	89,138	..	48,494
47,576	48,769	-1,193	.	2,616	..	3,839	18,103
2,65,745	1,86,491	79,251	8.72	30,510	48,741	..	99,778
74,791	42,162	32,514	36.67	3,916	28,598	..	32,406
1,11,552	71,717	39,835	15.38	9,457	30,378	..	38,691
2,52,893	89,299	1,64,597	19.75	29,728	1,34,869	..	65,492
90,700	18,734	71,936	20.03	9,362	62,604	..	21,037
1,54,380	1,62,542	-8,162	..	7,517	..	15,679	52,922
7,81,659	4,97,650	3,74,009	17.96	69,334	3,04,675	..	231,651
9,931	5,328	4,603	17.61	575	3,728	..	4,683
13,195	14,316	-1,121	..	316	..	1,437	4,504
1,66,835	82,774	84,121	76.62	3,810	89,281	..	82,681
71,468	36,322	35,146	222.54	623	31,223	..	37,978
72,177	27,651	44,526	94.42	1,267	42,779	..	31,656
72,529	34,233	34,296	29.93	4,661	29,635	..	..

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Increase in operation.		Total Capital outlay (direct and indirect).	Accumulated amounts of in- terest.	Accumulated surplus revenues.	Total sum a'-char, o (column 1 + column 5)
	Main canals and branch.	Distributaries.				
1	2	3	4	5	6	7
	Miles	Miles	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS — contd.						
BOMBAY (SIND)—contd.						
Dambho	65	..	51,818	..	9,932	51,818
Lloyd Barrage, etc. . . . .	..	..	56,10,318	2,27,557	..	58,46,875
Garkhoo Canal	9	4	1,03,476	4,128	..	1,07,604
Total Sind	5,647	781	4,14,09,582	2,43,943	5,07,59,210	4,16,53,523
BOMBAY (DECCAN AND GUJARAT)						
Calikent Tank . . . . .	..	1	16,918	..	47,103	16,918
Mavnolo, Tank . . . . .	..	3	33,501	3,604	..	37,305
Shahala Channel	18	1	68,479	..	8,683	68,479
Total Deccan and Gujarat	18	5	1,18,901	3,604	55,793	1,22,705
Total Bombay	5,665	786	4,15,28,483	2,47,747	5,98,15,003	4,17,76,230
UNITED PROVINCES						
Ganges Canal	568	3,307	3,99,63,790	..	6,92,45,100	3,99,63,790
Lower Ganges Canal	662	3,151	4,18,93,278	..	1,69,45,342	4,18,93,278
Arwa Canal	109	901	1,23,01,418	..	13,33,064	1,23,01,418
Eastern Jumna Canal	129	796	54,10,759	..	4,76,01,348	54,10,759
Dun Canals . . . . .	..	86	16,75,369	..	5,04,548	16,75,369

No. I—contd.

FINANCIAL RESULTS OF THE YEAR 1921-22

Gross receipts (direct and indirect)	Working expenses (direct and indirect)	Net revenue	Percentage on Capital outlay, column 4	Interest.	Net profit	Net loss.	Amortised.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
31,040	20,870	10,170	20.78	1,738	9,032	..	11,515
..	..	..	..	1,83,112	..	1,83,112	..
..	..	..	..	3,501	..	3,501	..
73,11,034	36,08,493	37,03,441	8.04	14,11,030	26,64,032	3,71,621	2,631,801
					+22,92,411		
1,501	1,165	136	0.89	544		408	407
1,978	611	1,367	4.08	1,001	363		651
11,249	5,259	5,990	8.75	2,141	1,810		2,427
14,528	7,035	7,493	6.10	3,689	4,212	408	3,185
73,26,462	36,15,528	37,10,934	8.94	14,14,719	26,68,244	+3,801 1,720.9	2,635,183
					+22,96,215		
67,77,320	19,40,665	48,36,655	12.10	12,81,101	37,55,519		67,999
40,57,297	15,12,813	25,44,484	6.09	13,01,731	12,12,719		113,729
8,63,586	4,62,702	4,01,884	3.26	3,81,611	19,273	..	174,324
22,94,076	6,64,598	16,29,478	10.12	1,72,723	14,24,755		214,199
1,70,318	87,003	83,315	3.78	19,607	3,526	..	18,223

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenue.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches	Distributaries.				
1	2	3	4	5	6	7
	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS—						
<i>contd.</i>						
UNITED PROVINCES—contd.						
Bijnor Canal . . . . .	..	78	5,55,416	..	6,19,069	5,55,416
Gorai Canal . . . . .	..	37	8,77,292	56,410	..	9,33,702
Bohalkhand Canal . . . . .	..	455	30,92,316	10,89,637	..	41,81,953
Sarda Kichha Feeder Canal . . . . .	..	..	1,17,22,074	12,23,613	..	1,29,51,687
Sarda Oudh Canal . . . . .	..	..	1,10,50,015	6,91,467	..	1,16,41,482
Total United Provinces	1,468	8,811	12,85,42,627	29,60,127	13,62,48,531	13,15,09,754
PUNJAB.						
Western Jumna Canal	299	1,751	1,87,27,932	..	6,22,48,103	1,87,27,932
Upper Bari Doab Canal	324	1,559	2,13,61,150	..	6,76,83,438	2,13,61,150
Sutkind Canal	318	1,645	2,62,14,327	..	3,31,01,890	2,62,14,327
Lower Chenab Canal	427	2,242	3,41,37,617	..	22,26,13,851	3,41,35,647
Upper Sutlej Canal	328	394	18,18,279	..	50,70,210	18,18,279
Sudnai Canal	68	249	13,32,492	..	04,17,068	13,32,492
Lower Jhelum Canal	181	989	1,87,75,174	..	3,69,37,065	1,87,75,174
Indus Inundation Canal	433	298	29,78,845	13,99,513	..	43,78,398
Upper Chenab Canal	173	1,241	3,68,59,922	6,70,274	..	3,75,39,196
Upper Jhelum Canal	129	666	4,43,51,348	1,87,18,140	..	6,30,69,488
Lower Bari Doab Canal	132	1,216	2,21,88,074	..	1,32,13,973	2,21,88,074

No. 1—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay. column 4.	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acre.
80,061	43,932	37,029	6.07	22,135	14,894	..	15.70
65,579	33,537	32,042	3.65	31,020	1,022	..	18.23
2,48,560	1,89,083	59,477	1.92	93,587	..	37,110	73.72
..	..	..	..	5,70,780	..	5,70,780	..
..	..	..	..	4,25,471	..	4,25,471	..
1,45,07,503	49,34,213	95,73,290	7.45	43,45,769	62,60,832	10,33,361	1,817,415
					+52,27,521		
40,73,021	15,42,934	25,32,037	13.52	6,21,567	19,10,490	..	831,035
57,40,601	15,15,013	42,25,538	19.78	6,90,281	35,35,277	..	1,705,133
46,74,252	13,21,935	33,52,297	12.79	8,43,587	25,08,710	..	1,132,562
1,98,57,766	28,12,932	1,70,41,614	49.93	11,31,709	1,29,12,905	..	2,145,165
9,91,664	6,28,747	3,67,919	20.23	57,312	3,10,607	..	314,290
8,19,365	1,07,359	7,12,001	53.43	42,337	6,72,219	..	297,254
49,98,824	10,29,736	39,69,088	21.14	6,65,560	31,03,228	..	852,346
6,43,107	8,62,609	-2,19,002	..	91,005	..	3,15,007	247,201
76,56,671	15,01,591	61,55,081	5.92	12,07,665	9,73,616	..	221,144
18,62,477	13,81,974	4,80,503	1.07	11,24,079	..	9,41,273	225,923
67,94,189	19,89,453	48,04,736	21.65	7,28,913	40,75,723	..	1,114,279

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Makeage in operation.		Total Capital outlay (direct and indirect)	Accumulated amount of interest	Accumulated surplus revenues.	Total sum-at-charge (column 1+column 6).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
IRRIGATION WORKS— <i>contd.</i> PUNJAB—contd.	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
Muzaffargarh Inundation Canal	426	605	9,84,613	..	1,07,23,247	9,81,613
Central Workshop	..	..	12,66,278	27,880	..	12,34,158
Chenab Inundation Canal	221	135	11,68,011	..	97,38,176	11,68,011
Sutlej Valley Project	..	..	2,15,49,712	10,19,768	..	2,25,69,480
Total Punjab	3,459	13,039	25,36,52,104	2,18,41,603	47,03,50,036	27,54,03,700
BURMA.						
Mandalay Canal	40	122	57,70,227	2,82,133	..	60,52,380
Shwelo Canal	76	293	62,36,076	..	35,38,878	62,36,076
Yeu Canal	64	170	59,15,321	18,53,722	..	77,59,043
Mou Canals	54	115	63,87,393	8,00,862	..	71,88,245
Man Canal	..	..	16,399	628	..	17,027
Kunda Canal	..	..	69,491	2,517	..	72,008
Total Burma	234	700	2,43,94,900	29,09,882	35,38,878	2,73,01,782
CENTRAL PROVINCES.						
Wainzanga Canal	28	250	49,12,317	15,51,770	..	61,64,087
Mahanadi Canal	160	495	1,37,90,630	40,50,188	..	1,78,10,818
Total Central Provinces	218	746	1,87,02,947	55,71,958	..	2,42,74,905

No. I—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect)	Work and expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay, column 4.	Interest	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
R.	Rs.	Rs.	Per cent	R.	R.	R.	A res
6,64,331	4,81,511	1,79,820	18.26	35,519	1,44,301	.	365,515
1,61,935	31,366	1,30,569	10.82	49,794	80,883	..	.
6,36,014	1,82,803	4,53,811	78.85	39,091	4,13,820	.	187,907
..	..	..	..	8,01,109		8,09,109	.
					2,18,063	21,01,992	
5,50,13,332	1,54,00,295	4,02,17,017	15.85	81,68,378	+ 1,17,659	659	10,361,163
4,71,937	2,09,081	2,61,873	4.56	1,87,709	73,171		74,370
10,79,070	3,62,203	7,17,777	11.51	2,07,532	5,10,183		161,951
5,24,879	2,87,664	2,37,075	4.01	2,23,177	8,078		80,831
2,40,527	1,51,977	88,550	1.28	2,10,122		1,31,552	743
..				541		41	
				2,219		2,119	
23,17,709	10,10,928	13,06,781	5.33	8,47,777	5,77,441	1,77,171	7,80,911
					+4,29,114		
1,50,970	1,13,776	46,193	0.95	1,87,998		1,32,773	74,243
3,55,915	3,70,373	-14,358		2,90,671		6,00,892	127,923
5,15,884	4,83,879	31,905	0.17	7,81,070		7,49,165	1,77,904
						-7,49,165	

STATEMENT

Name of works	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total capital outlay (direct and indirect)	Accumulated arrears of interest.	Accumulated surplus revenues.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches	Distributaries				
1	2	3	4	5	6	7
	Miles	Miles	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS— <i>contd.</i>						
NORTH-WEST FRONTIER PROVINCE.						
Lower Swat Canal . . .	22	187	43,03,670	..	75,52,666	43,03,670
Kabul River Canal . . .	66	13	12,73,000	..	14,02,006	12,73,000
Total North-West Frontier Province.	88	200	55,76,760	..	80,54,762	55,76,760
Total Productive Irrigation Works.	15,149	32,615	51,33,19,988	3,47,93,555	92,38,01,814	57,81,13,543
NAVIGATION, EMBANKMENT AND DRAINAGE WORKS.						
BENGAL						
Grand Trunk Canal . . .	..	..	68,17,997	9,50,530	..	77,68,527
Total Bengal	..	..	68,17,997	9,50,530	..	77,68,527
BURMA.						
Twante Canal . . .	22	..	51,36,530	..	4,32,563	51,36,530
IRRAWADDY EMBANKMENT.						
Western Series						
Kyangin Section . . .	..	..	1,55,064	..	38,929	1,55,064
Myanaung Section . . .	..	..	11,93,776	..	49,35,500	11,93,776
Henzada Section . . .	..	..	23,90,978	..	2,89,24,820	23,90,978

No. I—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue	Percentage on Capital outlay, column 4	Interest.	Net profit	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Ra.	Ra.	Ra.	Per cent.	Ra.	Ra.	Ra.	Aacres.
7,61,788	1,68,378	6,03,410	14.02	1,37,409	4,66,001	.	158,763
2,36,171	84,681	1,51,487	11.90	43,909	1,07,578	..	46,215
9,97,959	2,43,002	7,54,897	13.53	1,81,318	5,73,579	.	294,978
9,43,44,569	2,00,35,479	6,53,09,090	12.02	1,63,17,206	5,15,91,401	46,02,510	17,767,678
					+ 4,69,91,881		
..	..	.	..	3,67,210	.	3,67,210	..
..		.		3,67,210	..	3,67,210	
4,55,682	14,199	4,41,483	6.89	1,64,631	2,76,851	.	..
4,994	3,294	1,700	1.09	4,994	.	3,294	4,191
69,282	34,075	35,207	4.45	34,225	14,972	.	8,572
7,64,599	8,62,790	-1,12,191	..	77,277		1,91,274	242,524
					-3,67,210		

STATEMENT

GENERAL FINANCIAL RESULTS TO END OF 1923-24.

Name of works	Mileage in operation		Total Capital outlay (direct and indirect.)	Accumulated arrears of interest.	Accumulated surplus revenues.	Total sum-at-charge (column 4 + column 5)
	Main canals and branches	Distributaries				
1	2	3	4	5	6	7
	Miles	Miles	Rs.	Rs.	Rs.	Rs.
NAVIGATION, EMBANKMENT AND DRAINAGE WORKS— <i>concll</i>						
BURMA— <i>concll</i>						
Eastern Series						
Sagin Sagayy Section . . . . .	..	..	59,890	.	22,44,802	59,890
Yandoon Island Embankment . . . . .	.	.	12,49,692	..	1,11,202	12,49,892
Thongwa Island Embankment . . . . .	.	..	2,27,909	..	15,34,851	2,27,909
Sittanz Embankment . . . . .	..	.	2,53,513	26,763	..	2,80,276
Total Burma	22	.	1,06,67,552	26,763	3,82,22,739	1,06,94,315
Total Productive Navigation, Embankment and Drainage Works	22	.	1,74,85,549	9,77,293	3,82,22,739	1,84,62,842
GRAND TOTAL of Productive Works	15,171	32,615	56,03,05,737	3,57,70,848	95,21,17,553	59,65,76,385

No. I—concl'd.

FINANCIAL RESULTS OF THE YEAR 1923-24

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue	Percentage on Capital outlay, column 4.	Interest.	Net profit	Net loss	Area irrigated
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent	Rs	Rs	Rs	Acres
59,133	8,109	44,036	73.53	1,941	42,095	..	29,075
62,949	1,82,692	-1,19,843	.	67,413	..	1,87,226	50,735
70,258	16,619	53,639	23.51	7,402	46,237	.	38,764
..	..	..	..	12,572		12,572	.
14,84,190	11,23,868	3,60,331	3.38	3,75,000	3,79,663	3,04,392	757,493
14,84,190	11,23,868	3,60,331	2.06	7,42,270	-14,729 3,79,663	7,61,602	757,493
9,58,28,768	3,01,59,347	6,56,69,421	11.70	1,50,59,476	-3,81,939 5,19,710.51	53,64,122	18,525,171
					4,466,09,915		

STATEMENT UNPRODUCTIVE

Financial results of Unproductive Irrigation, Navigation, Embank

GENERAL FINANCIAL RESULTS TO END OF 1923-24.

Name of works.	Mileage in operation.		Total capital outlay (direct and indirect)	Accumulated arrears of interest	Accumulated surplus revenue.	Total sum at charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS.						
MADRAS.						
Rushikulya System	80	151	51,46,516	32,72,361	..	84,18,877
Nagaravalli River System	21	96	17,23,332	4,30,423	..	21,53,755
Muniyeru Project	61	6	6,01,059	3,53,430	..	9,54,498
Peddinaidu Tank	2	1	63,495	17,502	..	80,997
Jangameshwarapuram Tank		6	71,661	37,013	..	1,08,707
Atmakur Tank		4	1,23,379	63,494	..	1,86,873
Dondapad Tank		7	1,40,004	1,34,360	..	2,74,364
Paravasi Tank Project	7	..	2,60,308	85,874	..	3,46,182
Mogud Project	17	84	22,89,697	7,83,069	..	30,72,766
Hajipuram Tank . . . . .	..	4	3,11,883	1,46,448	..	4,58,331
Ponnalur Tank . . . . .	..	7	2,16,576	1,48,203	..	3,64,778
Anamasamudram Tank, Beraperu . . . . .	..	3	73,573	37,410	..	1,10,983
Yerur Tank . . . . .	..	..	63,353	25,841	..	89,194
Vamula Tank . . . . .	..	..	63,757	45,057	..	1,08,814
Sagileru Tank	12	..	4,64,727	4,71,127	..	9,35,854
Talapalavanka Tank . . . . .	..	..	68,824	40,754	..	1,09,578

No. II.

PUBLIC WORKS.

ment and Drainage Works for, and up to the end of, 1923-24.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect)	Working expenses (direct and indirect)	Net revenue	Percentage on Capital outlay. column 4	Interest	Net profit.	Net loss.	Area irrigated
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent	Rs.	Rs.	Rs.	Acres.
1,73,141	98,109	74,972	1 40	1,58,426	..	83,454	48,065
79,185	21,553	57,632	3 34	66,801	771	..	10,414
27,123	10,616	16,507	2 74	18,046	..	2,479	6,460
2,144	231	1,910	3 00	2,043	.	163	138
1,172	602	570	0 79	2,039	.	1,469	588
1,768	5,020	-3,252	.	3,630	.	6,008	777
683	440	243	0 17	4,149	.	3,900	109
5,109	3,263	1,846	0 70	9,069	.	8,122	761
23,373	5,716	17,657	0 77	85,532	..	6,178	3,434
4,593	940	3,653	1 17	9,270	..	5,613	1,023
2,740	4,823	-2,083	..	6,931	..	9,017	643
-1,875	-1,066	-810	..	2,354	..	3,194	-3
210	10	200	0 31	2,023	..	1,823	987
..	..	..	..	2,023	..	2,023	..
..	138	-571	..	14,877	..	12,438	-123
-435	..	..	..	2,204	..	2,204	-

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus to date.	Total sum at charge (column 1 + column 5).
	Main canals and branches.	Distributors.				
1	2	3	4	5	6	7
	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS—						
<i>contd</i>						
MADRAS—contd.						
Cumbum Tank . . . . .	.	24	86,373	..	63,786	86,373
Markapur Tank	7	..	1,20,658	37,056	..	1,57,714
Yellanur Tank . . . . .	.	4	2,60,707	93,039	..	3,62,766
Kocheruvu Tank . . . . .	.	2	1,35,734	62,044	..	1,97,778
Eddapur Tank	7	9	8,04,486	290,511	..	10,94,997
Nagavaram Tank and supply channel . . . . .	.	.	1,09,890	33,625	..	1,43,515
Venkatapuram Tank	3	..	3,81,921	1,53,943	..	5,38,864
Kutnool Cuddapah Canal	417	294	2,33,81,053	3,22,67,944	..	5,56,49,027
Barur Tank	11	26	4,43,113	3,51,747	..	7,94,860
Kannampalayam Aicut . . . . .	..	..	1,29,170	37,476	..	1,66,646
Madras Water Supply and Irrigation Syst. m.	11	..	18,21,272	24,88,715	..	43,09,987
Pelan'coot Aicut System	39	25	6,92,017	5,48,541	..	12,40,558
Panjampattil Reservoir Project . . . . .	..	1	3,39,188	94,875	..	4,34,063
Total Madras	698	753	4,03,99,759	4,25,51,910	63,786	8,29,51,655
BOMBAY (SINDH)						
Mahisab	207	87	14,63,705	13,25,331	..	27,79,036
Dal Canal	231	130	26,80,659	7,68,417	..	34,49,076
Narsi	216	69	19,66,840	4,28,634	..	22,95,474

No. II—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay. column 4.	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
10,003	1,191	8,809	10 20	2,793	0 010	..	2,443
4,295	2,031	2,261	1 87	3,870	.	1,618	1,541
2,409	1 618	831	0 31	8,383	..	7,532	610
—298	784	—1,082	.	4,352	..	5,431	—59
2,172	1,913	229	0 24	26,401	.	20,172	992
1,007	50	957	0 67	3,568	..	2,611	156
200	610	—410	..	12,098	.	13,108	38
3,49,915	1,28,997	2,20,918	0 93	7,83,702	.	5,64,781	89,013
4,037	6,191	—1,259	..	13,945	..	15,204	1,293
..	3,750	—3,750	..	6,502	..	10,252	.
52,290	24,158	28,132	1 54	53,359	..	25,227	2,116
54,675	24,192	30,483	4 41	22,152	8,331	..	10,476
922	57	865	0 26	12,693	..	11,801	163
8,01,519	3,46,009	4,55,510	1 12	13,38,492	15,118	8,99,109	181,527
					—5,62,952		
1,776	1,65,256	—1,63,480	..	49,551	..	2,19,021	41,872
2,67,632	1,36,273	1,31,359	4 93	26,271	43,168	..	1,17,996
1,66,099	1,24,187	41,912	2 24	60,025	.	19,117	9,257

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenue.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
IRRIGATION WORKS— <i>contd.</i>	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
BOMBAY (SIND)— <i>contd.</i>						
Suttah Canal	37	..	1,83,881	34,630	..	2,18,520
Paghar Canal	159	..	2,73,968	..	47,510	2,73,008
Dadu Canal	37	..	28,915	8,918	..	37,833
Seharwah . . . . .	..	..	28,802	6,710	..	35,512
Naulakhi Canal (Abandoned Project)	..	..	5,145	3,618	..	8,703
Total Sind	940	286	65,21,921	25,76,297	47,510	90,98,218
BOMBAY (DECCAN AND GUJARAT)						
Hathmati and Kharfut Canal	60	82	13,19,729	11,00,618	..	24,10,347
Wanoli Tank	17	..	2,93,295	1,93,547	..	4,83,842
Tranza Nazrana Tank	8	..	2,80,635	2,03,770	..	4,84,385
Saki Tank	8	1	2,55,210	1,98,912	..	4,54,122
Saki a' Tank	9	2	1,84,029	1,68,623	..	3,52,655
Fotehao Tank	4	..	1,16,461	46,383	..	1,62,844
Lower Panzura River Works . . . . .	..	45	4,68,621	4,90,229	..	9,58,850
Hartala Tank	39	75	73,352	72,416	..	1,45,798
Mhaswa Tank . . . . .	..	7	1,38,926	2,41,821	..	3,80,777
J. . . . .	..	6	10,44,137	23,50,907	..	33,95,044
.	4	5	3,79,707	6,78,410	..	10,58,117

No. II—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay, column 4.	Interest.	Net profit.	Net loss.	Amortized.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
24,026	7,143	16,883	9.21	5,892	10,991	..	12,567
77,859	42,774	35,085	12.81	8,870	16,215	..	30,737
32,095	40,673	-7,978	..	910	..	8,918	10,194
..	..	..	..	1,612	..	1,612	..
..	..	..	..	170	..	170	..
5,70,078	5,16,296	53,782	0.82	2,10,256	82,371	2,18,818	268,233
53,754	26,055	17,699	1.34	41,417	-1,56,471	23,718	61
2,198	5,470	-3,272	..	8,168	..	11,110	..
393	2,735	-2,342	..	7,915	..	10,177	2
5,324	5,118	-1,814	..	7,787	..	9,211	7
3,815	4,990	-1,175	..	5,239	..	5,114	..
405	1,502	-1,097	..	3,570	..	4,447	37
26,176	4,445	21,931	4.18	14,810	7,125	..	4,453
899	929	-27	..	1,794	..	1,731	22
1,734	1,831	-97	..	4,582	..	4,519	126
7,108	9,042	-1,834	..	33,127	..	27,981	81
8,719	10,891	-2,172	..	11,727	..	15,899	1,294

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1023-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenue.	Total sum-at-charge (column 4 + column 5)
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS— <i>contd.</i>						
BOMBAY (DECCAN AND GUJARAT)— <i>contd.</i>						24,27,41
Ekrak Tank	48	2	13,40,386	10,87,032	..	1,22,53
Koregaon Tank	4	..	39,189	53,365	..	19,01,1
Aashti Tank	27	3	8,41,703	10,82,400	..	10,44,5
Pathri Tank	5	3	6,42,846	4,01,677	..	14,95,
Krishna Canal	64	..	9,45,477	5,10,110	..	46,37,
Mhaswad Canal	67	43	20,96,016	25,41,900	..	1,00,
Bewari Canal	10		59,811	40,383	..	11,04
Upper Man River Works .	17	6	4,19,296	7,55,578	..	18,50
Yerla River Irrigation Works	33	4	7,78,727	11,02,010	..	1,63
Chikhli Canal	7	..	57,442	1,06,177	..	11,8
Ma'n Tank	9	8	4,91,613	6,88,817	..	3,8
Muchlundi Tank	6	2	1,58,707	2,23,345	..	19,4
(okak Canal, 1st section and storm-se work.	16	35	13,81,922	5,61,368	..	1,
Damli Tank . . . .	..	3	62,980	78,815	..	2,
Melleri Tank . . . .	..	6	81,392	1,42,644	..	5,
Ma'ag Tank	9	..	1,67,598	3,41,628	..	1
Anandi Tank . . . .	..	5	74,995	1,04,903	..	1
Dharma Canal	19	12	97,832	67,829	..	22
Kadwa ver Works	24	14	10,35,483	12,01,612	..	31
(.	19	21	20,49,963	11,34,601	..	

No. II—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay, column 4	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
1,37,778	20,936	1,16,842	8.72	40,837	70,005	.	3,043
661	1,660	-1,005	..	1,261	.	2,266	476
26,426	7,423	19,003	2.26	25,403	.	6,402	3,353
4,775	5,891	-1,119	..	20,876	.	21,093	1,240
75,447	27,801	47,646	5.04	29,722	17,924	..	9,401
53,355	17,807	35,548	1.69	60,658	..	31,140	11,252
2,856	2,828	28	0.03	1,588	.	1,800	200
4,931	,038	1,923	0.44	13,827	.	11,904	555
14,617	19,212	-4,595	..	24,536	.	29,131	5,892
1,889	1,072	837	1.46	17,81	..	932	3.8
9,091	4,854	4,203	0.83	13,473	.	11,771	1,791
590	6,398	-3,803	..	4,663	.	10,471	113
47,637	17,002	49,735	3.60	43,261	6,449	.	9,654
2,538	1,009	929	1.43	2,623	.	1,094	171
1,170	1,250	-80	..	2,003	.	2,085	23
1,704	2,431	-1,123	..	3,302	.	6,465	749
1,003	1,564	3.1	0.43	200	.	1,759	730
—	1,570	-1,078	..	7,412	.	2,000	2,477
51,701	20,352	31,349	3.02	37,347	.	1,000	1,661
23,881	25,562	18,899	0.88	29,744	.	1,741	7,742

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect)	Accumulated arrears of interest	Accumulated surplus revenues	Total sum-at-large (column 4 + column 5).
	Main canals and branches	Distributaries				
1	2	3	4	5	6	7
IRRIGATION WORKS— <i>continued</i> BOMBAY (DECCAN AND GUJARAT <i>contd.</i>)	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
Pravara River Works, Fakhri Ghat,	23	0	3,71,891	10,98,059	..	13,80,850
Chakravarti Canal , , ,	117	175	1,02,73,905	25,41,316	..	1,27,95,251
Pravara Canal , , ,	33	76	1,31,97,607	30,00,805	..	1,71,01,172
Parul Tank , , ,	..	5	2,11,005	2,17,555	..	4,02,550
Pravara Left Bank Canal ,	17	93	3,37,550	5,50,912	..	8,08,192
Mutha Canal including Mutha Tank,	88	81	65,39,953	39,01,815	..	1,05,01,798
Nira Canal and Shajapur Tank	107	139	60,41,793	9,25,719	..	75,67,512
Kusum Tank , , ,	..	2	45,590	1,12,171	..	1,57,761
Shajapur Tank , , ,	..	12	2,21,608	3,25,512	..	5,50,110
Bhamburda Tank , , ,	..	10	2,27,122	2,97,702	..	5,25,124
Mahabaleshwar Tank , , ,	..	..	3,11,028	2,72,319	..	5,81,247
Buldhana Tank , , ,	..	..	5,10,728	3,16,932	..	8,27,660
Nira Right Bank Canal	..	..	3,10,40,281	65,33,618	..	3,75,73,902
Chakravarti Survey , , ,	..	..	1,00,023	6,329	..	1,07,252
Victoria Tank , , ,	..	..	60,613	37,616	..	1,01,280
Fakir Bazar , , ,	..	..	13,521	6,436	..	21,960
Chakravarti, 2nd Right Bank	..	..	1,00,281	3,08,112	..	1,98,396
Total Deccan and Gujarat	1,118	1,075	8,70,69,183	3,90,57,950	..	12,70,57,103
Total Bombay	1,888	1,201	9,18,21,074	4,10,31,247	17,510	13,01,55,321

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect)	Working expenses (direct and indirect)	No. revenue.	Percentage on Capital outlay. column 4	Interest.	Net profit.	Net loss.	Assets and Liabilities
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Assets.
2,316	3,803	—1,490	..	11,720	..	13,216	1,013
5,56,441	2,63,774	2,92,667	2.85	3,59,618	..	36,951	51,803
1,13,610	70,777	42,833	0.32	5,66,567	..	5,23,734	12,616
1,442	1,437	5	..	6,917	..	6,612	1,035
2,21,018	1,02,369	1,18,649	34.13	10,784	1,07,805	..	26,713
3,28,348	1,38,104	1,90,244	2.91	2,07,326	..	17,082	16,578
5,93,561	2,44,931	3,48,630	5.25	2,11,885	1,30,715	..	77,539
611	1,024	—413	..	1,357	..	1,770	34
7,367	3,213	4,154	1.85	7,030	..	2,907	1,537
4,921	3,408	1,513	0.67	7,087	..	5,574	820
..	..	..	..	10,015	..	10,015	..
..	..	..	..	16,393	..	16,393	..
..	..	..	..	17,30,363	..	13,50,363	..
..	..	..	..	4,470	..	4,470	..
..	..	..	..	2,274	..	2,274	..
..	..	..	..	500	..	500	..
..	..	..	..	3,333	..	3,333	..
24,50,397	11,16,741	13,33,656	1.32	32,81,915	3,32,661	23,18,254	23,18,254
20,20,475	10,33,007	13,87,482	1.47	25,02,201	—19,62,500 4,39,651	23,54,219	23,54,219
					—21,19,753		

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated amount of interest.	Accumulated depreciation.	Total amount of work done (in Rs. and paise).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
IRRIGATION WORKS—contd.						
BENGAL.						
Mitnampur Canal	69	254	84,00,213	1,50,51,039	..	2,35,48,152
Total Bengal	69	254	84,00,213	1,50,51,039	..	2,35,48,152
UNITED PROVINCES.						
Botwa Canal	108	568	81,06,214	78,73,304	..	1,62,70,518
Bar Canal	86	240	60,39,762	33,10,387	..	93,50,149
Chambal Canal	107	187	50,90,240	31,86,007	..	82,83,147
Palaji and Jarlhamu Canals . . . . .	..	65	8,25,126	3,01,002	..	12,16,218
Chambal Nadi Scheme . . . . .	..	11	4,21,218	2,35,021	..	6,57,139
Chambal Canal	67	113	41,08,046	14,00,088	..	55,08,134
Chambal Tank . . . . .	..	32	4,25,264	1,47,317	..	5,72,581
Chambal Tank . . . . .	..	67	57,493	1,60,030	..	2,17,728
Chambal Tank . . . . .	..	20	18,984	16,511	..	35,495
Chambal Tank and Canal . . . . .	..	..	1,86,316	77,987	..	2,64,302
Chambal Tank . . . . .	..	..	75,012	53,157	..	1,28,169
Chambal Tank . . . . .	..	5	1,42,159	33,300	..	1,75,459
Chambal Tank . . . . .	..	7	2,30,351	60,811	..	2,97,162
Chambal Tank . . . . .	..	..	61,660	31,543	..	93,203
Chambal Tank . . . . .	..	..	1,28,728	59,021	..	1,67,749

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay, column 4.	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
2,21,857	2,21,314	543	..	2,76,395	..	2,75,852	72,4 12
2,21,857	2,21,314	543	..	2,76,395	..	2,75,852	72,412
					-2,75,852		
2,01,793	2,72,583	-10,789	..	2,69,577	..	2,80,666	61,193
1,93,424	2,05,782	-9,358	..	1,94,118	..	2,03,476	42,718
1,09,271	1,66,138	-56,867	..	1,65,741	..	2,22,608	30,528
15,975	20,145	-4,170	..	26,770	..	30,910	4,066
1,810	6,892	-5,082	..	14,081	..	19,134	511
38 156	1,02,762	-64,603	..	1,19,279	..	2,13,853	12,014
11,356	10,091	665	0 16	14,786	..	14,124	3,109
10,265	11,845	-1,580	..	2,701	..	4,751	3,333
9,519	8,299	1,220	6 43	690	330	..	1,833
4,000	3,470	600	0 32	6,920	..	6,220	..
1,788	3,912	-2,124	..	2,470	..	4,704	..
192	1,862	-1,670	..	7,629	..	9,279	73
1,580	4,150	-2,570	..	7,717	..	9,907	511
273	1,542	-1,269	..	2,000	..	3,373	..
2,015	1,576	437	0 34	4,600	..	2,209	..

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenue.	Total sum-at-charge (column 4 + column 5)
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
	Miles	Miles.	Rs.	Rs.	Rs	Rs.
IRRIGATION WORKS—						
<i>contd.</i>						
UNITED PROVINCES—						
<i>contd.</i>						
Manikpur Tank	61,788	16,647	..	78,435
Bam Muaf Tank	77,581	25,265	..	1,02,846
Barwar Lake and Canal . .		19	7,17,227	1,74,492	..	8,87,719
Batkhara Tank	4,56,702	94,230	..	5,50,932
Jaiwanti Tank	3,68,827	43,510	..	4,12,337
Raipura Tank	1,10,183	11,857	..	1,22,040
Bela Sagar Lake	17,435	754	..	18,189
Tanks in Banda District . .		14	95,512	34,278	..	1,29,790
Macarpur Tank	41,935	16,427	..	61,362
Rampur Kalyanagarh Tank	78,054	12,701	..	90,755
Aunhar Tank	1,22,291	18,591	..	1,40,882
Kitham Pe ervour	2,48,240	24,752	.	2,72,992
Pelan Canal	36,155	17,388	.	53,543
Bundelkhand Irrigation Survey	..	.	1,83,361	3,07,825	..	4,91,186
Kamalpur Tank	17,983	1,540	..	19,523
Ghaziuddin Ha'dar Canal	2,70,583	31,275	..	3,01,858
Total United Provinces . .	428	1,357	2,91,58,650	1,79,50,908	..	4,71,09,558

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay, column 4.	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent	Rs	Rs.	Rs.	Acres.
1,741	1,462	279	0.45	1,001	..	1,712	..
1,271	1,116	155	0.29	3,072	..	2,917	..
..	6,193	-6,193	..	33,859	..	40,978	..
..	..	..	..	23,151	..	23,151	..
..	..	..	..	16,571	..	16,571	..
..	..	..	..	5,336	..	5,336	..
..	..	..	..	603	..	603	..
1,273	4,542	-3,269	..	3,802	..	7,071	1,419
1,300	1,446	-146	..	1,751	..	1,807	351
..	..	..	..	3,700	..	3,700	..
..	..	..	..	5,894	..	5,894	..
..	..	..	..	11,613	..	11,613	..
..	..	..	..	1,108	..	1,108	..
..	..	..	..	5,203	..	5,203	..
..	..	..	..	953	..	953	..
..	..	..	..	14,564	..	14,564	..
670,553	836,420	-1,66,063	..	10,02,697	231	11,62,392	1,72,734
					-11,62,392		

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenue.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
	Miles	Miles.	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS— <i>contd.</i>						
UNITED PROVINCES— <i>contd.</i>						
Manikpur Tank	61,788	16,647	..	78,435
Bata Muafi Tank	77,581	25,265	..	1,02,846
Barwar Lak and Canal	19	7,17,227	1,74,403	..	8,87,719
Bathkhar Tank	4,56,702	94,230	..	5,50,932
Jaiwanti Tank	3,68,827	43,510	..	4,12,337
Raipura Tank	1,10,183	11,857	..	1,22,040
Bela Sazar Lake	17,435	754	..	18,189
Tanks in Banda District	14	95,512	34,278	..	1,29,790
Macarpur Tank	41,955	10,427	..	61,383
Rampur Kalyanpur Tank	78,054	12,701	..	90,755
Aunghar Tank	1,22,291	18,501	..	1,40,882
Kr'ham Peervoer	2,48,210	24,752	..	2,72,993
Pelan Canal	36,155	17,388	..	53,543
Bundelkhand Irrigation Survey	1,83,361	3,07,835	..	4,91,186
Kamalpur Tank	17,983	1,510	..	19,523
Ghaziuddin Haider Canal	2,70,583	31,275	..	3,01,863
Total United Provinces	428	1,357	2,91,58,650	1,79,50,908	..	4,71,09,558

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net income.	Percentage on Capital outlay. column 4.	Interest.	Net profit.	Net loss.	Amortized.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent	Rs.	Rs.	Rs.	Acres.
1,741	1,462	279	0.45	1,991	..	1,712	..
1,271	1,116	155	0.20	3,072	..	2,917	..
..	6,193	—6,193	..	33,850	..	40,078	..
..	..	..	..	23,151	..	23,151	..
..	..	..	..	16,571	..	16,571	..
..	..	..	..	5,356	..	5,353	..
..	..	..	..	603	..	603	..
1,273	4,542	—3,269	..	3,602	..	7,071	1,419
1,300	1,446	—146	..	1,731	..	1,897	354
..	..	..	..	3,760	..	3,760	..
..	..	..	..	5,898	..	5,898	..
..	..	..	..	11,813	..	11,813	..
..	..	..	..	1,108	..	1,108	..
..	..	..	..	5,263	..	5,263	..
..	..	..	..	953	..	953	..
..	..	..	..	14,564	..	14,564	..
6,70,385	8,56,420	—1,86,035	..	10,02,697	330	11,63,292	1,62,758
						—11,63,292	

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenues.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
	Miles	Miles	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS—						
<i>contd.</i>						
PUNJAB.						
Shahpur Canal	117	118	2,25,646	..	13,50,475	2,25,646
Ghaggar Canal	44	34	3,88,435	6,00,704	..	9,89,229
Total Punjab	161	162	6,14,081	6,00,704	13,50,475	12,14,875
BURMA.						
Panlaung River Improvement Scheme.	..	..	7,231	185	..	7,416
Kyaik'on Tank . . . .	..	..	46,522	3,442	..	49,964
Total Burma . . . .	..	..	53,753	3,627	..	57,380
BIHAR AND ORISSA						
Orissa Project	327	1,298	2,71,89,415	4,06,57,326	..	7,68,46,771
Fon Project	357	1,236	2,68,43,771	1,73,06,013	..	4,41,69,784
Trileni Canal	61	185	80,53,318	49,77,766	..	1,29,41,084
Dhaka Canal	18	32	5,95,661	4,09,422	..	10,45,083
Total Bihar and Orissa	763	2,751	6,26,92,195	7,23,10,527	..	13,50,02,722

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect).	Net revenue.	Percentage on Capital outlay. column 4.	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
1,43,516	1,63,466	—24,958	..	7,363	..	32,310	70,731
22,687	37,647	—14,960	..	12,826	..	27,780	10,724
1,66,197	2,00,113	—33,916	..	20,189	..	60,105	87,455
..	..	.	..	185	..	185	..
..	..	..	..	2,388	..	2,388	..
..	..	..	..	2,573	..	2,573	..
6,59,095	5,33,615	1,25,480	0.46	8,85,566	..	7,60,080	143,138
26,70,673	10,36,330	16,34,343	6.03	8,62,697	7,71,646	..	606,760
37,393	2,10,150	—1,72,757	..	2,71,493	..	4,41,253	83,057
7,531	15,913	—8,382	..	19,428	..	27,810	19,131
33,74,692	17,96,008	15,78,684	2.52	20,29,189	7,71,646	12,32,151	932,086
					—4,60,503		

STATEMENT

Name of works	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total Capital outlay (direct and indirect).	Accumulated arrears of interest	Accumulated surplus revenues	Total sum-at-charge (column 4 + column 5)
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
	Miles	M'as	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS—						
<i>contd.</i>						
CENTRAL PROVINCES.						
Khapri Aiauda	28	3,53,934	93,101	..	4,47,035
Chandpur	71	6,69,404	2,84,726	..	9,54,130
Maronda	23	3,95,073	2,13,202	..	6,08,275
As-la Mendha	134	17,51,182	8,75,674	..	26,26,856
Ghora,beri	82	11,09,374	4,74,818	..	15,84,192
Pandraon	19	2,33,261	88,561	..	3,21,822
Kharlanja	59	7,71,621	4,89,624	..	12,61,245
Rooral	16	3,01,903	1,01,469	..	4,03,371
Bantek	206	28,86,207	14,09,404	..	42,95,610
Patara Kalan	21	2,21,088	85,449	..	3,06,537
Tandula Canal	69	512	1,03,55,386	31,85,403	..	1,35,40,789
Nalshavar	34	6,38,619	2,90,524	..	9,29,143
Jamuna	38	5,23,738	1,79,778	..	7,03,516
Kattan,beri	17	1,93,757	79,592	..	2,73,349
Chorkharaia	48	9,20,989	2,80,101	..	12,01,090
Polalkava	54	6,27,659	1,93,897	..	8,21,556
Parat	14,43,516	2,33,750	..	16,77,265
Kumbhari	9	5,87,911	90,016	..	6,77,927

No. II—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24.

Gross receipts (direct and indirect).	Working expenses (direct and indirect)	Net revenue.	Percentage on Capital outlay. (column 4).	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Lrs	Rs	Rs.	Per cent.	Rs.	Rs.	Rs	Acres.
19,307	12,034	7,273	2.05	11,121	..	3,818	7,018
20,433	20,620	—187	..	21,380	..	21,567	8,130
8,008	6,987	1,021	0.41	12,501	..	10,883	2,032
34,913	43,186	—8,273	..	57,741	..	66,014	13,230
16,282	30,816	—14,534	..	40,421	..	54,035	5,060
0,898	6,733	3,165	1.36	8,606	..	5,411	3,117
13,326	29,079	—16,653	..	21,362	..	41,015	5,510
4,710	9,009	—5,190	..	9,866	..	15,036	2,697
5,065	37,570	—4,505	..	91,015	..	95,520	0,832
6,792	4,476	2,316	1.05	7,585	..	5,269	2,289
2,88,372	3,33,840	—45,468	..	4,14,861	..	4,60,329	114,859
4,333	13,716	—9,323	..	22,590	..	32,213	1,662
11,597	7,723	4,071	0.78	17,664	..	13,590	4,336
3,306	4,890	—1,584	..	6,603	..	8,187	1,241
19,280	15,035	4,245	0.46	40,015	..	35,770	5,102
18,014	17,212	802	0.13	25,180	..	24,378	5,154
271	..	271	0.02	72,772	..	72,501	..
2,297	1,916	381	0.03	30,837	..	30,456	2,301

STATEMENT

Name of works.	GENERAL FINANCIAL RESULTS TO END OF 1923-24					
	Mileage in operation.		Total capital outlay (direct and indirect).	Accumulated arrears of interest.	Accumulated surplus revenues.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
IRRIGATION WORKS— <i>contd</i>						
CENTRAL PROVINCES— <i>contd.</i>						
Kharung	19,16,051	1,47,361	..	20,63,412
Kuerla	2,40,398	30,582	..	2,79,980
Boharibund	5,55,171	78,730	..	6,33,901
Dorma Nalla	8	6,71,464	1,03,392	..	7,79,856
Niwartar Ahme	16	3,59,916	79,000	.	4,38,976
Mals	4	5,39,667	69,774	.	6,09,441
Simrar Nalla	1,86,561	26,880	..	2,13,441
Surkhigouds	1,61,366	22,558	.	1,83,924
Jagwa	2,46,688	27,159	..	2,73,847
Aman	2,96,687	30,965	..	3,27,652
Chandus Nala	3,01,367	23,364	..	3,24,731
Managath	503	69	..	577
Bori	1,06,594	2,898	..	1,09,482
Manliri	32,614	1,229	..	33,843
Total Central Provinces	61	1,399	2,96,18,694	96,88,019	..	3,93,06,733

No. II—*contd*

FINANCIAL RESULTS OF THE YEAR 1923-24.

Capital receipts (direct and indirect),	Working expenses (direct and indirect),	Net revenue	Percentage on Capital outlay, column 4.	Interest.	Net profit.	Net loss.	Area irrigated.
8	9	10	11	12	13	14	15
Rs.	Rs.	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
..	..	..	..	81,468	..	81,468	..
..	..	..	..	11,817	..	11,817	..
420	..	420	0.03	29,245	..	28,705	..
1,348	5,681	—4,296	..	31,733	..	36,029	979
2,096	8,376	—6,281	..	12,141	..	18,122	809
2,620	2,916	—297	..	27,363	..	27,660	1,237
..	..	..	..	10,159	..	10,159	..
..	..	..	..	8,643	..	8,643	..
..	..	..	..	11,871	..	11,871	..
..	..	..	..	14,026	..	14,026	..
..	..	..	..	12,583	..	12,583	..
..	..	..	..	27	..	27	..
..	..	..	..	2,888	..	2,888	..
..	..	..	..	1,229	..	1,229	..
5,21,605	6,13,618	—92,013	..	11,70,589	..	12,62,602	199,222
					—12,62,602		

STATEMENT

Name of works,	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation.		Total capital outlay (direct and indirect).	of accumulated areas of interest.	Accumulated surplus revenues.	Total sum-at-charge (column 4 + column 5).
	Main canals and branches.	Distributaries.				
1	2	3	4	5	6	7
IRRIGATION WORKS— contd.	Miles.	Miles.	Rs.	Rs.	Rs.	Rs.
NORTH-WEST FRONTIER PROVINCE.						
Upper Pesh Canal	111	315	2,50,34,110	80,81,021	..	3,07,16,073
Pabaspur Canal	•	•	9,20,719	9,80,410	..	10,01,165
Total North-West Frontier Province.	111	315	2,59,54,891	90,72,310	..	3,20,17,238
RAJPUTANA.						
Tanks in Ajmer Sub-Collectorate.	..	..	18,61,805	16,09,252	..	34,70,057
Tanks in Pawaar Sub-Collectorate.	..	..	11,01,22,0	7,11,353	..	18,35,582
Tanks in Todgarh Sub-Collectorate.	..	..	4,01,809	1,85,201	..	6,77,110
Total Rajputana . . . . .	..	..	36,17,893	26,31,806	..	68,27,709
BALUCHISTAN.						
Sheho Canal	5	10	8,27,171	11,305	..	8,41,569
Khushdal Khan Canal	1	40	17,01,611	..	3,57,874	17,03,611
Narl Weir Canal	3	12	6,17,232	13,722	..	6,30,954
Total Baluchistan	9	71	31,18,017	28,117	3,57,874	31,70,134
TOTAL UNPRODUCTIVE IRRIGATION WORKS	4,229	8,313	20,52,05,227	21,20,17,371	18,15,645	50,72,22,611

STATEMENT

Name of works	GENERAL FINANCIAL RESULTS TO END OF 1922-24.					
	Mileage in operation		Total capital outlay (direct and indirect)	Accumulated arrears of interest	Accumulated surplus revenue	Total sum at charge (column 1 + column 5)
	Main canals and branches	Distributaries				
1	2	3	4	5	6	7
	Miles	Mile	Rs.	Rs.	Rs.	Rs.
NAVIGATION, EMBANKMENT AND DRAINAGE WORKS.						
MADRAS.						
Ganjam Gopalpur Canal	..	..	1 55 493	1 93 285	..	3 48 778
Buckingham Canal	262	..	90 53 326	1 8 20 149	..	2 48 75 775
Vedaranniyam Canal	34	..	1 36 432	5 21 077	..	6 57 509
Total Madras	296	..	93 47 251	1 65 34 11	..	2 58 82 062
BENGAL.						
Hajdi Tidal Canal	50	..	26 14 318	40 21 303	..	66 38 626
Calcutta and L. Canal	1 184	..	95 57 900	..	1 23 25 360	97 57 900
Madaripur R. Route	38	..	68 39 700	..	11 81 463	68 39 100
Dredging Bidyadhari	..	..	9 9 133	37 888	..	10 32 021
Purchase of Dredger	..	..	68 30 287	7 81 651	..	76 11 938
Total Bengal	1 272	..	2 69 3 738	8 43 817	1 35 09 823	3 16 79 585
BURMA.						
Yonwe River Embankments	..	..	11 72 138	3 56 225	..	15 28 363
Total Burma	..	..	11 72 138	3 56 225	..	15 28 363

No. II—contd.

FINANCIAL RESULTS OF THE YEAR 1921-22

Gross receipts (direct and indirect)	Working expenses (direct and indirect)	Net revenue.	% centage on Capital outlay, column 4.	Interest.	Net profit.	Net loss.	Area irrigated
8	9	10	11	12	13	14	15
Rs.	Pn	Rs.	Per cent.	Rs.	Rs.	Rs.	Acres.
223	481	—258	..	4,768	..	5,016	..
78,027	2,91,096	—2,17,160	..	2,85,973	..	5,03,142	..
100	2,307	—1,257	..	4,412	..	5,600	..
80,200	2,93,894	—2,18,684	..	2,95,143	..	5,13,27	..
					—5,13,827		
86,268	25,565	60,703	2.3	84,820	..	21,117	..
4,70,123	6,04,639	—1,04,516	..	3,17,717	..	5,12,233	..
2,67,656	47,131	2,20,525	3.2	2,78,466	..	57,941	..
..	..	..	..	28,741	..	28,741	..
..	1,716	—1,716	..	3,62,801	..	3,61,517	..
8,24,017	7,39,051	84,996	0.32	10,72,545	..	9,87,549	..
					—9,87,549		
18,028	1,09,130	—91,102	..	55,289	..	1,46,391	15,227
18,628	1,09,130	—91,102	..	55,289	..	1,46,291	15,227
					—1,46,391		

STATEMENT

GENERAL FINANCIAL RESULTS TO END OF 1923-24.						
Name of work.	Mileage in operation		Total capital outlay (direct and indirect)	Accumulated amount of interest	Accumulated surplus revenue	Total sum-at-charge (column 4 + column 6)
	Main canals and branches	Distributions				
1	2	3	4	5	6	7
	Miles	Miles	Rs.	Rs.	Rs.	Rs.
MADRAS.						
Gangam Gopalpur Canal	..	..	1 55 493	1 03 285	..	3 48 778
Rockingham Canal	262	..	90 55 326	1 8 20 140	..	2 48 75 775
Vedarsangam Canal	31	..	1 36 432	5 21 077	..	6 57 509
Total Madras	296	..	93 47 251	1 65 34 411	..	2 68 82 062
BERGAL.						
Hijli Tital Canal	50	..	26 14 318	40 21 308	..	66 38 626
Calcutta and T. Canal	1 184	..	95 57 900	..	1 23 25 360	95 57 900
Kadripur R. River	38	..	68 39 100	..	11 81 461	68 39 100
Dredging Bilyadhari	..	..	9 9 133	37 888	..	10 32 021
Purification of Dredger	..	..	68 30 287	7 81 051	..	76 11 938
Total Bengal	1 272	..	2 68 35 738	48 43 817	1 35 09 823	3 16 79 585
BURMA.						
Yonwe River Embankments	..	..	11 72 138	3 56 225	..	15 28 363
Total Burma	..	..	11 72 138	3 56 225	..	15 28 363

No. II—contd.

FINANCIAL RESULTS OF THE YEAR 1923-24							
Gross receipts (direct and indirect)	Working expenses (direct and indirect)	Net revenue	Percentage on Capital outlay—column 4.	Interest.	Net profit.	Net loss.	Area irrigated
8	9	10	11	12	13	14	15
Rs.	P.A.	Rs.	Per cent	Rs.	Rs.	Rs.	Acres
223	481	—258	..	4,758	..	5,016	..
78,927	2,91,036	—2,17,109	..	2,85,973	..	5,63,142	..
100	2,307	—1,257	..	4,412	..	5,669	..
80,200	2,93,884	—2,18,684	..	2,95,143	..	5,13,27	..
					—5,13,827		
86,268	25,665	60,703	2.3	84,820	..	24,117	..
4,70,123	6,64,639	—1,94,516	..	3,17,717	..	5,12,233	..
2,67,676	47,131	2,20,525	3.2	2,78,406	..	57,941	..
..	..	..	..	28,741	..	28,741	..
..	1,716	—1,716	..	3,62,801	..	3,61,517	..
8,24,017	7,99,051	84,996	0.32	10,72,545	..	9,87,519	..
					—9,87,519		
18,028	1,09,130	—91,102	..	55,259	..	1,40,391	16,227
18,028	1,09,130	—91,102	..	55,259	..	1,40,391	16,227
					—1,40,391		

STATEMENT

Name of works	GENERAL FINANCIAL RESULTS TO END OF 1923-24.					
	Mileage in operation		Total capital outlay (direct and indirect)	Accumulated arrears of interest	Accumulated surplus revenues	Total sum at charge (column 4 + column 5).
	Main canals and branches	Distributaries				
1	2	3	4	5	6	7
NAVIGATION, EMBANKMENT AND DRAINAGE WORKS— <i>contd</i>	Miles	Miles	Rs	Pes	Rs	Rs
BIHAR AND ORISSA						
Ghoru Katora Reservoirs			469	67	.	536
Total Bihar and Orissa	.	.	469	67		536
TOTAL UNPRODUCTIVE NAVIGATION, EMBANKMENTS AND DRAINAGE WORKS	1,568	..	3 73 55,596	2,17,31,950	1,35,09,823	5,90,90,546
GRAND TOTAL UNPRODUCTIVE WORKS	5,797	8,313	33,25,60,833	23 37,52,324	1,53,25,468	56,63,13,157

No. II—concl'd.

FINANCIAL RESULTS OF THE YEAR 1924-25

Grass receipts (direct and indirect)	Working expenses (direct and indirect)	Net revenue	Percentage on capital outlay. column 4	Interest	Net profit.	Net loss	Amortized.
8	9	10	11	12	13	14	15
R.	R.	R.	Per cent	R.	R.	R.	Acct.
..	..	..	..	27	..	27	..
..	..	..	..	27	..	27	..
					—27		
9,22,275	11,47,665	~2,24,750	..	11,23,694	..	10,47,791	15,327
					—16,47,791		
1,06,81,167	75,98,693	30,27,201	0.93	1,17,91,961	12,21,549	59,20,206	2,127,834
					—86,98,657		

- (2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them

Notes.

1. **Application of the Section.**—The Section is directory and not mandatory. A substantial compliance with the provisions of the Section is sufficient.—1 P R 1896 "See 77 Cr P C hereby directs that a Warrant shall ordinarily be directed to one or more Police Officers. It does not say that the name of that Police Officer is to be inserted in the warrant as well as his designation" [3 Pat J. 493]
2. **Warrants directed to private persons.**—

When Police Officers are available, a warrant should not be addressed to private persons [8 W R 74]

3. **Police officers cannot entrust warrants to private persons.**—When a warrant is directed to a Police Officer, he cannot endorse it to a private person and thereby authorise him to execute it. See S 79—it can be endorsed only to another Police Officer.—See also Abbot 51 Barb 512]
4. **Procedure**—Warrants should be directed to the Senior Officer of Police in attendance at a Court, by whom they should be registered in a book, kept for the purpose. He should then endorse on such warrant the name of the officer who is charged

with its execution (generally an officer in charge of a Police Station) and should despatch it without delay. The officer receiving the warrant may again transfer it for execution to another Police Officer but in every instance a regular endorsement must take place, so that the name of the officer executing the process may be apparent on the order itself. Ben, Pol Man, 2nd Ed p. 396.

5. **Effect of omission of the name of the**

would certainly be extremely difficult to carry on the Police Administration of the country if every warrant had to be directed by name to a Police Officer and upon his transfer it were to become incapable of execution till the name of some other officer had been substituted in his place."

6. **Who may execute the warrant.**—In English Law, the actual or constructive presence of the person named or designated in the warrant as the person directed to execute it, is necessary [Whalley 7 C and P, 215, See 1 Cow, 63.]

78. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79 A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notes.

1. **Endorsement by name.**—

Under the terms of S 79 the endorsement should be regularly made by name to a certain person in order to authorise him to make the arrest. Where no name is endorsed, the warrant is illegal and the person executing it is not liable to punishment [10 N. 81.] See however 3 Pat J. 493

2. **Endorsement of warrants under Special Acts.**—

A special warrant issued under S 6 of the Bombay Prevention of Gambling Act (1V of 1887) can be executed only by the officer to whom it is directed by name S 79 Cr. P. C. does not apply to such cases [3 S 56.] The Burma Gambling Act (1 of

1899) contains no provision authorising the endorsement of the warrant issued under S 6 thereof by the officer to whom it is issued to another officer [21 Cr. 9 (L. B.)]. Similarly only the person named in a warrant under S 45 of the Chowkidari Act (Bengal VI of 1870) can lawfully execute the warrant [37 C 122].

Only the officer named in the warrant can endorse it.—Where the warrant was directed to the Court SubInspector, in his absence, the Court Head Constable, cannot endorse it to any process-serving peon. Only the officer to whom the warrant is directed can lawfully endorse it to another officer [27 C 457]. See also 18 A 246.

Q. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Notes.

Application of the Section.—All that the Section requires is that the accused shall have reasonable opportunity of knowing on what charge he is being arrested and before what Court he is to appear, so that he may take steps for arranging for his defence. The omission on the part of the Police Officer to explain to the accused the particulars of the warrant after showing him the warrant does not invalidate the arrest, when the accused had sufficient opportunity of reading the warrant itself [3 Pat. J 493].

When arrest will be illegal.—When the contents of the warrant had not been explained to the accused before his arrest and the accused had not had a chance of seeing the warrant and reading it, the arrest was held to be illegal—23 C 690, 26 C 748.

Resistance to arrest under illegal warrant.—Where the warrant itself is *ultra vires* and illegal or has ceased to be in force on the date of arrest, resistance to arrest does not constitute any offence—See 10 C. 18; 13 B 164; 22 C 246(290); 10 P. R. 1905; 24 C 320 (323). See also 28 C. 399; 35 A. 103; 10 P. R. 1904 (escape from custody).

Arresting officer bound to have the warrant with him at the time of arrest.—The

4. Process-serving peons—are not Police Officers within the meaning of S 70 Cr. P. C. [27 C 457]. The terms of S 59 expressly provide that no other person except a Police Officer, is competent to execute a warrant of arrest under an endorsement from another Police Officer (ibid.)

5. Endorsement should not be made by initials.—A Magistrate is guilty of gross carelessness in not signing his name in full on a warrant but a warrant is not invalid merely because it has been initialled [3 Pat. J 493]. Where one of the endorsements is only by initials, the warrant will be legal if the initials are identified by witnesses [5 C N 447].

officer arresting, must have the warrant of arrest in his possession at the time of making the arrest, otherwise the arrest would be illegal—5 A. 318; See 27 A 258 (259). The person sought to be

Galleard; 2 B & S. 361. The police officer who

5. Distinction between S. 56 and S. 80 Cr. P. C.—The provisions of S. 80 should not be extended to an arrest by the Police on an order

officer is bound to do so is to extend the law beyond the limits laid down by the Legislature—27 C. 320.

6. Police officer acting *homo fide*—is protected by S 70 I. P. C.—See 24 W. R. 51; 19 W. R. 361; 6 W. R. 88.

The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is arrested to be brought before without delay. red by law to produce such person.

Notes.

Character of the warrant to which the section refers.—The warrant is not a warrant for commitment but merely an order authorising the police officer to whom it is addressed to arrest the person and bring him before a particular magistrate. The warrant is exhausted as soon as the person arrested is produced before the Court

To authorise further detention, an order under S 344 Cr. P. C. is necessary. The warrant for further detention would be one of commitment directed to a jailer or other person having authority to receive and keep the prisoner—4 B. L. (sp) 1.

2. Unnecessary detention is punishable.—17

a person arrested is detained by a police officer for over 24 hours [as required by S 61 Cr. P. C.], he is punishable under S 23 of Act V of 1861. Detention means continuous detention. See 1 W R 5. 6 W R 88; 19 W R 36.

3. No particular time fixed for execution

Where warrant may be executed.
British India.

82. A warrant of arrest may be executed at any place in

of warrants.—The Code contains no provisions as to the particular week-days or time of day when an arrest may be made. In England, arrests for felonies may be made on all the days of the week and during nights as well as days. See *Raulins*, 3 Cox 96.

Notes

1. Mere presence in "British India" may not be sufficient.—The arrest of a person for an offence committed in British territory and not committed on the Nizam's Railway (The Hyderabad State Railway) or in any way connected with the administration of the Railway, merely because, he was physically present on a portion of that line of the Railway, is illegal. The taking of the advantage of the fact that criminal jurisdiction along the line of the Railway

has been granted to British Government by treaty would be an evasion of the law [See 25 C. 20 (P. C.)].

2. Evasion of the law.—

It would be a mere evasion of the law to arrest a person in British India [e.g., the Residency of Jeypur] after having him first arrested by a constable of the Native State outside British India—7 Bur 83.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency town within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

Notes.

1. The section applies to warrants issued under the Workmen's Breach of Contract Act, 23 M 215, 23 M 457, 20 A 121. See also 11 P. R. 1474, 33 P. R. 7438, 17 P. R. 1896.
2. Power of arrest of persons at Aden.—See Reg. an Ord N. W. F., S 10 p 361.
3. Arrest of persons in Jail.—See S. 3 of the Prisoner's Testimony Act XV of 1869.

4. Outside the local limits.—The expression must not be understood to include any place outside British India. See S. 82 Supra.

5. The section is merely directory and not mandatory.—1 P. R. 1896.

Magistrates competent to act under the section.—The power under the section may be exercised by all provincial magistrates.—See Sec 111 (1) (3).

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to

be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the town of Calcutta.

85 When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner or District Superintendent.

86 (1) Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

87 (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

- (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
- (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and
- (c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that a proclamation was duly published on a specified day shall be conclusive evidence thereof.

requirements of this section have been complied with, and that the proclamation was published on such day

I. Condition precedent to order.

1. Previous issue of warrant.—

The previous issue of a warrant against the person whose attendance before the Court is required, is a necessary condition. If this is wanting, all proceedings relating to proclamation and attachment would be illegal.—13 P. R. 1893; 5 N. 125; 2 Weir 40

2. Magistrate is bound to satisfy himself

that the accused is really absconding.

Before issuing a written proclamation, the officer, sent to serve the warrant, must be examined as to the measures adopted by him to serve it. If on his evidence or on other grounds the Magistrate is satisfied that the accused is absconding or concealing himself for the purpose of avoiding the service of the warrant, then only the procedure laid down in ss. 57 and 58 should be adopted [3 W. R. 143; 8 W. R. 73]. The Magistrate must judicially find that the necessary conditions for the issue of a proclamation are present. [19 W. R. 12; 18 W. R. 73; 3 W. R. 63].

3. Meaning of the term "absconding".—

The term "abscondit" is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense is to hide oneself; and it does not matter whether he departs from a place or remains in it if he conceals himself. Nor does the term apply to the commencement of concealment. If a person having committed himself before process issues, continues to do so after it has issued, he abscondit.—[14 M. 311]. But an absent person should not be too readily assumed to be an absconder without due enquiry and notice [2 Weir 40].

4. For a conviction under S. 172 I. P. C.—

It is necessary to prove that the accused knew or had reason to believe that a warrant had issued.—See 4 M. 393. See also 5 W. R. 71; 7 N. P. 302; 11 W. R. 70; 24 P. R. 1890

5. Proclamation in petty cases.—

When the offence is a petty one, it would be more judicious to drop proceedings than to issue a proclamation against the absconder.—3 L. B. 116

6. Procedure.—

When it is alleged that an accused person has absconded, evidence to prove the allegation should be taken [cf. S. 512 infra]. If the Magistrate considers there is sufficient *prima facie* proof of the offence, he can proceed under ss. 57 and 58. If there is no *prima facie* proof, proclamation and attachment should be refused.—See 3 L. B. 116; 19 W. R. 12. See also 7 M. 430.

7. Change of Law.—

Under the Codes of 1861 and 1872 proclamations could not be issued in summons cases [See S. 172, Code of 1872]. But the word "any person" in the section clearly includes also an absconder accused in a summons case. But to lay the foundation for the issue of the proclamation, a warrant should be previously issued under Cl. (6) of S. 90 Cr. P. C.—5 N. 125

8. The warrant previously issued must be a valid one.—

Where a person discharged in a case of cheating was called upon to show cause why he should not be re-tried but before he had opportunity of showing cause, a warrant of arrest was issued—held—that the order for warrant and the orders under ss. 57 and 58 Cr. P. C. upon the accused absconding were passed without jurisdiction.—15 P. R. 1893; See also 5 N. 125

9. All Magistrates competent to issue proclamation.—

See Sch. III, Cl. (4)

II. Publication of the Proclamation.

10. As to the Form.—

See Sch. V Forms No 4 and 5.

11. Computation of the period of "thirty days".—

The period of thirty days is to be reckoned from the date of the complete publication of the proclamation, i.e. the date on which the

12. Omission to give thirty days' time renders the proclamation void.—

Where a proclamation under s. 57 of the Cr. P. C. does not give thirty days for the appearance of the accused, the proclamation is invalid and the subsequent proceedings following upon it are liable to be set aside.—21 Cr. 210 (P); 17 R. 438; 19 M. 3; See

Mad H. C. Cr. Rev. case 209 of 1901 and 12 of 1907; Cr. R. 7 of 45-01

13. Provisions of clauses (a) (b) and (c) imperative.—

In respect of the rules regarding the time and the places of proclamation the section is imperative and a neglect of such rules renders all proceedings void.—19 M. 3; 21 Cr. 210 (P); 27 A. 572; 14 B. R. 163. Where a proclamation issued on 6th Nov. fixed the date of the appearance of the accused as 11th Dec. and although published by affixing a copy on the Court-house on the 6th and was not published in the place where the accused resided till the 16th—held—there was no legal proclamation [14 M. 3]. But See 17 W. R. 10

14. Publication at the accused's place of residence the most important part.—

The most important part of the publication of a

proclamation under S. 87 Cr P C is the publishing of it in the newspaper at the place of residence [6 P. R. 1916]

15. Absence of validating order under Cl. (3)

In the absence of a statement issued by the court in writing to the effect that the proclamation was duly published, the subsequent attachment is illegal, and sale under it is a nullity. 27 A 572 See 9 P. R. 1908 22 A, 216 Magistrates when acting under S. 87 should always make an endorsement or statement in writing validating the proclamation as contemplated by cl. (3) of the section 6 P. R. 1916

16 Effect of defective order under Cl. (3)

An order under S. 87 (3) Cr P. C. stating that the proclamation was duly published, but omitting to specify the date of the publication, cannot be

considered as conclusive evidence that the requirements of S. 87 had been complied with. 21 Cr 210 (P)

17 Proof of publication The prosecution in a case against an absconding accused ought to file the statement referred to in cl. (3) of S. 87 Cr P C to prove the fact of absconding. 17 Cr 78(M)

17a. When informality is curable. Where a proclamation under S. 87 Cr P C is made and is read and published in the place, where the absconders are most likely to hear of it, the mere omission to affix a copy of it to the court house, is in the absence of prejudices, an irregularity curable by S. 537 Cr P C. 36 P. R. 1917 Com 49 M 3

17b. For instructions regarding publication of proclamation See Beng Pol Code p 250

III. Penalty for disobedience.

18 The Position of an absconder An accused person against whom a proclamation has been issued, must be regarded as in contempt until he has come in and surrendered. No petition on his behalf can be entertained until he has so surrendered.—2 N. P. 441 17 W. R. 10

19. What an absconder should do after surrender.—The absconder should appear before the Magistrate and apply to be discharged, on the ground that the warrant is informal, or otherwise offer some explanation by way of purging his contempt. He may apply at the same time for the release of his property. The Magistrate may then determine judicially whether the warrant was a valid one and when he has done so, the absconder may apply for a revision of the proceedings.—See 2, N. P. 441, 5 W. R. 71

20. Magistrate enforcing penalty cannot utilise provisions of S. 537 Cr. P. C.—It is not for the Magistrate enforcing the penal consequences of alleged disobedience to a proclamation

under S. 87 Cr P C to utilise the provisions of S. 537 Cr. P. C. to cure any defect in the mode of publication of the proclamation. It is for the Sessions Judge on appeal or the High Court in revision to consider whether the defect is curable or not.—19 M. 2.

21. Section of the I. P. C. applicable on disobedience A warrant of arrest should be sharply distinguished from a summons, notice or order. It is addressed not to the person arrested but to the police officer directed to make the arrest

absconder should be dealt with under the Criminal Procedure Code and not under S. 172 I. P. C. [7 N. P. 302] If the absconder fails to attend in obedience to the proclamation he should be proceeded against under S. 174 I. P. C. [5 W. R. 71, 7 N. P. 302 See 9 W. R. 70; 21 P. R. 1909]

IV. Miscellaneous.

22. Cost of proclamation to be paid by absent witness.—When a proclamation has been issued for an absent witness, if the witness shall afterwards appear, and the Court shall be of opinion that such witness has absconded or concealed himself for the purpose of avoiding the service of a warrant upon him, such Court may order the witness to pay the cost of the proclamation.—Wilkins 42

23. Simultaneous proclamation and attachment.—A Magistrate may in a proper case, simultaneously issue proclamation and make an order for attachment of the property of the absconding accused.—29 C. 417

[Note.—The words “at any time” in S. 88 points to this conclusion]

24 Proclamations to be preserved.—Magistrates ought to take particular care in cases where a Court is asked to confiscate private property to preserve proclamations; and the records must be so clear as to satisfy the Court that all the legal formalities were duly observed. 14 B. R. 163 Where there was on account of the neglect of the Lower Courts, these materials were not forthcoming, the order for attachment was set aside. [5, 4]

88 (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property

belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf;

or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(c) by taking possession; or

(d) by the appointment of a receiver; or

(e) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(f) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature the Court may if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Proposed amendments to the Section— After sub-section (6) of Section 88 of the said Code, the following sub-sections shall be inserted, namely

lates and requires proof that the offender did not abscond or conceal himself for the purpose of avoiding arrest, and that he had not had such notice of the proclamation as to enable him to attend within the time prescribed—15 B R 175 See 3 W R 63 G P R 1916

5. **Objection by the absconder to validity of proclamation, attachment and sale.**—It is open to the alleged absconder to prove (1) that he was not absconding (2) that there was no publication at all or that the proclamation was defective, & (3) that it specified no date for his appearance—59 P R 1917 But See G P R 1916

6. **Recusant witness.**—Where a recusant witness does not make his appearance, the Magistrate may sell any part of the attached property and recover the amount of fine imposed on him, and the fine is not illegal by reason of the witness's answer to the charge not having been recorded—2 W R 44 (16)

7. **Procedure.**—Forfeiture of property of an absconding offender who appears within two years from the attachment of his property should not be carried into effect, until after a regular enquiry into the cause of the offender's absence, and when the accused appears, he is bound to satisfy the Magistrate that he has not been avoiding the process of the Court—3 W R 63

8. **Applicant's remedy if the property has already been sold.**—S 80 Cr P C provides for applications by the absconding offender only, for restoration of the property attached, and no provision is made for claims by third parties to such property. Once the sale of the property has duly been effected, it cannot be set aside even at the instance of the absconder—(5 P R 1911) Criminal Courts cannot compel restitution by the purchaser [22 A 216 27 A 572 See 39 P R 1917]

9. **Suit by absconder to recover property sold.**—S 89 Cr P C has no application if the attachment and sale under S 88 is not a valid one [See 21 Cr 210 (19) 6 P R 1916 Contra 39 P R 1917.] In such a case there would apparently be no legal bar to a civil suit for recovery by the absconding party [See (104) A N 139, 39 P R 1917]. But where the accused whose property was attached, did not appear within 2 years of the attachment and the property was thereupon ordered to be sold, no civil action would lie to set aside the sale [5 W R (Cr) 257]

10. **Application barred if made after two years.**—An application under S 89 Cr P C for return of the property attached made more than two years after the attachment, is barred—6 P R 1916; See 22 A 216.

11. **Property does not vest in Government.** The language of sections 87 to 89 does not warrant the construction that from the date of attachment, the interest of the absconder is severed and vests in the Government—31 M J 120 (F.B.).

12. **Remedies of the absconder against order under the section.**—(1) The accused has a right of appeal under S 405 *infra* if his application for restoration of the attached property is rejected (2) The High Court may also revise orders under the section—39 P R 1917, 8 P R 1911, 19 M 3 22 A 216

13. **Order releasing attached property.**—A Magistrate's direction to his subordinate to write to the Collector and authorise the taking off of a certain attachment will amount to an order releasing the property from attachment—5 W R 8

14. **Magistrates empowered to act under the section.**—All provincial Magistrates have the power to make an order under S 80—See Sch. III Cl 6

D—Other Rules regarding Processes.

90 A Court may in case in which it is empowered by this Code to issue a summons for the apprehension of any person other than a juror or assessor issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons, or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Notes

Form of warrant—See Sch. V No 7

1. **Warrant cannot be issued only where a Magistrate is empowered to issue summons.**—This section authorises the issue of a warrant only in cases in which the Magistrate is empowered to issue a summons. Where there is no

power to issue summons, S 80 does not apply. A warrant cannot therefore be issued against discharged accused before the order of discharge is set aside—15 P R 1893

2. **Condition precedent to issue of warrant.**—A Magistrate ought not, after the issue of a

Provisions of this Chapter generally applicable to summonses and warrants of arrests

of arrest issued under this Code.

93 The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant

Notes.

1. **Recusant Witnesses.**—A Magistrate is competent to admit to bail recusant witnesses arrested under S 90—See 2 Weir 39

2. **Every Summons.**—This would include summons to Jurors and Assessors.—S 329, Summons to produce documents.—S 91, etc.

3. **Every Warrant.**—See for instance Search Warrants (S 96); Search for persons wrongfully confined (S. 100). Warrant of arrest under S 107(1); Warrant for arrest issued under S 114 Cr P. C. etc.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

94 (1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in the section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

Notes.

1. Application of the Section.

1. **The Section applies to accused persons.**—"It will be observed that the law, so far as the immediate subject before us is concerned, is practically the same as it was in 1872, and there can, I think, be no doubt that the Legislature intended, as I have already observed, that an accused person might be compelled to produce evidence against himself."—*Per Ghose J* (See 16 C 109 at page 140 and 141). This view is also adopted in 19 C 52, 16 C N 1078, 41 C. 261; 4 Pat. W. 65, 37 M. 112; 30 P. B. 1913. A contrary view seems to be indicated in 34 C 391. But the very same Judge who decided it, say in 16 C N. 1078 that if the ruling in 39 C. 304 "intended to lay

down that a Police Officer is not empowered to search an accused's house for stolen property relevant to the case, it is not a correct statement of the law." In 12 C. N 1016 a distinction is apparently drawn between an accused person and an accused person on his trial. The provisions of S. 91 are held 'not to apply to the case of an accused person on his trial to whom a notice has been issued to produce an incriminating document.' See Com. 12 Cr. 69 (C).

2. **Safe-guards provided by law.**—"The only safeguard as far as I can see, which the Legislature provides are; first that the documents called for or in regard to which a search warrant is issued, must be distinctly specified; second, that the

inspection should be confined to the documents covered by the search warrant—15 C 109 5 B R 980 See 8 W R 174 [The ruling in 15 C 109 applies where the procedure prescribed by S 94 or 96 has been complied with—5 B R 976]

13. **Inspection at the Office of accused's Solicitor**—A Magistrate is not authorised under S 94 to allow the prosecution to inspect the entries in the account books kept by the accused at his Solicitor's office. They must first be produced in Court, when, of course, they can be inspected [5 B R 976]
14. **Security for production whenever required cannot be taken**—There is no section of the Code enabling a Magistrate to demand security from the person in possession of the documents or articles for their production, when ever required—7 C N 322 (504)
15. **Disposal of the property produced before the Court** See Ss 517 and 520 Cr P C See 19 C 52 (65) 3 C 379 12 B A 217
16. **Accused cannot insist on the document or thing being put in evidence** The fact that a document is produced by the Court will not give the accused any right to insist upon the pro-

secution putting it in evidence. The prosecution is entitled to inspect it, to determine whether it is to be put in evidence or not—15 C 109 5 B R 980.

17. **Penalty for failure to produce**—In addition to the omission to produce a document before a public servant by a person legally bound to produce it, is punishable under S 173 I. P. C. non-production of the document for which a summons has been issued under S. 94 Cr. P. C. by accused does not amount to an offence under 173 I. P. C. [12 C N. 1016 12 Cr. 95 (C)] conviction will be only when the production of the document is necessary for the decision of the case in which it is called for, but not otherwise [1 Pat W 65]
18. **Person producing document not a witness** A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined and until he is called as a witness S Evidence Act (1 of 1872)
19. **Revision**—The High Court can interfere under S 379 Cr P C Where a Magistrate erroneously refuses to make an order for the production of a necessary document or thing—See 19 C 52

95 (1) If any document parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry or other proceeding under this Code, such Magistrate or Court may require the Postal and Telegraph authorities, as the case may be, to deliver such document parcel or thing to such persons as such Magistrate or Court directs

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court

Notes

Magistrate empowered under Subs. (2)—All Provincial Magistrates can act under Sub Cl (2)—See Sub III Cl 7

Presidency Magistrate—Only the Chief Presidency Magistrate can act under Cl (1)

Rules in Bengal and Assam—“A summons from a Court of Civil or Criminal Jurisdiction to produce any of the records of a Post Office or a certified extract from or copy of any such records must be complied with. The receipt of such a summons and such particulars as are known to the

Post Master regarding the case, should be at once reported to the Post Master General in case should see fit to raise any objection in Code under S 121 and 124 of the Indian Evidence Act I of 1872 to the production of any of the records. When any journal or other record of Post Office is produced in Court and admitted in evidence, the Officer producing it, shall ask the Court to direct that only such portions of the records may be required by the Court shall be disclosed”—Cal G R. and C O Rule 64 p 6

B -- Search-warrants.

96 (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1) has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition, When such warrant may be issued

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant, and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities

Notes.

I. Scope and application of the section.

1. **Order in the nature of attachment before judgment not contemplated.**—S. 16 Cr P C authorizes and compels the production in Court of the property in respect of which a search warrant is issued, but when property not alleged to be stolen is in the hands of the third parties, such production can only be sought for the purpose of evidence and ought not to be granted for the sole purposes of attaching property the title to which is in dispute. Rat 677. See 14 C 32

2. **Power not to be exercised for "fishing for evidence"** The power of issuing a search warrant is not intended to be used for the purpose of giving complainants an opportunity of fishing for evidence. The warrant is intended for use in respect of defined documents believed to exist which must be clearly specified in the warrant. 27 Cr 543 (L B). 5 W R 73 (75)

3. **Warrants can be issued only for specified documents or things.**—A Magistrate has no authority for issuing, on the application of the complainant a search warrant under the summary seizure of all the goods of a certain description in the possession of the accused [12 P W 1916 17 Cr 543 (L B) 16 C N 1075] See 21 Cr 313 (C)

4. **Prompt action necessary.**—The whole object of issuing a search warrant is to ascertain by a surprise visit whether the property which the complainant alleges, is in possession of the accused, is actually in his possession at the place named in the application, and to secure it for the purposes of trial identification. Delay in issuing a warrant cannot but operate to defeat this purpose.—21 C N 719 See 13 M 18

II. Procedure.

5. **Condition precedent to issue.**—A Magistrate, before issuing a search warrant, is bound to give reasons for believing that the accused would not produce the articles required, if a summons were issued to him for their production. A failure to do so makes the order of the Magistrate issuing the search warrant illegal and improper [12 P W 1916 (17) M N 494 15 C 103 (134) 5 B R 1632 17 Cr 543 (L B)]

6. **Application of Police Officers.**—No doubt statements of a police officer engaged in the investigation is entitled to great weight but a Magis-

trate should apply his mind to the facts and proceed on his independent judgment. He ought not to issue a search warrant simply because a police officer asks him to do so.—21 Cr 313 (C)

7. **A person in S. 96 includes the accused.**—The words "a person" in S. 96 Cr P C include a person accused in the case [16 P B 1914 15 C 109 14 C 32 41 C 261 37 M 112 5 B R 980 Con 34 C 304 12 C N 1016 12 Cr 98 (C)] See note No 1 under S. 94 Cr P C

8. **Issue of warrant a judicial act.**—The act of issuing a search warrant is a judicial act and before a Magistrate issues it, it is his duty to weigh the circumstances before making up his mind on the question. A mere statement in an affidavit that in the opinion of the deponent, a summons may not have the desired effect, is not sufficient to justify the issue of a search warrant [(17) M N 494 15 C 109 35 C 1075] Before issuing a search warrant, the Magistrate must have before him some information or evidence that the documents are necessary or desirable for the purposes of the enquiry before him [17 Cr 543 (L B)] See 22 B 949 But a search warrant cannot be issued upon the basis of a telegram received by the Police [22 B 949 Rat 680]

9. **The stage at which a search warrant may be issued.**—It is not necessary that the Magistrate should be sitting as a Court i.e. some proceeding requiring his judicial determination should have been initiated before him. A search warrant may be issued before any proceedings of any kind are initiated and in view of "an enquiry to be made [39 C 953 (P C) overruling 36 C 443 Contra—22 B 949 (956)] It is not obligatory upon the Magistrate to wait till a preliminary enquiry is held and all the witnesses for the prosecution examined and cross-examined. Such a restriction would often tend to defeat the object with which search warrants are issued.—13 M 18

10. **Complainant to be examined on oath before issue of search warrant.**—The Ma-

tributed by the Code" [13 M 18 22 B 94] Where a District Magistrate transferred a complaint to the Deputy for enquiry and disposal, and the latter without examining the complainant on oath,

issued a search warrant under S 96 Cr. P. C.—*held* that the issue of the search warrant was illegal [S. M. T. 416 8 A. J. 517. See also 15 C. 103 33 C. 1073 See also M. H. Rev. Case No. 330 of 1904]

11. Scope of the terms "document or thing".—The words "document or thing" in Ss. 94 and 96 are general and cover any document, the production or inspection of which is 'necessary or desirable' or will serve the ends of justice. There is nothing in the sections to limit their provisions to the finding of such documents or things only in respect of which the alleged offence may have been committed [36 P. R. 1914 9 B. R. 980]
12. Information on which action is taken must be concerning some offence.—It is not competent to a Magistrate to issue a search warrant where there is no allegation either in the petition or affidavit that any offence as defined by S. 4 (a) Cr. P. C. has been committed [1 Weir 720]
13. How far the Court can proceed under the section.—In taking action under S. 96 Cr. P. C. the Court is authorised to go as far as is physically possible in that search. The accused can perhaps defeat the Court by concealing or destroying the documents etc. or by having it concealed or destroyed, taking of course the consequences of such action, just as the accused in the dock, can, when questioned under S. 312 Cr. P. C. thwart the Court in its search for the truth by answering falsely or refusing to answer. But the mere fact that the accused can so defeat or thwart the Court, is no reason for holding that the Court is debarred from going as far as the sections specifically allow. *Johnstone J.* in 20 P. R. 1911

III. Powers under the Section.

14. Order directing Police 'to take possession' without issuing search warrant is illegal. Upon a complaint that the accused had fraudulently tampered with the account books of a partnership business the Magistrate directed the Police "to enquire and report and to take possession of the Khata books",—*held*—that the order was illegal. The Magistrate should have issued either a summons to produce under S. 94 or a search warrant under S. 96 Cr. P. C.—35 C. 64 Rat 850.
15. Security for production whenever required is illegal.—Under the Cr. P. C. the Magistrate acting as a Judicial Officer has no jurisdiction merely to take security for the safe custody and production whenever necessary of the property.—7 C. N. 522, but see 21 Cr. 391 (C).
16. Power to grant inspection of documents on production.—See Note No. 12 under S. 91
17. Case under Special Acts.—In a proceeding under S. 7 of the Copyright Act (111 of 1911) a Magistrate has power to issue a search warrant.—21 Cr. 391 (C). The section applies to searches under S. 41 (1) of Prevention of Cruelty to Animals

Act XI of 1890; under Cl. (2) Bombay Salt Act II of 1890. under S. 7 of the Indian Explosives Act IV of 1884; under S. 23 of the Arms Act XI of 1878

18. Disposal of the thing produced.—See note No. 15 under S. 94 Cr. P. C.
19. Power to search includes power to take possession.—Having regard to the language of Form VIII Sch. V, the power to take possession is inherent in all cases where a search warrant is issued.—See Rat. 677.
20. Search warrant to be executed between sunrise and sunset.—A search warrant should except under special circumstances be executed between sunrise and sunset "If for special reason between sunset and sunrise" the Police.
21. Magistrate competent to conduct the search himself.—See S. 105 Cr. P. C. *infra*. (84) A. N. 213 36 C. 433; 30 C. 853 (P. C.).

IV. Miscellaneous.

22. Magistrates.—All Magistrates are empowered to issue search warrants.—See Sch. III. I (-) Form II
23. Form of search warrant.—See Sch. V. Form No. 8.
24. Search warrant under S. 96 Cr. P. C. and the terms of the warrant indicated that it was issued under that section also—*held*—that the warrant was illegal [11 C. N. 536]. But where, the Magistrate, on account of there being no prescribed form of warrant under S. 100 adopted a form under S. 94 to the provisions of S. 100 by altering the figures and also by drawing up the warrant in terms required by S. 100 Cr. P. C.—*held*—that the warrant was perfectly legal. [20 Cr. 47 (C); 39 C. 403; 16 C. N. 336]
25. Search warrant.—The general principle of self-defence against such act under S. 96 Cr. P. C. unless there is an apprehension of death or grievous hurt [See 19 M. 349; 28 C. 411 30 C. 403, 16 C. N. 336; 18 A. 216; 16 P. R. 1073 But see 17 M. J. 323; 10 P. R. 1165; 16 P. R. 1073 23 C. 490 28 C. 399; 38 C. 304; 11 C. N. 536]

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

93. (f) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magis-

Search of house suspected to contain articles of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place, he may by his warrant authorize any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit and also of any such instruments and materials as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

(2) The provisions of this section with respect to—

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to—

(a) pieces of metal made in contravention of the Metal Tokens Act, 1880, or brought into British India in contravention of any notification for the time being in force under section 10 of the Sea Customs Act, 1878,

(b) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.

Notes.

1. **Distinction between S. 93 and S. 98.** Cr. P. C.—This Section (S. 93) is much wider than S. 98 and its language is very similar to that of S. 6 of the Burma Gambling Act, 1897 [F. L. II. 21]. While S. 98, Cr. P. C., contemplates the existence of a judicial proceeding in the course of

which alone the Magistrate can issue a search-warrant, S. 93 does not require a judicial proceeding as a prerequisite for the issue of a search-warrant [45 P. 1070].

2. **Strict compliance with the provision enjoined.**—When a statute creates a spe-

right, but certain formalities have to be complied with, antecedent to the exercise of that right, a strict observance of the formalities is essential to the enjoyment of that right—36 C 433

3. Notification under S. 19 of the Sea Customs Act 1878.—See *Fort St George Gaz* North Circular 5 & 87

4. Warrant under S. 100 drawn up on form used under this Section with necessary alterations is legal. See 39 C 403 16 C N 136 20 C 17 (c) *Chand* 11 C N 836 S c also Note No 24 under S. 96 C P C

5. Right of private defence.—If there search warrant under S. 94 C. P. C., there be not a legal search, and the occupiers of the house have a right of private defence in resisting 35 C 304.

6. For form.—See Sch. V, No 9

7. Erroneous issue of Search Warrant Magistrate.—If any Magistrate not empowered by law to issue a search warrant under S. P. C. erroneously in good faith does so, his proceedings shall not be set aside merely on the ground that he was so empowered.—S. 529 (a) C

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things found in such search is made, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is to the Magistrate having jurisdiction therein than to such Court, in which case the list and the things shall be immediately taken before such Magistrate, and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Notes.

Power to endorse a search warrant and to order delivery of the thing found is common to all P. C. Magistrates. See III (c) 9

C.—Discovery of Persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate, having reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith. If the person, if found, shall be immediately taken before a Magistrate, who shall make such order in the circumstances of the case seems proper.

Notes.

1. Duty of Magistrates.—When a Magistrate has an application before him containing the allegations that are required by the section, and asking him to issue a search warrant under it, it is incumbent on such Magistrate to satisfy himself that there is some foundation for the application, and that in order to enable him to satisfy himself he would be acting within his powers in making an enquiry—34 P. R 1916
2. Enquiry under the section is judicial enquiry.—The enquiry made by a Magistrate under the section preliminary to the issue of a warrant is a judicial proceeding—34 P. R 1916 15 C 109 (17) M. N. 811; 37 C. 1077. See G. A. 187. See Note No 8 under S. 96 C P C *Supra*
3. Order under S. 100 as to custody can only be made on an warrant being issued under the section.—Where although a warrant for the production of a law was issued,

but no search warrant was issued, nor any brought up in execution of such a warrant, and upon the materials on record, it is held that whether the confinement (if any) amounted to an offence, an order directing the child to be delivered to the complainant was set aside as it was 20 Cr. 729 (C)

4. Complaint against husband.—In a case where a complaint being made against the husband that he was keeping his wife in confinement, a Magistrate can not make a summary order before disposing of the proceedings, he is to hear both sides, and after making such order as may seem necessary, he should pass an order if he finds the confinement amounted to an offence, he should let the husband go, and warn the husband against interfering except through a Civil Court. If on the other hand, he arrives at the conclusion that

It, with several Provisions relating to Searches

101. The provisions of sections, 74, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to
 direction, etc., of such warrants. Search warrants issued under section 96, section 98 or section 100,

Notes.

1. Application of S. 79 Cr. P. C. to search warrants issued under the Gambling Act of 1867. Search warrants issued under Act III of 1867, are governed by those provisions of the Criminal Procedure Code which provide for the issue of warrants in general. Consequently a search warrant may be endorsed by a Police Officer, to whom it has been originally directed, to another who is not of a rank below that authorized under the Act to enter and search. (21 A 141)

The section not applicable to warrants under Burma Gambling Act. Section 101 Cr. P. C. is not applicable to warrants issued under S. 6 of the Burma Gambling Act (I of 1899), and the Act itself contains no provision for endorsement of search warrants. Consequently a search by an officer to whom the warrant was not originally directed but endorsed by the officer named in the warrant is illegal. 21 Cr. P. (I. B.). See 22 P. R. 1897

102. (1) Whenever any place liable to search or inspection under this Chapter is closed, any
 Persons in charge of closed place person residing in, or being in charge of such place shall, on
 to allow search demand of the officer or other person executing the warrant,
 and on production of the warrant, allow him free ingress thereto, and afford all reasonable
 facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing
 the warrant may proceed in manner provided by section 48

(3) Where any person in or about such place is reasonably suspected of connivance about his
 person any article for which search should be made, such person may be searched. If such
 person is a woman, the directions of section 52 shall be observed.

Note.

S 102 (3) applies to searches made under [Burma Gambling Act (I of 1899). S. 6]

of the Act requires that all searches made under that section shall be made in accordance with the

terms of Subs (3) of S. 102 and of S. 103 Cr. P. C. [See 3 L. B. 229 (240) 4 L. B. 131 (136)] The presumption arising under S. 7 of the Act arises only when the searches are so conducted, but not otherwise [4 L. B. 134 (136)] See also 4 L. B. 213

Searches under the Opium Act.—S. 103 of the

Opium Act (1 of 1875) makes the provisions of the Criminal Procedure Code applicable to all searches under Ss. 14 and 15 of the Act—See 4 L. B. 121 (122) 4 L. B. 213

Searches made under Subs. (3).—The person under search is entitled to a list of all things taken out of his possession—See S. 103 (1) below

103 (1) Before making a search under this Chapter, the officer or other person about to make Search to be made in presence of witnesses it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (2), a list of all things taken possession of all things taken possession of shall be prepared, and a copy therefore shall be delivered to such person at his request

Proposed amendments to the Section.—(i) In sub-section (1) of Section 103 of the said Code, after the words "before the search," the following shall be inserted, namely:—

"and must, if necessary, summon under an existing law in any of them so to do"

(ii) After sub-section (4) of the same section the following sub-section shall be added, namely:—

"(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an officer in writing, shall be deemed to have committed an offence under section 187 of the Indian Penal Code."

Notes.

Interpretation of the Section.

1. Object of the Section. The intention of the Legislature in framing S. 103 Cr. P. C. beyond doubt seems to have been to ensure that searches are conducted with decency and order, and that no gross abuse, such as planting of articles by the Police in the house searched should take place. The rigour and proper conduct of the search is to be secured by two or more witnesses [4 L. B. 213] See 20 Cr. 712 (749) Pat. The object of S. 103 Cr. P. C. in requiring that respectable inhabitants of the locality "should be called to witness the search is to ensure that false evidence may not be fabricated [31 Cr. 706 (L. B.)] The object is to afford a guarantee of fair dealing and the absence of tampering. See Judgment of Robinson J. in 7 Bar T. 117 (F. B.) See 4 L. B. 221

2. Meaning of the word "respectable".—"Respectability" in S. 103 means the same thing as "respectability."—Per Twomey J. [4 Bar T. 117 (F. B.)] See also judgment of Robinson J. in 7 Bar T. 143 (F. B.) Only those should be chosen as witnesses who can be reasonably relied on to secure the search is really, i.e. prevention of the false return of evidence and decent and orderly conduct on the part of the officers conducting the search, and whose trustworthiness and ability towards the occupant of the particular duty required of them should be felt. The intention of the Legislature was to exclude from the category of the inhabitants those in whom confidence could not be felt and those against whom a reasonable suspicion arises that they may not carry out the duty required of them [4 L. B. 213] The importance

apply to a search for a bottle of liquor by an Amlari Officer in a cart. B H C R 18-6-85.

14. Rules concerning the search-list.

- (1) Signature of witnesses.—Under s. 103 Cr. P. C. unless the list of the things seized is signed by the witnesses mentioned in the section, the search-list would not be legal.—4 L. B. 134
- (2) Addition to search-list.—A police officer should not add any new items to a search-list

after it has been signed under s. 103 Cr. P. C. but the act would not invalidate the search especially when the irregularity is satisfactorily explained. 7 L. B. 275

- (3) Omission to prepare list fatal.—In conducting searches, the provisions of s. 103 (2) Cr. P. C. should be strictly complied with. An omission to prepare a list of articles found and to take signatures on it renders the search illegal.—S. Bur T. 131.

III. Miscellaneous.

15. Penalty for refusing to assist a police officer in conducting a search.

- (a) Refusal to sign search-list.—Where a person, on requisition attended a search held under s. 103 Cr. P. C. and witnessed the search but refused to sign the search-list when duly prepared, held that he was not guilty of an offence under s. 187 I. P. C. as the signing of the search-list is an independent duty imposed on the witness, having no personal relation to the execution of the duty by the police officer.

26 M. 419 (F.B.)

- (b) Refusal to attend as search witness.—

Failure to render assistance to an officer authorised by law to demand such assistance in making a search is an offence punishable under s. 187 I. P. C. 21 Cr. 37 (M).

16. Resistance to illegal search.—A police

officer in carrying out search under s. 103 Cr. P. C. is bound to call upon two or more respectable inhabitants of the locality to attend and witness the search; and if he omits to do so, a householder will be entitled in closing his door and refusing an ingress into the house. 20 Cr. 695 (4). *Condon* 19 M. 349. Search after sunset.—A Sub-Inspector, acting under s. 14 of the Opium Act (of 1878), has no right to enter the premises after sunset. See 20 Cr. 742 (Pat). But a mere inhabitant in the exercise of a right of search under the Opium Act is not in itself a sufficient ground for setting aside a conviction. [20 Cr. 745 (Pat) *Con* 21 Cr. 742 (Pat)]

17. Can articles found in the course of an illegal search be the basis of a conviction? Even if the search is illegal, the occupier of the house searched can be convicted for unlawful possession of the articles recovered in the course of the search. [35 A. 338; 20 Cr. 745 (Pat) See 41 Cr. 557 35 M. 227 *Condon* 20 Cr. 742 (Pat)]

18. Duty of prosecution to examine per-

sons present at the search.—The fact that the prosecution believed that some persons who were present at the search had formed an opinion unfavourable to the prosecution story, is no reason why these persons should not be called in the prosecution. The prosecution is under a duty to call such persons, unless it is of opinion that they should misrepresent facts and would misstate what had happened [9 C. N. 438]. It is always open to the defence to challenge the evidence of search witnesses, and a court is not bound to accept as true their evidence merely because the formalities of the law with regard to the search and preparation of the search list had been observed [16 A. J. 72] See 33 M. 413]

19. Evidentiary value of search-list.—A search-list is not evidence of the matter stated therein, within the meaning of s. 91 of the Evidence Act. It does not therefore exclude oral evidence of such matter. [23 M. 413; 41 M. 24] (F.B.) *Condon* 2 Weir 47]. A search list not signed by witnesses is illegal [4 L. B. 144]

20. Oral evidence of things seized during the search is admissible.—When a search has been conducted under s. 103 Cr. P. C. other evidence than the search-list itself can be given regarding the things seized in the course of the search, and regarding the places in which they were respectively found. 34 M. 349 (F.B.) See 7 B. H. 45 (64). See 58 31

21. Bengal rules.—As to the selection and sending for of ship keepers.—See *Beng. Pol. Man.* 2nd ed. p. 403

22. Liability of Police Officers contravening the provisions of s. 103 Cr. P. C. They may be prosecuted under s. 106 I. P. C. [38 31]

23. As to the time of the day when the search-warrant should be executed.—See *Beng. Pol. Man.* 2nd ed. p. 402. See *Note* No. 29 under s. 96 Cr. P. C. *Supra*.

E—Miscellaneous.

Power to impound documents, etc., prohibited.

104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

Notes.

1. The section applies only when the document or thing is legally before the Magistrate. Where a Presiding Magistrate

on receiving a telegram from a District Magistrate requiring him to take possession of the account books of a certain person, examined the person (2)

impound any document which has been produced in a case pending before one of the Subordinate Magistrates. I A, J 607 (608)

- 3 **Procedure.** The Presiding Officer should make a note upon the document or thing impounded, and it should remain in the custody of the Court and not allowed to pass out of its custody without a written order by the said Court. All H.C. BK. for p. 6

is made in his presence of any place for

Magistrate may direct search of the place of which he is competent to issue a search process.

Notes.

1. **General principles on which the section is based.** When the Legislature empowers an Officer to delegate an authority to a certain other person it necessarily implies that the original authority is such as to fill and complete in the Officer himself. It is thus necessary for the exigency of business that it should be done in the majority of cases by persons acting under authority derived from him. H.C. 418
2. **A Magistrate has power to himself conduct a search under S 6 of the Bombay Gambling Act (IV of 1887).** See H.B. 418
3. **The Scope of the Section.** It only regard to

the ordinary powers of a Magistrate as specified in the Third Schedule I, (8) and S 106 Cr. P. C., any Magistrate has in the circumstances stated in Ss 94 and 95, the power or authority to conduct, as such Magistrate, a search under this section — 94 C 453 (P.C.) [50 C 133, 0]

- 4 **Magistrate acting under the Section is protected.**—A Magistrate making a general search in view of an enquiry under this Code, acts in the discharge of his judicial functions and may therefore claim protection under Act XVIII of 1820 (An Act for the protection of Judicial officers. 39 C 451 (P.C.) overruling the opinion of the majority in 50 C 431

PART IV

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SPECIAL PROVISIONS FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

1. *Security for keeping the Peace on Conviction.*

106. (1) Whenever any person accused of rioting, assault or other offence involving a breach of the peace or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

upheld in a search for a bottle of liquor by an Akbari Officer in court B H C R 186 '85

14. Rules concerning the search-list.

- (1) **Signature of witnesses**—Under S 101 Cr P C unless the list of the things seized is signed by the witnesses mentioned in the section, the search list would not be legal—A L B 134
- (2) **Addition to search-list** A police officer should not add any new items to a search-list

III. Miscellaneous.

15. Penalty for refusing to assist a police officer in conducting a search.

- (a) **Refusal to sign search-list** When a person on requisition attempted a search held under S 101 Cr P C and witnessed the search but refused to sign the search list when duly prepared *held* that he was not guilty of an offence under S 187 I P C. The signing of the search list is an independent duty imposed on the witness having no personal relation to the execution of the duty by the police officer. A M 419 (F B)

- (b) **Refusal to attend as search witness** Police to render assistance to an officer authorized by law to demand such assistance in making a search go to attend and witness when called upon, is an offence punishable under S 187 I P C 21 Cr 43 (M)

16. Resistance to illegal search. A police officer in carrying out search under S 101 Cr P C is bound to call upon two or more respectable inhabitants of the locality to attend and witness the search and if he omits to do so, a householder will be justified in closing his door and refusing an ingress into the house. 20 Cr 605 (A) *Constn* 19 M 349 Search after sunset. A Sub-Inspector, acting under S 14 of the Opium Act (I of 1878), has no right to enter the premises after sunset. See 20 Cr 712 (Pat) that a mere illegality in the exercise of a right of search under the Opium Act is not in itself a sufficient ground for setting aside a conviction. (20 Cr 745 (Pat)) (see 21 Cr 712 (Pat))

17. Can articles found in the course of an illegal search be the basis of a conviction? Even if the search is illegal, the occupier of the house searched can be convicted for unlawful possession of the articles recovered in the course of the search [35 A 378, 20 Cr 715 (Pat) 8-31 C 557, 35 M 225 *Constn* 20 Cr 712 (Pat)]

18. Duty of prosecution to examine per-

son present at the search.—The fact that the prosecution believed that some person who was present at the search had formed an opinion unfavourable to the prosecution story no reason why those persons should not be called by the prosecution. The prosecution is not bound to call such persons, unless it is of opinion that they should misrepresent facts and misstate what had happened [10 C N 385] is always open to the defence to challenge the evidence of search witnesses, and a person is not bound to accept as true their evidence merely because the formalities of the law in regard to the search and preparation of search list had been observed [16 A J 727 13 M 413]

- (3) **Omission to prepare list fatal**—In conducting searches the provisions of S. 101 (2) P C should be strictly complied with. An omission to prepare a list of articles found and to sign it renders the search illegal—S T 131

sons present at the search.—The fact that the prosecution believed that some person who was present at the search had formed an opinion unfavourable to the prosecution story no reason why those persons should not be called by the prosecution. The prosecution is not bound to call such persons, unless it is of opinion that they should misrepresent facts and misstate what had happened [10 C N 385] is always open to the defence to challenge the evidence of search witnesses, and a person is not bound to accept as true their evidence merely because the formalities of the law in regard to the search and preparation of search list had been observed [16 A J 727 13 M 413]

19. Evidentiary value of search-list. Search-list is not evidence of the matter therein, within the meaning of S 91 of Evidence Act. It does not therefore exclude evidence of such matter [13 M, 413, 34 M (F B) *Constn*—2 W 47] A search list signed by witnesses is illegal [4 L B 144]

20. Oral evidence of things seized during the search is admissible.—When a search has been conducted under S 103 Cr P C oral evidence that the search-list itself can be given regarding the things seized in the course of search, and regarding the places in which they were respectively found, 34 M. 349 (F B) 7 B H 45 (63) See 38 31.

21. Bengal rules.—As to the selection and sending for of shop-keepers—See Beng. Pol. Man 2nd 1 p 403

22. Liability of Police Officers contravening the provisions of S. 103 Cr. P. C. They may be prosecuted under S 169 I. P. [5 N 31].

23. As to the time of the day when the search-warrant should be executed—See Beng. Pol. Man 2nd Ed. p. 402 See also No. 20 under S. 101 Cr. P. C. *Supra*.

E—Miscellaneous.

Power to impound documents, or thing produced before it under this Code.

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Notes.

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on receiving a telegram from a District Magistrate regarding him to take possession of the accuser's books of a certain person, impounded the person

Notes.

1. **General principles on which the section is based.** When the Legislature empowers an Officer to delegate an authority to a certain act to another person it necessarily implies that the original authority is not to be fully and completely in the Officer himself. But then it is necessary for the exigencies of business that it should be done in the majority of cases by persons acting under authority derived from him. B. B. 434.
2. **A Magistrate has power to himself conduct a search under S. 6 of the Bombay Gambling Act (IV of 1867).** S. B. B. 435
3. **The Scope of the Section.** Having regard to

the ordinary powers of a Magistrate as specified in the Third Schedule I (8) and 8, 96 Cr. P. C., any Magistrate has in the circumstances stated in Ss. 94 and 95, the power or authority to conduct, as such Magistrate, a search under the section 19 C 173 (P. C.) [30 C 173, O.]

- 4 **Magistrate acting under the Section is protected.** A Magistrate making a general search in view of an enquiry under this Code, acts in the discharge of his judicial functions and may therefore claim protection under Art. XVIII of 1859 (An Act for the protection of Judicial officers. 39 C 173 (P. C.) overruling the opinion of the majority in 30 C 471)

PART IV PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

1. Security for keeping the Peace on Conviction

106. (1) Whenever any person accused of rioting, assault or other offence involving a breach of the peace, or of abetting the same, or of assembling armed man or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person, order him to a bond for a sum proportionate to his means, with or without sureties, for keeping during such period, not exceeding three years, as it thinks fit to fix.

- 14 **Subdivisional Magistrates.**—A subdivisional Magistrate can act under this section, though he has 2nd class powers only. [37 A. 230] subdivisional Magistrates dealing with a case under S. 341 cannot pass orders under this section, when the referring Magistrate has already convicted the accused. The proper course for the latter is to submit his opinion and the record of the case without passing any final order or sentence [11 Cr. 170 (C)]
- 15 **2nd and 3rd Class Magistrates.**—If a Magistrate of the second or third class be of opinion, that it is necessary for the accused in a case before him to be bound down under S. 106 Cr. P. C., he must refer the whole case to the proper authority for the latter to pass the sentence. It is not open to such Magistrate to pass any part of the sentence himself. 15 Cr. 1093. 21 Cr. 622. 11 Cr. 170 (C)
16. **Only the Magistrate who convicts the accused can pass orders under S. 106 Cr. P. C.**—34 Cr. 1093. 21 Cr. 622. 11 Cr. 170 (C). 22 P. R. 1971

- 17 **A Bench of Honorary Presidency Magistrates**—can act under the section. See S. 14 (2) Cr. P. C. 7 B. R. 833.
- 18 **Bench of Honorary Magistrates in the mofassil**—could not act under this section as enacted in the Code of 1872 [21 W. R. 12 S. 2 C. L. 344]; but under the present Code a Bench is competent to do so, if any of the members who compose it has first class powers.—17 B. R. 12 Cr. P. C.
- 19 **Proceedings of a Magistrate not empowered.**—are void. See S. 530 (C) Cr. P. C. 21 C. 622
- 20 **Whether Period of Security can exceed six months in the case of Subdivisional Magistrate, 2nd class.**—A Subdivisional Magistrate of the 2nd class can pass an order under S. 106 Cr. P. C. binding over a person convicted to keep the peace for a period exceeding six months if the period exceeds 1 year S. 123 (2) applied. 37 A. 230

III. MEANING OF "INVOLVING."

21. **The meaning.** The words, 'offences involving breach of peace' in S. 106 Cr. P. C. must be construed to mean an offence into which breach of peace necessarily enters as a constituting element [10 M. J. 63]. An offence merely provoking or likely to lead to a breach of the peace is not within the section. The offence must be one in which breach of the peace is a necessary ingredient. [11 C. 671. 30 C. 366. 30 C. 393. 29 M. 190. 26 M. 469. 20 Cr. 543 (B)]
- 22 **Divergence of Judicial opinion.**—The expression "involving a breach of the peace" is so illusive that it must of necessity attract different interpretations from different minds. To my thinking the words cover at any rate two classes of cases. . . . The first class of cases is where there actually has been a breach of the peace, (not where it has been intended or been likely to occur but where in fact it has occurred). The other class is where the definition of the offence involves a breach of the peace, as it does in one of the two classes of cases which occur under S. 501 I. P. C. [Per *Hobson J.* in 20 Cr. 543 (B)]
- 23 **Difference of opinion.** . . . has been expressed by M. T. 468. But it is not that the accused did not involve a breach of the peace, an order must be passed if the offence of

which he is convicted is "not one of which breach of peace is a necessary ingredient." But there is now a consensus of opinion in a large majority of cases that where the accused actually committed a breach of the peace [See e.g. 43 C. 671. 28 C. 376], or manifested by his conduct or acts an unmistakable intention to break the peace [See 90 C. 381] or, after taking steps to compass his crime by violence was prevented by circumstances over which he had no control from committing a breach of the peace—e.g.,—timely flight of the complainant [See 37 A. 771. 5 C. N. 230. See 31 C. 870], the section applies; although, the offence of which he is convicted, cannot strictly speaking, be said to be one 'involving a breach of the peace' within the meaning of the section of the Penal Code where it is defined [O. U. B. 14 (1) [See Note No 5 (1)—Object and application of the section, where all the rulings are collected]. In 30 C. 366. 26 M. 469. 64 P. R. 1857. See also 20 W. R. 57 offences which do not necessarily involve a breach of the peace but are merely likely to lead to it are held to be excluded by the section. This view is directly opposed to the very wide definition which has been adopted in 31 A. 771 [See also Cr. R. 13 of S. 501]. Viz. that the word "involve" connotes the inclusion not only of a necessary but also of a probable future, circumstance, antecedent condition or consequence" (Dissent also from 29 M. 190. 30 C. 613)

IV. WHEN OFFENCE NOT STRICTLY WITHIN PURVIEW MAY JUSTIFY ORDER.

24. **House-trespass.**—An order under S. 106 Cr. P. C. can be passed against a person convicted of house-trespass, if he committed it with the object of causing hurt.—7 C. N. 35 (26); 21 Cr. 255 (A). 8 L. B. 463. See (45) A. N. 301.

25. **Criminal trespass.**—A person convicted of criminal trespass can be ordered to give security under the section only when the Court finds that the intention of the accused in committing the trespass was to commit a breach of the peace

[20 W. R. 27; 7 W. R. 14; 7 L. N. 25] For where house and intention was found, the trespass being complete with the object of "having" it entered, with the complaint made [25 C. 628], it was held that a conviction [4 L. R. 277] an order by S. 106 Cr. P. C. was maintained.

[Note. Alder Balfour in 4 M. T. 485, however refused an order, based upon a conviction under S. 418 I. P. C. that the fact showed that in doing things the accused, the accused did not making breach of the peace.]

26. **Theft.** A conviction by S. 521 P. C. is not a "breach of the peace" in an order under S. 106 Cr. P. C. unless it is clearly found that force was employed or that arms or weapons were present. 24 C. 310; 8 C. N. 517 (519); 1 C. N. 196 (187); 7 L. J. 172; 20 M. 461; 1 N. P. 151; Rat 722; Rat 48; See 20 M. 48.

27. **Unlawful Assembly.** S. 106 Cr. P. C. applies to a conviction under S. 141 I. P. C. only when it is expressly found that force was employed or armed to be present in committing the offence.

V WHAT ARE NOT OFFENCES INVOLVING BREACH OF THE PEACE.

30. Scope.

- (a) Offence not specified in the Section. 20 W. R. 47.
(b) Offence affecting the business body. 1 N. P. 151.

31. Trespass.

- (c) House-trespass with intent to commit theft. 4 L. R. 277.
(d) House-trespass with intent to have illicit intercourse with the complainant's wife. 25 C. 628.
(e) Criminal trespass. (75) A. N. 363; 2 P. R. 1304; 4 M. T. 164.

32. Unlawful assembly etc.

- (f) Offence under S. 111 I. P. C. See IV when offence etc. (27).
(g) Offence under S. 141 I. P. C. 3 P. R. 1840.
(h) Offence under S. 117 I. P. C. Where the rioting took place in preventing family dispossession. 11 C. N. 840.

33. Wounding religious susceptibilities.

- (i) Offence under S. 294 I. P. C. 2 L. R. 125 (91-96) L. R. 50.
(j) Offence under S. 216-238 I. P. C. In this case accused were charged with instigating others to beat tom-toms in front of a Hindu Temple thereby causing disturbance to religious worship. 2 W. R. 47.

VI. WHAT ARE OFFENCE INVOLVING BREACH OF PEACE.

39. Hurt etc.

- (a) Assault. 1 N. P. 96.
(b) Voluntarily causing grievous hurt. 7 N. P. 328; Con. 1 N. P. 151.
(c) Offence under S. 321 and 322 I. P. C. (76) A. N. 181; 7 C. C. 338.
(d) Attempt to commit murder or offence under S. 321 I. P. C. Rat 48.

47 C. 671; 26 C. 576 (578); 35 C. 315; 30 C. 19; 27 C. 184 (184); 25 C. 628; 11 C. N. 176; 8 C. N. 517 (519); 7 C. J. 172; 20 M. 169; 2 W. R. 48; 125 P. L. 1910; 3 P. R. 1840 (1004) C. D. (I P. C.) 1.

28. **Hurt.**—When there was no specification in the charge of a common intention to cause grievous hurt, and the conviction was finally only under S. 321 I. P. C., the Court held that "the conduct of the accused who entered the premises where their enemy was, and violence to him, cut and tore his ears and deprived him of his jewellery involved a breach of the peace in the wider sense of the expression. [19 M. 629 (M)] See also Rat 48; 7 N. P. 328 (70) A. N. 181]. See however 1 N. P. 151 where it was held that the section "does not refer to offences affecting the human body. [Con. (76) A. N. 181].

29. **Mischief.**—A person convicted under S. 434 I. P. C. for removing land marks, can be bound down if there is evidence that in so doing, he was prepared to use force and to commit a breach of the peace. 31 A. 771.

34. Theft etc.

- (k) Theft. (8) 370 I. P. C. 26).
See IV When offence etc. (26).
(l) Offence under S. 302 I. P. C.

35. Hurt.

- (m) Grievous hurt under S. 325 I. P. C. 4 N. P. 154; Rat 48—10 M. 629 (M); Rat 48; (86) A. N. 181.

36. Mischief.

- (n) Mischief (S. 426 I. P. C.) 20 M. 469; 11 C. N. 176.
(o) Breach of a water course. Cr. R. 13 of 2-5-95.

37. Miscellaneous.

- (p) See S. 208 I. P. C. 4 W. R. 4.

38. Attempts.

- (q) Attempt to commit theft. Rat 622.
(r) Attempt to seduce woman and immoral and imbecile behaviour towards them. 30 C. 366.
(s) Attempt to commit assault. 3 Shone 33.

40. Trespass.

- (t) House-trespass committed with the object of causing hurt. 7 C. N. 25; 8 L. R. 103; 21 Cr. 288 (M).
(u) Criminal trespass with intent to commit breach of the peace. 7 W. R. 14; 20 W. R. 37.

41. Insult.

- (v) Offence under S. 504 I. P. C. 20 Cr. 513 (M).
See 4 B. R. 74; Con.—1 L. R. 279.

73. Security cannot be made liable for larger amount than that covered by the principal's bond.—*J Bur. T 101*

(4) *Imprisonment in default.*

74. Imprisonment in default of security must be simple. See 123 (5) Cr P C : ('93-'00) L B 630
75. Period of imprisonment should coincide with the period of security. 4 L B 135
76. Imprisonment cannot be deferred.—Imprisonment in default of security cannot be deferred till the expiration of the sentence. 7 N P 324 3 N P 126 (Nov 21 P R 1905)
77. Imprisonment in default of security is a sentence within the meaning of S 397 Cr P C—30 A 324 (F B) See—Notes under S 110
78. Sessions Judge can pass order for imprisonment for default under S 123 (3) before the expiration of the sentence. 5 L B 34 (F B) 3 L B 43 4 L B 205 (F B) Can Rat 432 Rat 774 P J and B 245

(5) *Procedure when term of the bond exceeds one year*

78. (n) See S 123 (2) and notes under that section

(6) *Miscellaneous.*

80. Bond can be taken only on conviction.—A bond can be taken only on conviction. [See 1 (subject) 3]
81. Effect of acquittal.—Upon an acquittal by the Appellate Court, the order for security abates *ipso facto* and the Appellate Court has no power

to direct that the security should continue—(75) A N 131 '30 C 101 7 N P 375; 22 P R 1901

82. Juvenile offender.—When a juvenile offender is sentenced to be whipped for causing grievous hurt, the Magistrate should not under the Reformatory Schools Act direct delivery to parents on their furnishing security but proceed to take security under this section.—*J L B 30*
83. Period of security commences from date of order.—See S 120 (2).
84. Bail.—Bail cannot be refused to persons ordered to give security under S 106 Cr. P. C.—7 M T 104.
85. High Court. Can reduce the amount of security when it is unduly excessive. 23 A 89; 10 B. 372.
86. Order for security in lieu of punishment.—Order for security cannot be made in lieu of the punishment on conviction. It must be in addition to the award of punishment for the substantive offence.—22 P. R. 1901.
87. Taking of security is entirely within the discretion of the Magistrate.—23 W R 58 But see 23 C 624
87. A Defective order.—A Magistrate having convicted the accused persons of assault and sentenced them to months bonds should be inflicted in default of furnishing security—held—that the Magistrate's order, so far as it related to the finding of security was defective and could not be sustained—(81) A N 88

XI. ALLIED SECTIONS.

88. S. 106 and 107. *How these sections compared.*—*See 1 Ch 18 3 Ch 72 21 W R 6*
89. When complainant should be bound down under S 107. When the order is likely to interfere with the exercise of lawful right, the accused should not be bound down under S 106 Cr P C. The complainant should be bound down in a separate proceeding taken under S 107 Cr P C. 11 C N 176 11 C N 840 See also 11 C N 1124
90. Failure of prosecution. If the case fails and the accused is acquitted but the Court thinks he should be bound down, it should proceed under S 107 and not 106 Cr P C. *Pro M. S. C. 18th January 1902*
91. Procedure when Magistrate omits to pass orders under S 106 Cr. P C but

subsequently changes his mind—When the Magistrate does not at the time of conviction, pass an order under S. 106 Cr P C. but on additional information afterwards thinks security is necessary, he should proceed under S. 107 and not 106. 4 N P 154; 8 P R. 1893. See 3 N. P. 60 35 P R. 1884 15 W. R. 56

92. Person convicted under S 144 I. P. C.—The case of a person who merely joins an unlawful assembly must be dealt with under S. 107 Cr P C.—3 P R 1890
93. Person convicted under alternative charges of attempt to commit murder and an offence under S 324 I. P. C.—should not be ordered to furnish security for good behaviour, but should be bound down under S 107 Cr. P. C.—Rat 18

XII. APPEAL, REFERENCE, ETC.

(1) *General rules.*

94. No appeal from order under S 106 Cr. P C. No appeal lies from an order under S 106 Cr P C. (2 W R 411) But where an appeal lies from the order of conviction for the substantive offence under S. 107 or 108 Cr P C

the matter may be reopened (3 C 101) as a consequential order within the meaning of S 123 (4) [ibid]

95. Order under S 106 (3) can be made by the District Magistrate only when sitting as appellate Court. (District

Magistrate, with considerable satisfaction for the character of the evidence as to having the case as a court of appeal has jurisdiction to order the accused to keep a security under S. 100, 10 A 3 295

(2) Change of Law

90 The Code of 1872 did not expressly authorize Appellate Courts to pass orders under the Section in 4 A 212 (F.B.) was laid down by a District Magistrate, with a view to the power of an appellate Court to require the appellant to give security under this Section. The decision was disapproved in a large number of cases. 144 (S.A.) A N 71 (10) A N 170 (10) A N 201 16 C 779 (1884) 1 M J 252 (1894) 17 A G (1896) Est 100 (1897) In 1898 the law was made conformable to 4 A 212 (F.B.) (1st Edn) (3) and the contrary decisions above were superseded

(3). Limit of Appellate Court's power under Subh (3).

97 An Appellate Court's power is not limited merely to what the lower court could and should have done. It is competent to pass an order under S. 100 Cr. P. C. in a case in which the lower court was not empowered by law to make an order under the section. The words "under the section" in Subh (3) have reference to the power given by the section and not to the Courts by which those powers are in the first instance exercised.

[Madras—Pro 17 M 153 (F.B.) 30 M 182 15 Cr 102 (M) C 1—30 M 182 30 M 48 (19) 29 M 190 8 M T 201 7 M T 101 6 M T 248

[Bombay—Pro—31 B 31]
[Allahabad—Pro—31 A 48 10 A J 240 1 A 212 (F.B.) Con—(64) A N 71 7 A J 910 17 A 67
See also (90) A N 170 (90) A N 201]

[Patna—Pro 21st J 21 (F.B.)]
[Oudh—Pro 10 C 241 Con 10 C 257

[Upper Burma—Pro 1 U B 9]
[Calcutta—Con, 10 Cr 220, (C) 35 C 131 21 C 622, 10 C 779

[Panjab—Con 5 P H 1018 7 P R 1009, 21 P R 1104 6 P R 1907 21 P R 1905]

[Note—In 6 P R 1907, 21 P R 1009, 7 P R 1009, it was held that in such circumstances, the first Court should refer the case under S. 310 (2) Cr. P. C.

(4). Powers of Appellate Courts.

98 (1) An Appellate Court is competent to demand security after expiration of sentence—21 P. R. 1005

99 (2) It has power to set aside an order for security even while upholding conviction.—30 C 101

100 (1) It can order accused to furnish security after setting aside the sentence—22 P. R. 1001.

101 (1) It cannot, after acquitting on appeal, order that the bond shall be maintained—(95) A N 111

[Note.—Order for security abates on acquittal—See 7 N P 375]

(5) Miscellaneous.

103 (a) Appellate Court includes Courts other than the High Courts—21 P. R. 1005

103 Order under Sub (3) not an enhancement of sentence.—The exercise by appellate Courts of the power given by Cl (3) requiring Appellate to furnish security is not an enhancement of sentence—21 P R 1005 20 C 309 (A), 20 Cr. 760 (N)

104. Sub (3) applies only when there is substantive sentence.—The provisions of S. 100 (1) can be invoked only when there has been awarded a substantive sentence on conviction for one of the offences specified in the section—21 B 53

105. Imprisonment in default not a part of the sentence.—Imprisonment in default of security cannot be taken as part of the sentence for the purposes of appeal—7 O. C 344

106. Conviction after summary trial.—Appeal does not lie against order passed on conviction after summary trial—7 O. C 348 (110).

(6) Reversion.

107. High Court will not usually interfere with a Magistrate's discretion unless there is an error of law—5 B L 34 (45) See 27 C 781 3 M 24

(7) Reference.

108. Under S. 310 Cr. P. C.—See (2) Jurisdiction of Magistrates (15)

XIII. MISCELLANEOUS.

109. Juvenile offenders.—The section applies to juvenile offenders sentenced to whipping—3 L B 30

110. Person ordered to give security for-keeping the peace is not an accused person.—7 M 1 104

111. Court fee.—No court fee is payable on security bonds taken under S. 100 Cr. P. C. executed by

or on behalf of persons other than the executors, *Act of Ind 1880 Pt. 1 500*

112. Bail.—Bail cannot be refused to persons required to furnish security—7 M. T. 504

113. European British subjects.—The section applies to European British subjects. The words "any person accused" are wide enough to include them.—See 30 C. 103

B.—Security for Keeping the Peace in other Cases and Security for Good Behaviour.

107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest if he is not already in custody or before the Court, and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Proposed amendments to the Section—In sub-section (1) of section 107 of the said Code, for the words "this section" the words "here and hereinafter" shall be substituted, and for the words "until the completion of the inquiry hereinafter prescribed" the words "pending further action by himself under this Chapter" shall be substituted.

Arrangement of notes.

I. Object and application of the Section.—

- (1) The object of the section.
- (2) Infringement of legal right should be avoided.
- (3) Only a person likely to disturb peace can be bound down.
- (4) Application of the section.

II. Information

- (1) Information on which a Magistrate may act
- (2) Reports of Police officers etc
- (3) Extrajudicial information
- (4) Information forming subject of a previous inquiry
- (5) Credible Information.
- (6) What is not credible information.

III. Jurisdiction—local limits.

IV. " —Jurisdiction.

V. Proceeding

- (1) Condition precedent to initiation of proceeding
- (2) The contents of the preliminary order.

(3) Jurisdiction of Magistrate to draw up fresh

- (4)
- (5)
- (6)
- (7)

VI. Notice.

- (1) Procedure
- (2) Contents of the Notice.
- (3) Miscellaneous.

VII. Likelihood of a Breach of the Peace

- (1) Meaning of Likelihood.
- (2) Likelihood should not be inferred merely from past conduct or enmity between the parties
- (3) Likelihood after crisis has passed
- (4) Likelihood in anticipation.
- (5) Likelihood due to exercise of lawful right in a lawful manner.
- (6) Miscellaneous.

VIII. Wrongful Act.

- (1) Meaning
- (2) When an act lawful in its nature becomes wrongful
- (3) Lawful act performed in a lawful manner cannot be basis of proceedings, even when likely to induce others to commit breach
- (4) What is not wrongful act within the section
- (5) What is wrongful act within the section
- (6) Wrongful acts under the employee's work
- (7) The wrongful act must be in present contemplation and not merely an inference from past misconduct
- (8) Disputes about immovable property

IX. Enquiry and Procedure.

- (1) Showing cause
- (2) Procedure
- (3) Joint Inquiry

X. Evidence and Witnesses

- (1) Evidence must be recorded
- (2) Nature of evidence required
- (3) Facts necessary to prove in proceedings under S. 107 Cr. P. C.
- (4) What is not legal evidence under the section
- (5) Miscellaneous
- (6) Witnesses

XI. Final order.

- (1) Requisites of a valid final order
- (2) Final orders illegal and ultra vires.
- (3) Orders which cannot be passed
- (4) Persons who cannot be bound over
- (5) When both parties may be bound over

XII. Detention Pending Enquiry

XIII. Security

- (1) Object etc

- (2) Amount of security
- (3) Miscellaneous
- (4) Renewal of bonds

XIV. Forfeiture.

XV. Allied Sections.

- (1) S. 117 and 107 Cr. P. C.
- (2) " 116 " " "
- (3) " 117 " " "
- (4) " 111 " " "
- (5) " 103 " " "
- (6) " 110 " " "

XVI. Irregularities.

- (1) Irregularities which vitiate.
- (2) Irregularities which do not vitiate.

XVII. Appeal, Reference etc.

- (1) Appeal
- (2) Reference by Dist. Magistrate
- (3) Cancellation of bond by Dist. Magistrate.
- (4) Revision
- (5) Further enquiry
- (6) Review
- (7) Revival

XVIII. Transfer and withdrawal.

- (1) Transfer by High Court
- (2) Withdrawal by Dist., Subdivisional, and Chief Presidency Magistrate
- (3) Powers under Ss. 107 (2) and 328.

XIX. Miscellaneous

- (1) S. 250 Cr. P. C. does not apply
- (2) S. 319 (2)
- (3) Ss. 403 and 405 Cr. P. C. do not apply
- (4) S. 443 Cr. P. C. applies
- (5) Court fee.

I. OBJECT AND APPLICATION OF THE SECTION.

(1) The object of the section.

1. Proceedings under the section are intended to be only precautionary—The object is the prevention and not the punishment of crime. It should not be used for requiring security to an amount which may prevent the person bound down from finding the same. The punishment for past conduct is not intended; the object is the prevention of acts leading to a breach of the peace in future. See 11 C. N. 809. 31 C. 350; 11 C. N. 223 11 A. J. 769 36 M. 315

Section compared with Ss. 106, 110, 144 and 145 Cr. P. C. See "Allied Sections."

2. The object of the section is to secure regular trials

under the section would very seriously prejudice the accused in their defence. 9 C. N. 898; See 27 C. 781.

- 4 The object is not to help one party at the expense of another—Proceedings under S. 107 Cr. P. C. are only intended for the security of public peace and not for the purpose of enabling one of the two contending parties to help themselves to recover or retain possession of immovable property after having their adversary's hands tied down by an order under that section—25 C. 798 3 C. N. 163 See 144 P. L. 1917.

(2). Infringement of legal right should be avoided.

5. —

and not to take proceedings under the section 9 C. N. 898. Con 19 Cr. 246 (Pat)

3. Order under the Section inoperative where regular trial is contemplated. An order

incapable of being enforced owing to the exercise of such a jurisdiction and where the breach of peace apprehended by the Magistrate is a likely result of

the enforcement of his legal right by a party in a legal way and the illegal denial of the corresponding obligation of the other party, the Magistrate should not bind down the party who has the legal right in him—34 C 935 See 6 B 121, 20 Cr. 194 (Pat) 16 A J 279, 21 Cr 225 (Pat) 21 Cr. 347 (A)

- 6 Recognisance should not be taken from one person to prevent breach by another—It is illegal and contrary to the provisions of the section to take recognisance from one person to prevent another from committing a breach of the peace [17 W R 51 4 P R 1912] It is not the intention of the Legislature that a person should be prevented by a Magistrate from exercising his legal rights in a lawful manner, merely because another person would be likely to commit a breach of the peace if he did so [15 P R 1902 (F B.) 34 C 1135 12 C N 703 19 W R. 17 3 C L 280 17 W R 51 32 A 571 6 A 26 (F B.) 37 A 33 16 A J 279 6 B R 862 15 Cr. 661 (M) 22 M J 251 6 M 203 (F B.) (16) 2 U B 157 O S 77 4 P R 1912 21 P R 1885 54 P R 1887 See "(5) Wrongful Act"

(3) Only a person likely to disturb peace can be bound down.

7. Before a person is bound over to keep the peace, it must be shown that he is himself likely to commit a breach of the peace or do a wrongful act that may probably occasion a breach of the peace or disturb public tranquillity—7 A J 1161 (16) 2 U B 157 See 7 A J 649 D A 452 37 A 33, 16 A J 279 195 P L 1912 1 P R 1912, 54 P R. 1887 10 B L 441 12 C N 703 32 A 571, 6 M 203

Note—Proceeding should not be initiated against a person not likely to commit a breach of peace simply because other persons are likely to do so in his interest—[17 W R 51] A non-resident Zemindar cannot be bound down merely because his local agents are committing acts likely to cause a breach of the peace [10 C L 430] But if it is shown that the person while keeping himself in the back ground is making preparations for the enforcement of a claim likely to be fought over by armed forces on both sides through a servant who is continuously armed, he can be bound down [1 P J 361]

- 8 Party opposing exercise of lawful right should be bound down—Where no doubt exists, concerning the respective rights and obligations of the parties the magistrate should bind down the party in the wrong The infringement of a legal right in a person by another should never be encouraged—34 C 935, 22 M J 251 See 3 C N 164 20 Cr. 629 (Pat)

(4) Application of the section.

9. The section applies when violence is directed against certain person or persons only.—When all that the evidence discloses is that a certain person might commit a breach of the peace by using violence against certain person or persons and not the community as a whole, action should be taken under S. 107 Cr. P. C. and not under S. 110 Cr. P. C.—27 A 102.
10. Change in the Law. Section 107 of the Act X of 1882 (Cr. P. C.) did not make one of the objects of the section the mere disturbance of public tranquillity. These words were added in the present Code and they are very important words A person bound over may be a person who is not likely to commit a breach of the peace and still is likely to disturb the public tranquillity—14 A. J. 420.
11. Power discretionary.—The power of taking action under this section is a discretionary power—2 Weir 51 See 35 C 117
12. Party opposing wrongful act of aggression should not be bound down.—Where certain persons who attempted to do *badu* *puga* on a waste land were not entitled to perform it and the persons who opposed the act, acted properly and within their rights, the order of magistrate binding down the latter was held to be illegal—3 C. N. 463.
13. Prevention of disturbances during pendency of Proceedings.—The Code of Criminal Procedure as it stands at present, does not provide any obvious remedy for the prevention of disturbances during the pendency of the proceedings under S. 107 Cr. P. C.—43 C 277

[Note—But See. S. 114, proviso.]

II. INFORMATION.

(1) Information on which a Magistrate may act.

- 14 Nature of information required.—Information of the kind mentioned in S. 107 Cr. P. C.

[Note.—e.g.—the allegation that the accused have committed "diverse acts of oppression" is too vague to justify proceedings 7 C N 32 See 16 P R. 1884, 4 A 211

15. Information not setting out definite acts.—It may well be that all the information which a Magistrate receives is, that there will be a breach of the public peace without any information as to the acts intended to be done from a male an 67.

16. Sufficiency of information.—Sufficiency of an information is a matter for the Magistrate to determine. [8 W. R. 79, 7 Bur 116] He is justified in taking action on any information which he thinks credible. [22 W R 79] It is not necessary to call witnesses in support of an information laid before a Magistrate previous to issuing a

enough to show cause under the section [11 W R 6.]

17. **Information must refer to acts in present contemplation.**—The acts of which information is given, and in respect of which a complaint is made, must be such as are shown to be in contemplation at the time the information is given, and not merely those which may be apprehended on account of the past misconduct of the same kind on the part of the accused. [2 Wey 19 (37/90) 11 B 15. See however 10 Cr 226 (C)]

[Note. "It may well be that though there were no actual court acts on the part of the accused during the six months preceding the commencement of the trial there might still be a likelihood etc.—19 Cr 226 (C)"]

18. **Information may be of hear-say nature.** The information to be required by a Magistrate before issuing an order under S. 112 Cr P C may to some extent be of a hear-say and general description. [6 A 132]

[Note. That an order cannot be based on hearsay evidence. [21 Cr 220 (N). See 6 A 132]

(2) Reports of Police Officers, complaints, etc.

19. **Reports of Police Officers.** A Police report in itself may be sufficient information on which a Magistrate may issue a summons but it is no more, evidence on which the final order can be based. [11 L. M. (F. B.) 10 W. R. 53. See 21 W R 25] But a vague Police report that a person is quarrelsome, bad-tempered and contentious without allegations of specific conduct on the part of the accused cannot be acted on. [10 W R 41. See 21 P R 1885] Where however the accused has accurate apprehension of what the information is, a preliminary order based on a Police report containing very scanty and indefinite information was upheld. [14 A J. 430]

[Note. Duty of the Police.—Where it appears that any person is likely to commit a breach of the peace &c., it is the duty of the Police to lay information before the Magistrate having jurisdiction. In laying such information the Police should carefully set out the evidence on which they rely, or the circumstances leading to the information. C P Pol Man I 55]

20. **Complaints.**—A statement by a complainant that he expected the defendant at any time to make an attempt on his life and property is sufficient, if believed. [7 W R 30. See 17 W R 31] But a petition unsupported by a formal complaint or statement in oath and declared by the Police to be false is not credible information within the meaning of the section. [8 W R 65]

21. **Report by Subordinate Magistrate.**—The power of taking action under S. 107 Cr P C is a discretionary power, and there is nothing irregular in the Magistrate calling for a report from a Subordinate Magistrate before issuing notice under S. 112 Cr P C, especially, if he doubts whether the information before him is reliable. [2 Wey 51] But a report is "credible information" which will justify the issue of a notice to show cause. [2 M 11 210 8 B 11 (C C) 102 8 B. 11. (C C) 1 (5).

10 W R 11] But it cannot, unsupported by other evidence, form a sufficient ground for final adjournment. [6 B 11 (C C) 1. 5 B 11. (C. C.) 105]

(3) Extra-judicial Information.

22. **Extra-judicial information and knowledge.**—Considerations of Court with persons, however respectable, are not legal or proper materials upon which a Magistrate should adopt proceedings under this section. [6 A. 132 (136). See 3 Shorne 27] He cannot rely on the information derived in a case of riding in which the accused was tried but acquitted. [37 A. 30]. He

possesses knowledge of certain facts which he obtains from sources outside the record, he should not base his judgment upon the facts but should base it upon evidence relevant to the case. [14 A. J. 769] A Magistrate cannot refer to confidential papers in his possession or impart his outside knowledge into the case. [37 A. 34].

(4) Information forming subject of a previous enquiry.

23. **In initiating proceedings under S. 107 Cr. P. C.** A Magistrate should not rely upon facts and information which formed the subject of a previous enquiry and in which the accused were discharged. The same facts cannot form the subject of repeated proceedings either under the Penal Code or under the Criminal Procedure Code.—[41 M. 24 36 M 315. See 37 A 30].
24. **Substance of information should be set out in the notice.**—See (6) Notice (n2)

(5) Credible Information.

25. **What is credible information.**—(a) Report by Subordinate Magistrate.—See No. 21 Above (b) Report of a Hent Constable.—10 W. R. 41 (c) Reports of Police Officers.—See No 19 Above (d) Statement of complainant, that the accused might at any time make attempt on person or property. [7 W R 30. See 2 N. 3. 461, 20 W R 18]. (e) Information contained in the record of a case in which the person proceeded against was charged with an offence and acquitted.—[10 W. R. 1. Con 37 A 30]

(6) What is not credible Information.

26. **What is not credible information.**—(a) Statement by a private person unsupported by oath or solemn affirmation.—3 B 11 (C. C.) 1. (b) Petition without formal complaint and deposition on solemn affirmation. [8 W. R. 81] (c) Police report recommending proceedings under S. 110 Cr. P. C. [(84) A. N. 51] (d) Extra-judicial information. [See No. 22 Above] (e) Evidence of a witness in the course of a trial for robbery showing that he himself was one of the rioters. [5 M. 350] (f) Vague information that the accused have committed diverse acts of aggression. [7 C. N. 32, 16 P. R. 1858-6 A. 211] (g) An unproved charge of false imprisonment. [6 W. R. 1].

III. JURISDICTION—LOCAL LIMITS.

27 **Permanent residence of accused within local limits not necessary**—Nothing is said and no language is used in the Section bearing upon the question of residence at all. The Magistrate has power to deal with the accused, if it happens to be within the local limits of his jurisdiction at the time of the initiation of proceedings, no matter whether he is a permanent resident therein or merely a casual visitor [See 14 A J 1974 which adopts the principle laid down in 36 M 96—See 21 C 311-14 B R. 884 (ou 27 C 997]

28. **Person residing outside the limits cannot be proceeded against**—A person who has already left the jurisdiction of the Magistrate before the notice is issued cannot be bound down by him [See 14 B R 889] It is altogether ultra vires to call upon a person residing beyond the Magistrate's jurisdiction to give security against breach of the peace within his jurisdiction [11 A 26 (F.B.) 14 A 49 21 B 32 (35) 11 C 737 (738)-12 C 133 (135)]

29 **Jurisdiction derived from a superior Magistrate**—Where a proceeding under S 107 has been properly initiated by the District Magistrate or by a Magistrate empowered under Subs. (1) and (2), the District Magistrate may transfer the proceedings to a first class Magistrate or a Subdivisional Magistrate although the latter has no local jurisdiction over the accused within the meaning of Subs. (2) [See—31 C 350 (354) 27 C J 314 21 A 751 (707) S 2 See also 23 C 389 and 10 C N 1095 (1098) 37 A 20 Contra—41 M 216 13 C N. 560] This rule does not apply when the transfer takes place before the proceedings are legally initiated. A District Magistrate without recording any opinion as to likelihood of a breach of the peace transferred the case to a subordinate Magistrate or merely directed a subordinate Magistrate to draw up a proceeding against a person residing out of the latter's jurisdiction—held that his order was illegal. He ought to have tried the case himself and brought the proceedings to a conclusion—41 M 216 13 C N. 380 Contra—

19 Cr. 206 (C) where the District Magistrate "sanctioned the proceedings"]

[Note—In 13 C N. 340 and 41 M. 216 the power of transfer after initiation is not recognised]

30. **First class Magistrate at the Headquarters**—Under S 12 Cr. P. C. unless the powers of Magistrate have been restricted to certain local areas, he has jurisdiction over the entire District. [29 C. 389: See 10 C. N. 107 (1098)]

31. **Enforced residence**—Enforced residence of the accused is arrested outside the jurisdiction and brought up in police custody within it cannot entitle the Magistrate to act under the section [(41) A N. 55]

[Note—There is a great divergence of judicial opinion on this point—See notes under S 11 infra]

32 **Chief Presidency Magistrates and District Magistrates**—(1) Under the provisions of Subs. (2), a Chief Presidency Magistrate or District Magistrate has power to proceed against a person, who, residing beyond the limits of the Magistrate's jurisdiction, threatens breach of the peace within such limits [11 C. 737 and 12 C. 133 are obsolete]

(2) "As this section stood, proceedings could not be taken against a person outside the jurisdiction, but as such extended power requires careful exercise, we have provided that the power of taking action in such cases shall only be exercised by a Chief Presidency or District Magistrate" (See Comm Report)

33 **On Transfer by High Court—District Magistrate cannot make over case to 2nd class Magistrate**—Where the High Court transferred a case instituted by a First Class Magistrate to the District Magistrate with instructions to make it over to some other Magistrate subordinate to him and competent to try the case—Held, that the District Magistrate has no authority to make over the case to the Magistrate of a 2nd class Magistrate—37 A. 20

IV. JURISDICTION—JURIDICAL.

Jurisdiction under Chapter XII no bar to action under this section.

34 (a) S 145 Cr P C—The fact that there is a dispute concerning land likely to cause a breach of the peace does not deprive a Magistrate of jurisdiction under S 107 Cr P C when he is informed that any person is likely to commit a breach of the peace or disturb public tranquillity or to do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquillity—39 C 170 (F.B.) 32 C 146, 4 C N 151 7 C N 746, 31 A 169 9 A J. 582, 9 A J. 693 28 A 403 16 Cr 211 (30). 26 M 171 21 M 364 See King v Justice of Leicestershire 7 H and C. 12 C N 106—Contra 35 C 117 25 C 559 7 C N 142 7 C N 29 6 C N. 684 3 C N 245 25 A 535

Note—The only ground on which proceedings under S 107 Cr. P. C. can be preferred to those under S 145 Cr. P. C. is that the claim to possession by one of the parties is not bona fide 1 Pat W 586.

35 (b) S 147 Cr. P. C—The jurisdiction vesting in Magistrates under S 147 Cr P C does not necessarily oust the jurisdiction vesting in them under S 107 Cr. P. C : 2 Weir 50: See above

36 **Jurisdiction under S. 144 Cr. P. C.**—A Magistrate has no jurisdiction to proceed either under S 144 Cr P. C. or S 107 Cr. P. C.—26 M 171 32 C. 966

37. **European British Subject.**

When a proceeding under S 107 Cr. P. C. is instituted against a European British Subject, his case falls within the purview of S 443 Cr P. C. and he is

entitled to claim that he should be tried by a Justice of the Peace or a District Magistrate or Presidency Magistrate provided that the Justice of the Peace is a Magistrate of the first class and a European British Subject. 20 C 167

38. Power to proceed under Subs (3)—The power to proceed under Subs (3) ought to be used with the greatest caution. The objection of the Magistrate is very much limited by the language "has reason to believe" as distinguished from "is informed" in Subs (1). The question is not whether there was belief, but whether there was reason to believe and not merely to suspect.—3 R 472.

[Note.—For definition of "reason to believe" See S 201, P C

39. Jurisdiction not affected by pendency of Civil proceedings.

- (1) The fact that both the parties have applied to the Land Registration Court for registration of their names as proprietors of an estate, will not necessarily oust the jurisdiction of the Magistrate to proceed under S 107 Cr P C against one of them when it appears that the latter was out of possession and was seeking to obtain possession by an unlawful means which were likely to cause a breach of the peace.—11 C N 121
- (2) The mere fact that a *dur potandus* had brought a suit to set aside a sale held under Reg VIII of 1884, where everything had been done by the Revenue

Authorities and so similar to give possession to the purchaser of the *dur potandus*, would not prevent a Magistrate from binding down the *dur potandus* whose act in continuing to collect rents was likely to cause a breach of the peace. 9 C N 702.

40. Enquiry started by predecessor.—A Magistrate has jurisdiction to carry on the proceedings started by his predecessor who was transferred after examining a few of the prosecution witnesses subject to the defendant's right to ask for the re-examination and rehearing of such witnesses. 1 C L 472
41. Conditions precedent to exercise of jurisdiction.—See (5) Proceedings (41)
42. Jurisdiction derived from superior Magistrate.—See (3) Jurisdiction (24)
43. Jurisdiction of Subordinate Magistrate to start fresh proceedings on a proceeding already started by a superior Magistrate being referred to "for disposal." On the application of the complainant, a Subdivisional Officer after calling for and perusing the Police report instituted proceedings under S 107 Cr P C, against one only out of several persons and the Magistrate had jurisdiction to try the persons named in the Police report. 1 Pat, W, 610. See 24 C 389

V PROCEEDINGS.

(1) Condition precedent to initiation of proceeding or preliminary order.

44. (a) Likelihood of breach of the peace.—The law requires that in order to justify institution of proceedings under the section there must be credible information that the persons proceeded against are likely to commit a breach of the peace or to disturb public tranquillity or to do any wrong full act that may occasion a breach of the peace or disturb public tranquillity. In the absence of any of these elements an order is entirely without jurisdiction.—11 A J 769, 14 Cr 238 (1), 22 W P 79, 24 W R 21, 17 W R 35, 3 C L 72, 21 P R 1888, 21 Cr 453 (Pat), 7 C P 9, See 6 B R 862, 32 A 571, 115 P L 1903, 126 P L 1911, 16 A J 279, T N P 233

[Note.—But proceedings may be instituted on any information satisfactory to the Magistrate.—7 Bar 116]

45. (a) ... must was a —There on the part of the accused from which a reasonable and immoderate inference could be drawn that the accused were likely to commit a breach of the peace [21 P R 1888]. Proceeding cannot be initiated on the mere fact that there has been for sometime past, a series of disputes, litigation and high feeling between the parties, in the absence of a danger of a breach of the peace [14 A. J 769], or the

probability of the occurrence of the breach (where no likelihood of a disturbance is established) [14 Cr 238 (A) See 5 C J 447] or merely because

A police report that a person is "quarrelsome, headstrong and contumacious" is insufficient foundation for a preliminary order [21 P R 1888 See 21 Cr 571 (P)]

46. (c) The likelihood of breach of peace must not be due to exercise of lawful rights in a lawful manner.—See (1) Object etc (5) and (6)
47. (d) The party to be proceeded against must be himself likely to commit breach. See (1) Object etc (7)
48. (e) Breach of peace must be imminent.—See (7) Likelihood (72)
49. (f) ... ju- (g) ... must

(2) The contents of the preliminary order.

50. It should appear on the face of the preliminary

order that the Magistrate receive credible information about a likelihood of breach of the peace [6 W R 113]. The accused is entitled to notice of the particular conduct complained against [21 W R 6]. The substance of the information on which action is taken must be set forth [1 N P. 106; 1 N P. 304; 15 W R 13; 6 A 214 See 11 M 296].

(3) Jurisdiction of magistrate to draw up fresh proceedings on transfer.

51. Where a case instituted by a subordinate Magistrate has been transferred to a Magistrate not having local jurisdiction but stationed at District headquarters, the latter has jurisdiction, upon the former proceedings being found defective, to draw up fresh proceedings on the same information.

23 C 389; 1 Pat W 610.

See—(4) Jurisdiction—Juridical (No. 43)

(4) Repeated proceedings on same facts.

52. It would be improper to vex a party repeatedly with proceedings under Chapter VIII on the same facts which were found insufficient to justify in order for security in a previous proceeding. [30 M 315; 11 M 246]

Note—Second recognition on same facts. Where a matter in respect of which justice is sought to keep the peace is required to be taken up before the Magistrate on the first occasion, the case can be dealt with only under S. 210 of the Code of 1861. [7 W R 26; 7 W R 13 See 18 W R 57]

(5) Pendency of Civil proceedings no bar to initiation.

53. See—(4) Jurisdiction—Juridical, [No. 30]

(6) Nature of the proceeding.

54.

order in a criminal trial and the proceedings are proceedings in a criminal matter or cause within the meaning of S. 15 Letters Patent [27 M 310]

55. Is the person proceeded against an accused person?

There is a great conflict of rulings as to whether a party against whom proceedings under S. 17 Cr. P. C. are instituted is in the position of a necessary person as will appear from the rulings and Cases quoted below:—

Pro.—38 C 113; 28 C 709; 27 C 156, 1 C L 1 21 A 107; 24 A 148 (150); 2 L B 60; 15 P 1000; 21 P R 1007 [O], 33 P R 1505 [L 16 R 461, 35 R 301.

Con.—6 P B 391 (F B); 12 P R 1005; 27 162; 9 C S, 188; 31 M, 85; [10] A N, 284; 60 262 (257); 17 C 1, 127 (129).

56. Is the proceeding a criminal case within the meaning of S. 528 Cr. P. C.?

See—(14) Transfer, (317).

(7) Miscellaneous.

57. Simultaneous proceedings under S. 1 and 107 Cr. P. C.—A Magistrate having power an order under S. 107 Cr. P. C. has jurisdiction under S. 1.

58. Simultaneous proceedings under S. 1 and 107 Cr. P. C.—Where on the application the petitioners for the assistance of the Magistrate in respect of the possession of a piece of land, injunction was issued under S. 144 Cr. P. C. at the same time petitioners were called up to furnish security under S. 107—held—that procedure was valid, as in effect, it declared petitioners from giving evidence of possession. [19 Cr. 357 (C)]

Can a subordinate Court be directed to initiate proceedings?

59. The power of taking action under this section is a discretionary power [2 Weir 51; 33 C 117]. District Magistrate cannot direct a subordinate Magistrate to take action under S. 107 Cr. P. C. also [24 C 391; 1 Pat. W. 258. The High Court direct a Magistrate to initiate proceedings on the section [3 A 545 (F B)]]

60. Jurisdiction to drop proceedings—Is competent to a Magistrate holding enquiry under S. 107 Cr. P. C. to drop proceedings under section and to proceed under S. 145 Cr. P. C. Cr. 712 (Pat); See 4 Pat W 195

VI. NOTICE.

(1). Procedure.

61. (1) Form etc.

Notice should be in form no. 12, Sch. V and accompanied by a copy of the preliminary order under S. 112 Cr. P. C. Omission to follow this procedure is illegal. [4 Cr 179 (A); 10 C. L. 130 See 14 A 1 704]

(2) Contents of the Notice.

62. (i) The substance of the information received should be set forth—[3 N P. 106; 1 N P. 304; 15 W R 13; 6 A 214 See 11 M 296]

63. (b) The accused should be called upon to show cause—*Ibid*

64. (c) Should distinctly specify the amount & nature of the security required and the time for which it is to run—[20 W R 36; 15 W R 3 N P. 100; 1 N P. 304 But See 8 C 724]

65. (d) The particular conduct of the accused which the magistrate thinks is likely to lead to a breach of the peace etc. should be mentioned [21 W R 6 See 6 A 26 (F.B.)] The fact that Magistrate has received credible information that the accused is likely to commit a breach

the peace must appear on the face of the notice [6 W. R. 391]. The wording of the notice should not be vague. It should state when the alleged threats were uttered, who are the persons who are threatened and when the apprehension of a breach of the peace arose [41 W. 245].

66. (c) Sufficient time to show cause must be given.—21 W. R. 14. 22 W. R. 70.

(3) Miscellaneous.

67. Separate summonses should be issued on each accused. 7 N. P. 91.
68. What is not a valid Summons.—A summons which merely sets out that the person summoned is charged with an offence under the Section and requires his personal attendance

in court, but which does not state any of the matters which the law requires to be set out in a summons under this Section, is not a valid summons. 10 C. L. 430.

69. Proceedings commence only on issue of notice. A Magistrate cannot be said to have taken proceedings under S. 107 Cr. P. C. until he issues notice to the person charged to show cause why he should not be proceeded against under the Section. 11 W. 246.
70. Final order without previous issue of notice is illegal.—See (11) Final order (155).
71. Notice issued under S. 107 Cr. P. C. followed by an order under S. 110 is illegal. See (15) Allied Sections (216).

VII. LIKELIHOOD OF A BREACH OF THE PEACE.

(1) Meaning of "Likelihood."

72. Likelihood means with reference to this Section a reasonable probability and not merely a fair possibility. [20 W. R. 57. See 2 Weir 99]. It is not enough to show that there is great probability of a breach of the peace ensuing. It must further be shown that the party is likely to do illegal acts of violence. [6 B. R. 842]. Where all that the evidence established was that owing to a series of disputes, feeling was running very high between the parties, and the Magistrate considering that there was a probability of a breach of the peace, made an order under S. 107—held that there was no likelihood of a breach of the peace within the meaning of the section. [11 A. J. 709. See 38 A. 468. 37 A. 33. 7 A. J. 1161]. It must appear to the Magistrate that a breach of the peace is imminent and cannot be prevented without taking action under this section. [7 N. P. 233]. To justify an order under the section, the Magistrate must believe that the person against whom he makes the order is about to commit a breach of the peace, etc. [32 A. 571]. The probability must be strong and reasonable. [115 P. L. 1903. 21 W. R. 10. 3 J. G. 37]. A Magistrate cannot act on a merely vague apprehension. [23 M. J. 251. 1 A. J. 418]. There must be a present danger and not merely one which may occur in the future. [2 Weir 49. 26 A. 190. 2 N. P. 233. 6 B. R. 663. See 7 C. L. 352].

(2). Likelihood should not be inferred merely from past misconduct or enmity between the parties.

73. See: (c) Proceeding.—See also 26 A. 190. 2 Weir 49. 6 B. R. 663. 1 A. J. 418. 126 P. L. 1911.

(3). Likelihood after trials has passed.

74. An order would not be justified when all fear of a breach of the peace passes away before it is passed. [See 31 P. W. 1907. U. M. T. 271]. But security should be taken in a case where, after the occasion on which ill feeling between the parties came to a head had passed without any actual

disturbance, there still remained the probability of a recurrence of it in the near future in fact at any moment. [8 A. J. 1040]. Where, however, the occasion of such ill feeling was an annually recurring festival, which had passed away without any disturbance, an order cannot be made with a view to prevent disturbance at the next recurrence of the festival. [26 A. 190. See 6 B. R. 663]. But the fact that a breach of the peace was averted by the precautionary measures taken by the authorities is no ground for discharge of a person from liability to be bound over to keep the peace.—[31 C. 350].

(4). Likelihood in anticipation.

75. Where there is nothing to show that the person called upon to furnish security was himself likely, at the time the proceedings are taken, to commit a breach of the peace or cause a disturbance of public tranquillity, he may not be bound over merely on the ground that he was a wealthy and influential member of a party which was on terms of enmity with another party of the village.—7 A. J. 1161.—See (1) Object (7) and 32 A. 571. 3 C. L. 280.

(5). Likelihood due to exercise of lawful right in a lawful manner.

76. See (1) Object etc. (7) and (9).

G. Miscellaneous.

77. Likelihood must be established by legal evidence.—15 W. R. 42. See (1) Evidence and Witnesses (131).
78. Likelihood condition precedent to initiation of proceedings.—21 W. R. 23. See (5) Proceedings (44).
79. Overt acts as evidence of 'likelihood'.—Threats of violence are sufficient to indicate an intention to commit a breach of the peace, [31 C. 350. See 9 M. T. 271]. A hasty speech may be likely to cause a breach, but it will not justify order, when the fear of a breach of the peace has passed away. [31 P. W. 1907]. A likelihood

91 (c) *How's speech likely to lead to a breach of the peace* (particularly when the risk of disturbance is great)—31 P. W. 197

92 (d) *How's speech likely to lead to a breach of the peace*—31 P. W. 197

93 (e) *Quere re, how's speech likely to lead to a breach of the peace*—31 P. W. 197

94 (f) *How's speech likely to lead to a breach of the peace* (particularly when the risk of disturbance is great)—31 P. W. 197

95 (g) *How's speech likely to lead to a breach of the peace*—31 P. W. 197

96 (h) *How's speech likely to lead to a breach of the peace*—31 P. W. 197

97 (i) *How's speech likely to lead to a breach of the peace*—31 P. W. 197

(7) Wrongful acts within the meaning of the section.

98 (a) The act of a *shareholder* in collecting rent with force and delivery of possession of *premises*—10 C. L. 40

99 (b) *Indictment* for a *shareholder* in collecting rent with force and delivery of possession of *premises*—10 C. L. 40

100 (c) *Attempt* to *indict* for a *shareholder* in collecting rent with force and delivery of possession of *premises*—10 C. L. 40

101 (d) *Indictment* for a *shareholder* in collecting rent with force and delivery of possession of *premises*—10 C. L. 40

102 (e) *Assertion* of a claim and making of *preparations* for enforcing that claim through a *servant* (continuing)—1 Pat J. 754

103 (f) *Wrongful acts*—performed with the deliberate intention of wounding the feelings of members of other community—31 A. 775 [See Note above].

(10) Wrongful acts under the employer's orders

104 A proceeding lies against persons who commit wrongful acts—e.g.—acts of oppression with a view to extort *loyalty*—not in their own interest but for the benefit of their common master [10 C. L. 40].

(11) The wrongful act must be in present contemplation and not merely an inference from past misconduct.

105 2 Weir 49 6 B. R. 631 [See (10) Evidence and Witnesses (139)]

(8) Disputes about immovable property

106 S. 141 contemplates the case of two persons contesting in good faith for the possession of land etc. both of them rightly or wrongly believe that they are entitled to possession. But where it is clear that there is no bona fide belief by one of the parties that they have any title whatever to the property, an assertion of a claim by the latter amounts to a *wrongful act* within the meaning of S. 107 Cr. P. C. In such a case the party in the wrong should be bound over in a proceeding taken under S. 107 Cr. P. C., as the dispute is not really a dispute about possession of immovable property within the meaning of Chapter XII. See. 28 A. 406

See (4) Jurisdiction—Jurisdiction

IX. ENQUIRY AND PROCEDURE.

(1) Showing cause.

107. Procedure as in Summons Cases—An enquiry in a proceeding for security to keep the peace must be made in the same way as a trial in a summons case. The finding must be based on legal evidence.

25 A. 273 4 Pat. W. 41 See 117 (2) Cr. P. C. 9 A. 452.

108. Accused entitled to have opportunity to show cause—Persons who are bound over to keep the peace should be given an opportunity of showing cause and all the procedure laid down by Ch. VIII of the Code should be strictly followed.

10 A. J. 353 See 22 W. R. 68 21 W. R. 6 3 C. L. 72 1 C. L. 48 See (81) A. N. 155 14 A. J. 794 72 P. R. 1909 Ent. 421. W. R. 16 2 N. P. 189.

109. Accused entitled to sufficient time to show cause—Every person to whom a summons is issued, calling on him to show cause why he should not find security to keep the peace, is entitled to proper information as to the materials upon which process has been granted against him and to a reasonable interval within which to prepare himself to meet such information by evidence or otherwise, as the matter may require 6 A. 214 See 10 A. J. 353 20 W. R. 18

110. Meaning of 'showing cause'—An order under Ss. 107 and 112 Cr. P. C. requiring any person to show cause why he should not be ordered to furnish security for keeping the peace, is not in the nature of a rule nisi implying that the burden of proving innocence is upon such persons. The onus of proof lies upon the prosecution to establish circumstances justifying the action of the Magistrate in calling upon persons to furnish security 4 B. L. 46 (F. B.) 11 A. 452. 2 N. P. 441.

111. Adjournments—The party charged is not entitled, when sufficient time has already been given to show cause and to produce his witnesses, to an adjournment in order to summon witnesses. In such a case he must either bring his witnesses with him or apply for summons in such time as to enable him to bring them to Court on the date fixed [23 W. R. 9]. An adjournment *non est* pending decision by Criminal Court amounts to a discharge [5 C. L. 360].

(2) Procedure.

112. Scope of the Enquiry—The enquiry should not go beyond the terms of the notice served [21 W. R. 6]. The kind of enquiry required to be held by a Magistrate is a full judicial enquiry, evidence being taken in the presence of the parties charged, and opportunity being given for the cross examination of witnesses—18 W. R. 2.

113. **Bail**.—Where the accused person has been arrested under a warrant under S. 114 Cr. P. C. in connection with a proceeding under S. 107 Cr. P. C. the Magistrate has no jurisdiction to refuse bail.—31 M. 315 (F. B.) 32 O. 80: 98. 158 But See 36 M. 474

114. **Right of accused to know the definite facts alleged against him**.—The Magistrate should give notice to the accused of the particular offence on which he is complained of [21 W. R. 6]. He is entitled to know tangible facts and details, so that he may know what he is to meet [6 A. 26 (F. B.)]

114A. **The accused should be interrogated before commencing enquiry**.—The accused is entitled to have the preliminary order explained to him [8 113]. He should be interrogated as required in S. 212 Cr. P. C. But merely to put the question "Are you willing to execute the bonds required?" is not a sufficient compliance with the provisions of law. Even if the reply is in the affirmative it would not by itself justify the binding down of the accused. 34 M. 139

115. **Pleader for the accused.**

(1) A Magistrate should permit a non-resident accused to appear by pleader in the absence of special reasons to the contrary

12 C. 133 [See also S. 116 Cr. P. C.]

(2) The Court is bound to hear the pleader engaged by the accused. 25 A. 375 (177). 27 C. 856 4 C. N. 797 G. O. C. 232. See 22 C. 493

116. **Magistrate may call for a report from Subordinate Magistrate previous to issue of notice**.—The power of taking action under S. 107 Cr. P. C. is a discretionary power and there is nothing irregular in the Magistrate calling for a report from a Subordinate Magistrate before issuing notice under S. 112, especially if he doubts whether the information before him is reliable. 2 Weir 51

117. **Accused entitled to cross-examine complainant and produce witnesses**.—The accused should have an opportunity of disproving the allegations against him by cross-examining the complainant and his witnesses. He should have an opportunity also of calling and examining his own witnesses.

7 W. R. 59 10 W. R. 48 10 W. R. 1 18 W. R. 2 2 N. P. 461. See also 12 W. R. 60 (F. B.) 16 W. R. 47 20 W. R. 18; 21 W. R. 6 1 C. L. 45; 3 C. L. 72

118. **Duty of Magistrate to summon witnesses**.—A Magistrate is bound to assist both parties in a case under S. 107 Cr. P. C. in bringing their witnesses by issuing summonses to witnesses. 22 W. R. 70 See above (109) 16 W. R. 45; 7 W. R. 59 2 N. P. 461.

119. **De novo trial under S. 350 Cr. P. C.**.—A person proceeded against under S. 107 Cr. P. C. has the same right under a de novo trial as a case

Note.—Where a Subordinate Magistrate after receiving some evidence returned the case to the District Magistrate—held the latter is bound to proceed de novo [21 W. R. 52]

120. **Ex parte orders**.—Order cannot be passed ex parte. Warrant should be issued if the accused fails to appear [1 C. L. 45].

121. **When Accused expresses willingness to be bound down**.—The mere fact that a accused person says that he is willing to give security to keep the peace is not the kind of security required by S. 116 Cr. P. C., as condition precedes to taking security. The Magistrate is bound to record evidence to prove that the accused was likely to commit a breach of the peace or to do any wrongful act that may occasion a breach of the peace etc. 35 C. 674; 12 C. N. 215 34 M. 139; 30 M. 340 21 Cr. 176 (A) 21 Cr. 58 (A); 37 A. 30; 37 P. R. 1917 24 P. R. 1915; 14 P. L. 1912. Cou. 11 W. R. 50

122. **Statement of contending parties**.—Magistrate may act on statements of contending parties without taking further evidence.—18 W. R. 11

123. **Record of evidence**.—Procedure.—Magistrate is bound in proceedings under S. 107 Cr. P. C. only to make a memorandum of evidence under S. 355 Cr. P. C. [3 Pat W. 14] Evidence recorded under the section need not be read over to the witnesses. [ibid]

124. **Witnesses**.—Recognition from.—See (10) Evidence and witness (154).

(3) Joint Enquiry.

125. **Principles applicable**.—The main principles applicable to a criminal trial regarding joinder of charges and the joint trial of accused persons are also applicable to inquiries under S. 107 Cr. P. C.—3 C. N. 180; 9 A. 452; 6 A. 214

126. **Rival factions should not be tried together**.—Where both the parties to a proceeding under S. 107 Cr. P. C. were tried together, some of them having been examined as witnesses also—held—that there was a misjoinder of parties, and S. 537 did not cure the defect.—3 C. N. 149 11 C. N. 472; 14 A. J. 263 See 9 C. N. 808 31 M. 276 (277); See 9 A. 452. 8 S. 207

(Note)—Such a trial is not ipso facto illegal and may be allowed to stand in the absence of prejudice.—9 A. 452 11 B. R. 740; 3 L. B. 52.

127. **Meaning of "associated together"**.—Where the wrongful acts were alleged to have been committed by certain persons, as servants for the benefit of their common master—held—that although (1) each of the acts alleged was done by all of them together, (2) the acts imputed were done by them as individual members but as servants of another person, they were associated together within the meaning of S. 117 Cr. P. C. and a joint enquiry was justified.—See Judgment of Henderson J. in 9 C. N. 888

128. **S. 30 Evidence Act does not apply to joint enquiries under this section**.—For joint enquiries under this section—per sons against whom proceedings are taken jointly under S. 117 Cr. P. C. cannot be said to be on

their joint trial for the same offence within the meaning of S. 33 of the Evidence Act. Incriminating statements by one accused are therefore, admissible against the other—23 Cr. 276 (1).

120. **The case of each individual accused must be examined separately.**—In a joint proceeding under S. 107 Cr. P. C. it must be shown by proof of definite facts that each individual person implicated has done so to furnish a basis for the apprehension that he would commit a breach of peace or do a wrongful act which may occasion a breach of the peace or disturbance of public

tranquillity. The evidence must show that the persons sought to be bound down are *individually* and *not collectively* concerned with those facts—20 Cr. 191 (Pat); 8 C. N. 180; 38 A. 469; 37 A. 33; 9 A. 152; 126 P. L. 1911; 35 C. 629; 9 M. T. 271.

130. **Evidence must be recorded.**
C. L. 377 9 A. 152 126 P. L. 1911; 14 A. J. 130

X. EVIDENCE AND WITNESSES.

(1) Evidence must be recorded.

131. **Evidence must be recorded in the presence of the accused.**—The magistrate must adjudge on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace, after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses.—1 R. L. 46 (F.B.). 18 W. R. 21 W. R. 6 10 W. R. 1 10 W. R. 46 1 C. L. 48 3 C. L. 72. 2 N. P. 406 2 N. P. 101 & 10 W. R. 45 & 12 W. R. 10 20 W. R. 68

132. **Legal evidence must be recorded and judicially adjudicated upon before passing orders.**—Although a magistrate may accept the statement of the complainant on oath or police report etc. as credible information for the purposes of his preliminary orders and act on it by summoning the person complained against in whose cause why he should not be required to enter into bonds to keep the peace, he must take further evidence in the presence of the accused, giving the latter an opportunity to cross-examine the complainant and his witnesses and to produce his own evidence. He is bound, before taking bonds for the preservation of the peace, to adjudicate judicially on evidence given before him as to the necessity for taking security from the accused—2 N. P. 461 2 N. P. 431 5 W. P. 10 4 B. L. 46 (F.B.); 20 W. R. 18 22 W. R. 79 24 W. R. 30 3 C. L. 72 9 A. 452 64 P. R. 1887

133. **Evidence must be recorded even when accused is willing to be bound down.**—See (9) Enquiry and procedure (121)

(2) Nature of evidence required.

134. **Satisfaction as to the probability of a breach of the peace.**

wrongful act likely to occasion a breach of the peace or disturbance of public tranquillity—6 A. 132 101 P. L. 1912 22 M. J. 271 7 A. J. 1161 & 1 B. L. 16 (F.B.). 24 W. R. 23 17 W. R. 35 15 W. R. 42 37 A. 393 14 A. J. 369 7 N. P. 233

135. **Evidence need not be as conclusive as in regular trials.**—In holding the enquiry under S. 117, the nature of quantum of evidence

need not be as conclusive as in trial for offences. But a magistrate is bound to see that substantial grounds (and not merely a vague apprehension) are established by proof of facts against the person implicated, which would lead to the conclusion that an order for security is necessary—9 A. 432 8 C. N. 180 (93) A. N. 241 7 Bur. 116.

- [Note.—Threats of violence are sufficient to indicate an intention to commit breach (31 C. 330 See 9 M. T. 271). But an order under S. 107 Cr. P. C. cannot be passed merely on a vague apprehension—[22 M. J. 271]

136. **Facts sought to be proved must be definite.**—The evidence must point to some specific conduct or act on the part of the accused from which a reasonable and unimpeachable inference can be drawn that he is likely to commit a breach of the peace—25 W. R. 15 8 C. N. 180 10 C. C. 385 6 A. 26 (F.B.). 9 A. 452 38 A. 469 (93—'00) 1 R. 16 See 22 W. R. 79 21 P. R. 1888 20 Cr. 194 (Pat) 126 P. L. 1911

137. **Statement of contending parties.**—Magistrate may act on the statements of the contending parties without taking further evidence [16 W. R. 11]

(3) Facts necessary to prove in proceedings under S. 107 Cr. P. C.

138. (a) **Overt acts.**—Overt acts must be proved which show the nature of the information requires it [9 A. 432 (93—'00) 1 R. 16 See 21 P. R. 1888] but it is not necessary that in all cases overt acts should be proved to support an order for security. A general impression that the accused are likely to commit breach is sufficient [79) A. N. 241]. Order must be based on satisfactory evidence that the party bound down has done something or taken some step that indicates an intention to break the peace [6 A. 132]

139. (b) **Past conduct and past relations between the parties.**—Evidence of past misconduct may be given to show that similar acts may be committed in future [9 C. N. 898]. A court is entitled to look into the evidence of past relations of the parties and the attendant and existing circumstances [9 M. T. 271]. But the mere fact that a person has done a wrongful act in the past creates no presumption that he is likely to do the same again [2 W. R. 44, 28 A. 130 6 B. R. 147]. Mere proof of enmity between the parties without anything to show

that there is an intention to break the peace is insufficient [1 A. J. 418 126 P. L. 1911 7 C P 9]

140. (c) **Threats.**—Threats of violence are sufficient to indicate an intention to commit a breach of the peace [31 C 379 8 M. T. 271] But where there are merely idle threats couched in bombastic language, an order should not be made [9 M. 271] A hasty speech made in the heat of the moment when there is no indication to follow it up by action is insufficient [31 P R 1301]
141. (d) **The act complained of must be shown to be in present contemplation.**—Order cannot be passed where "no act is shown to be in contemplation likely to occasion a breach of the peace" (84) A N 34

(4) What is not legal evidence under the Section.

142. **General Principles.**—The trial decisions under S 107 Cr P C should be based simply and entirely upon evidence legally brought on the record—37 A 43 10 W R 1 12 W R 16 15 W R 42 17 W R 43 20 W R 68 6 B H 1 1 B H 101 5 B H 162 6 B L 145 25 A 273
143. (i) **Facts outside the record.**—A Magistrate cannot refer to confidential papers in his possession or impart his outside knowledge into the case [37 A 31] A Magistrate cannot base his order upon facts the knowledge of which he has obtained from sources outside the record [14 A. 1 704]

See (2) Information (22)

144. (b) **Hearsay evidence.**—Evidence of General Inquiry is inadmissible in a proceeding under S 107 Cr P C—25 A 273 21 P R 1888 16 P R 1688 2 P R 1897 21 Cr 700 (N) See 6 A 132
145. (c) **Police Report.**—The report of a police officer though it justifies the issuing of a summons is not sufficient ground on which a man can be bound over in a recognisance to keep the peace [4 B L 46 (F B.) 6 B L 145] A report of an Inspector of Police and the evidence given by the same Inspector are not sufficient to justify an order under the section [10 W. R. 55 15 W R 42. Can 10 W R. 41]
146. (d) **Report of Subordinate Magistrate.**—The report of a Subordinate Magistrate is not evidence on which a Magistrate can properly arrive

at a conclusion that the accused is likely to be a breach of the peace [4 B. H. (Cc.) 182; 6 (Cc.) 11 5 B H (Cc.) 105; 3 J B. 37] 8 Information (21).

147. (e) **Evidence in a previous criminal case.**—Evidence given in a previous criminal case cannot prevail over evidence given in the trial of the accused in the proceeding—22 W. R. 1 W. R. 39; See 37 A 30.
148. (f) **Admission by pleader.**—A statement made by the accused cannot be taken as admission of the intention of the accused to commit a crime 30 M 340

(5) Miscellaneous.

149. **Onus probandi.**—The burden of proof must lie on the person called upon to furnish security to keep the peace laid on the prosecutor [14 A. 452 (460); 2 N P. 441; 1 B. L. 50 (F. E)]
150. **Where evidence is sufficient, H. C. would not interfere.**—The High Court would not interfere with an order passed by a Magistrate in a case in which the evidence is sufficient to warrant an order under this section although such evidence was taken in reverse and in disregard of the provisions of the Cr P [13 W R 20. See 4 M. H. (ap) 35]
151. **Defence.**—It is no defence to say that wrongful act was done under the employment of others—9 C. N 698
151. A. **Evidence in joint enquiry.**—See Enquiry and Procedure (129) and (130).

(6) Witnesses.

152. **Stage at which they should be called.**—Witnesses need not be called before the enquiry stage [11 W. R. 63]
153. **Witness cannot be bound down.**—Witness cannot be bound over (without taking legal proceedings and going through the procedure laid down in Chap. VIII)—5 M. 350 See 4 B L 46 (F. B.)
154. **Procedure on adjournment.**—A party should not be called upon to repeatedly examine his witnesses on payment of fresh process simply because the Magistrate may have been unable to record the evidence on the date originally fixed for examining them. In each case it is his duty to direct the witnesses to attend to appear on the adjourned hearing—6 P. L. 1812

XI. FINAL ORDER.

(1) *Requisites of a valid final order.*

155. (a) **Issue of a notice.**—A final order without previously issuing a notice to the person called upon to furnish security is illegal—2 N P 158. 9 W. R. 16. 11 M. 246
156. (b) **The notice issued must be a notice under S. 107 Cr. P. C.—**eg—A final order under S 107 after starting proceedings under S 110 Cr. P. C. is illegal [30 M. 282 See Kan-

ran—14 Cr. 64 (M). An order under S. 107 Cr P C made in a proceeding under S 145 Cr P C is wholly without jurisdiction [14 A. J. 791]

157. (c) **Accused must be given a reasonable opportunity to show cause against the order.**—(81) A. N. 157—See (4) Enquiry and Procedure (108)
158. (d) **The existence of a likelihood of the accused committing a breach of the peace etc. must**

be proved by legal evidence—17 W R 37
15 W R 42; 105 P. L. 1012; 7 N P 217

See (10) Evidence and witnesses (131)

159. (c) Legal evidence must be recorded and judicially adjudicated upon before passing orders. See (10) Evidence and witnesses (132)

180. (f) Evidence must be recorded even if the accused agrees to submit to the order.

See (9) Inquiry and procedure (121)

181. (g) In the case of a joint inquiry against several accused, there must be a finding of definite facts against each making the action applicable

See (10) Inquiry and procedure (124)

182. (h) The order must conform to the terms of the notice (to show cause)—21 W R 6

183. (i) The order is passed by a Magistrate of the class authorized in the section having local jurisdiction

See III Jurisdiction—local limits

(2) For plural orders illegal and ultra vires.

184. See cases noted under (8) Wrongful Act (86—97)

(3) Orders which cannot be passed.

185. (1) An order directing an accused who leaves the village without giving recognisance not to enter it, is not an order under S 107 Cr P C—21 P R 1808

186. (2) Exparte order. 1 C L 48

187. (3) Order binding down a person on a bench because he has not interfered to prevent a riot when he might have done so—19 W R 32

188. (4) A magistrate apprehending breach of peace between two rival sects of Mahomedans offering their prayers at a certain mosque, fixed separate hours of prayers for them and took personal recognisance of the leading men of both parties to observe and maintain the order was ultra vires—10 P R 1816
See A J 619

189. (5) An order under S 107 binding down a manager cannot be extended also to the proprietor without instituting separate proceedings—18 W R 11

190. (6) Order binding down a non-resident Zemindar for the acts of his local agent in the absence of complicity in instigation 10 C L 440 9 C 917 See 39 C 150 (F.B.).

191. (7) Recognisance from a person enforcing his legal right in a legal way in order to prevent breach of the peace being

committed by a party illegally opposing such enforcement See (1) object. (5) and (9)

172. (8) Order against a person who is not himself likely to disturb peace. See (1) object (7)

173. (9) In a proceeding under S. 107 Cr. P. C no finding can be made on the question of possession 7 C N 142.

(4) Persons who cannot be bound over.

174. (10) An order binding down one of the two parties and directing the other to retain possession. 1 C L 48.

175. (1) Mokhasadon protecting his legal rights against Zemindar seeking unlawfully to oust him 14 M J 401

176. (2) Servants of a proprietor who assemble for the purpose of plunging a hand already lawfully put in possession of their master (84) A N 57

177. (3) A person not likely to commit breach cannot be bound down merely because his over-zealous friends are likely to do so in his interests 17 W R 54

178. (4) Non-resident Zemindar for the acts of his local agents when no complicity is established 10 C L 436 9 C 937

179. (5) Landlord attaching ryot's crops—for arrears of rent (on the ground that his act may result in the ryot's resistance which may lead to a riot)—3 C L 280 15 P R 1002 (F.B.)

180. (6) A person disobeying an illegal order—eg— an order prohibiting a Mahomedan from killing cows—7 A J 649

(5) When both parties may be bound over

181. (1) Where there are doubts as to the existence of the respective rights and obligations of the parties, the magistrate should bind down both parties so that his order may not be detrimental to either.—31 C 915 See 20 Cr 104 (Pat)

182. (2) when the magistrate finds that there is a

F C—39 A 19. See 11 C N 110 1 C L 132

183. (3) Where there is a bonafide dispute as to the right of possession of a land, giving rise to a likelihood of a breach of the peace the proper order is either to bind down both the parties under S 107 or to institute a proceeding under S 145 and not to bind down only one of the parties—12 C N 601

XII. DETENTION PENDING ENQUIRY.

184. No bail from person against whom proceeding is merely contemplated—No bail should be called for from a person against whom proceedings under S 107 Cr. P. C. are contemplated but not actually initiated. The most that can be required of him is to furnish

recognisance, and that only, where there is any likelihood of his absconding himself from Court 11 C N 415

185. Remand to custody not to exceed 15 days—The period for which a Magistrate can authorise the detention of a person provided

against under sub cl (3) in police custody cannot exceed 15 days on the whole. 23 B 32

186. **Rearrest after release on bail.**—After enlarging the petitioners on bail, a Magistrate pending the proceedings directed their rearrest and remanded them to custody until the termination of proceedings.—*Held*—that, firstly, the remand was illegal and secondly the Magistrate was bound to release under S 400, Cr P.C. the petitioners on bail.—32 C 80
187. **Special circumstances referred to in Cl. (3) and (4).**—Only in the special circumstances referred to in clauses (3) and (4) of S 107 Cr

P.C. does the law empower a Magistrate to detain a person against whom proceedings have instituted under S. 107 in custody the completion of the enquiry. 32 C. 80 M. 315 (F.B.); 36 M. 171.

188. **Proceedings other than under (3) and (4).**—In proceedings other than under Subs (3) and (4), a Magistrate is to enlarge the person procedural against. 32 C. 80, 31 M 315 (F. B.); 38 158
- [Note.—Even when an accused is sent up Cl. (3) bail should be granted unless the special reasons to the contrary. 32 C. 60]

XIII. SECURITY.

(1) Object etc.

189. The object of taking a security bond is the prevention of crime and not to obtain money for the crown. To ensure this object the liability of surety has not been made co-extensive with that of the principal debtor as in the ordinary cases of a surety for a debtor for the payment of his debt. A surety is an additional safe-guard. 26 C. 562
190. **Liability of Surety not co-extensive with principal's.** A surety is liable to pay the penalty of his bond, quite irrespective of the question whether the amount of the bond of the principal has been realised or not. 36 C 563. (On '03 '06) L B L 31 13 (13) C B L 159.
191. **Person on recognizance cannot be imprisoned on forfeiture without issuing warrant of attachment.**—A Magistrate is not competent to direct that in default of payment the person whose recognizance is forfeited should be imprisoned without first issuing a warrant for the attachment and sale of his moveable property.—10 C L 371

(2) Amount of security.

192. **Should not be excessive.**—The Second proviso to S 118 is that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. The fact that upwards of 21 months had elapsed without the person required to furnish security being able to do so, is conclusive proof of the amount being excessive [23 A 80 See 19 W R, 1]
193. **Should not be disproportionate to the means of the accused.**—The amount of security demanded should not be excessive or disproportionate to the means of the accused. 22 W R 71 See 2 C. 110, 2 C 381. 1 C L 268 16 B, 372, 23 A, 60 28 P. R 1931 3 S. 10, 4 M H (Ap) 16
194. **Should not be larger than the amount called for in the notice.**—The first proviso to S 118 says that no person shall be ordered to give security of a nature different from or of an amount larger than or for a period longer than that specified in the order made under S 112 Cr P. C.—the provision follows 2 J. G 2 9 B L 14. (Ap.) See also 23 P. W 1904 and 1914 (Ap.) A & 241

(3) Miscellaneous

195. **Sureties cannot be demanded** mentioned in the notice.—B P L (Ap)
196. **Discharge of Surety.**—The mere fact the principal party not being proceeded against is no ground for holding that the surety discharged. 27 C. 110
197. **Security should not be demanded a longer period than necessary.**—Security should not be demanded for a longer period than is necessary to obviate danger. "As the date at which the disturbance was anticipated, had been over in a fortnight it was a excessive exercise of jurisdiction to require the parties to furnish security for one year. 4 A. 211
198. **Surety cannot be rejected on the ground** (a) that he lives at a distance from the place of the accused.—1 C. N. 787.
(b) that he is a relation of the accused.—25 A
199. **Insertion of onerous conditions in bail.** (1) The insertion of a condition in the making the executant responsible for the acts of his servants and dependants is illegal. Magistrate had no power to put him (executant) under any such obligation for he could not be responsible for his own acts and not for acts of others." (81) A. N 152
- High Court can reduce the amount of the bail if it is excessive.—23 A, 60, 16 B, 372

(4) Renewal of bonds.

200. **Finding sureties a second time** person cannot be required without fresh proceedings taken against him, to find sureties at a time when in consequence of a breach his own security is forfeited. The Code does not provide for the renewal of the bond without fresh proceedings. 7 M T 60 See 7 W R. 26, 7 W R 23 14 W R
201. **Order for fresh Security before expiry of the first.**—A second order requiring fresh security from the same person to commence the expiry of the term of the security already given, passed during the continuance of the case, is not a proper order. If at the end of a period the dispute is continued, a further order can be demanded on fresh proceedings properly taken. 4 C N 121

XIV. FORFEITURE.

202. Order for forfeiture must be passed at the time of conviction.—If on convicting a person of an offence involving the forfeiture of a bond for keeping the peace a Magistrate who has knowledge of the fact that the person, before him, has by his conduct forfeited his bond does not make any order for forfeiture he must be taken to have decided not to take action on the bond in respect of that particular breach of the peace, and he cannot thereafter reconsider and add to his order by directing for forfeiture of the recognizance. 11 P. R. 1944 (F.B.). 24 P. R. 1944 1 P. L. 134 3 C. J. 632 Con 20 A 202
203. Condition precedent.—No forfeiture takes place unless the offence of which the person under recognizance is convicted is one involving a breach of the peace. 7 P. R. 1943
204. Order must be made in the presence

of the Surety. The mere fact that the person for whom another stands surety has been convicted of an offence involving a breach of the peace is not sufficient to make the surety bond executed by the surety liable to forfeiture without any evidence being taken in the presence of the surety to show that the forfeiture has been incurred. 25 C. 440; 4 C. 805; 10 C. R. 571. 9 C. P. S. Con.—32 P. R. 1904 4 M. H. XXXVIII.

205 Reduction of the amount forfeited.

- (1) When a Magistrate thinks that the amount forfeited should be reduced, he should refer the matter to the Local Government. He cannot reduce the amount himself.—19 W. R. 1; 3 C. 757 S. C. L. 72 1 H. H. 134.
- (2) High Court.—The High Court can reduce the amount forfeited. 15 P. R. 1905 Con. 3 C. 757 S. C. L. 72

XV. ALLIED SECTIONS.

(1). *Ss. 145 and 107 Cr. P. C.*

The following rules deduced from the numerous and often conflicting rulings, may be laid down as crystallized by authoritative decision

203. (1) *Ss. 145 and S. 107 Cr. P. C. not mutually exclusive—*

- (a) The fact that there is a dispute concerning land likely to cause a breach of the peace, does not deprive a Magistrate of jurisdiction under S. 107 Cr. P. C. which he is informed that any person is likely to commit a breach of the peace or disturb public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity

Pro.—39 C. 150 (T. B.). 22 C. 160 9 C. N. 551 7 C. N. 746 3 C. N. 297 30 A. 143 34 A. 449 28 A. 406 12 A. J. 162 9 A. J. 683 16 Cr. 211 (M.) 26 M. 471 24 M. 364 2 Weir 50 2 S. 181 1 S. 50 5 N. 94 19 Cr. 712 (Pat.)

Con.—35 C. 117 25 C. 550 12 C. N. 606 7 C. N. 142 7 C. N. 29 6 C. N. 543 3 C. N. 463 6 C. J. 697 (698) 5 C. J. 447 1 C. J. 632 25 A. 637 144 P. L. 1917

207. (2) *The question of bonafides.*

- (b) In every case in which a Magistrate finds that there is a bonafide dispute about land and that an order under S. 145 will suffice to keep the peace

Magistrate comes to the conclusion that there is a bonafide belief by all the parties that they have any right to the land in dispute however erroneous such belief may be, the proceeding should be under S. 145 Cr. P. C. When there is no such belief, the party wrongfully asserting his claim, is in reality committing a wrongful act and should be bound over under S. 107 Cr. P. C. 28 A. 1001

1 S. 50 See 11 C. N. 176 12 C. N. 600 See 114 462 14 B. 25.

209. (3) Where disputing parties are jointly entitled to the land.—When the Magistrate finds that there is a likelihood of a breach of the peace between two parties jointly entitled to the land, he may either bind both the parties over, under S. 107 Cr. P. C. or proceed under S. 145. He should not bind down only one of the parties under S. 107 Cr. P. C.—30 A. 17; 12 C. N. 600; 11 C. N. 176; 1 C. J. 632 See 31 C. 935; 20 Cr. 104 (Pat.); 5 C. J. 447 1 C. J. 632 [See Notes under S. 145]

209. (4) Proceedings under S. 145 followed by proceedings under S. 107

310. (5) Proceedings under S. 107 followed by an order under S. 145 Cr. P. C. and vice-versa.—Whether after proceeding under S. 107 Cr. P. C. it will be proper for the Magistrate to act under S. 145 depends on the circumstances of each case [39 C. 150 (F. B.)]. A Magistrate having reason passed an order under S. 107 Cr. P. C. does not lose his jurisdiction to make an order under S. 145 [21 C. N. 160 See 10 C. N. 381] It might be sometimes necessary to take security from one of the opposing factions under S. 107 Cr. P. C., even after passing an order under S. 145 Cr. P. C. where the Magistrate is satisfied that notwithstanding such an order, they are likely to take the law into their own hands.—36 M. 315

311. (6) Proceedings under S. 107 followed by proceedings under S. 145

- (7) It cannot be laid down as a general rule that simply because members of one party to a dispute relating to possession of land have been bound down under S. 107 no order of attachment can

116 Cr. P. C. can be made in respect of the disputed property—10 C N 384

(3). *Ss. 147 and 107 Cr. P. C.*

213. The jurisdiction vesting in Magistrate under Chapter VII (S. 147) does not necessarily oust the jurisdiction vesting in them under Ch. VIII (S. 107) Cr. P. C. [2 Weir 50]. Where a competent Civil Court has given a decision on the rights of the parties, the Magistrate ought not to proceed under S. 147 but under Ch. VIII of the Cr. P. C. [Rat 162 14 B 25]. See also L M 203 (F.B.); 6 M 835 16 W R 21

(4). *Ss. 144 and 107 Cr. P. C.*

214. When an order under S. 144 does not prove sufficient for the purpose, the right procedure to adopt is to commence proceedings under S. 107 Cr. P. C. [20 C N 534 10 Cr 367 (C), See J Pat J 130]. The proper way of preventing a breach of the peace is to proceed under S. 107 Cr. P. C. and not S. 144 Cr. P. C. [11 C N 223]. S. 144 Cr. P. C. does not oust jurisdiction under S. 107 merely because the dispute relates to immovable property [32 C 964 18 S 50]. But simultaneous proceedings under Ss. 144 and 107 are bad [10 Cr 367 (C)]. Where prohibition of public meetings is concerned, S. 144 and not S. 107 is the proper Section for application [2 L R 157]

(5). *S. 106 and S. 107 Cr. P. C.*

215. For a comparison of the scope of the two Sections

—See 21 W. R. 6, 1 Cl. 18; 3 Cl. 72; where an effect of an order under S. 106 will be to prevent the rightful party from asserting his lawful rights, an order handing down the party in the wrong should be made [11 C N. 176; 11 C N. 810]

(6). *Ss. 107 and 110 Cr. P. C.*

216. (a) Where a Magistrate holds that S. 110 with reference to which notice under S. 112 had been issued is inapplicable to a case, he ought not to proceed under S. 107 Cr. P. C. without issuing a fresh notice under S. 112 with reference to the altered view of the circumstances [30 M. 242 25 C. 794 (S29)]. Where after issuing summonses to parties under S. 107 Cr. P. C. the Magistrate took proceedings under S. 110 but the evidence was recorded at length and the parties had opportunity to cross-examine all the prosecution witnesses and were not prejudiced—Held that the irregularity in procedure was cured by S. 337 Cr. P. C. [11 Cr 65 (M)]

- 217 (b) Distinction between the Sections—S. 110 (c) also refers to habitual commission or attempt to commit or abetment of offences involving a breach of the peace. The distinction lies in this that while S. 107 refers to acts of violence

community as a whole—See 27 A. 82

XVI. IRREGULARITIES.

(1) Irregularities which vitiate.

218. (a) Summons not in accord with Sch. V Form No 12 and not accompanied by an order under S. 112 Cr. P. C. See (6) Notice (61)
219. (b) Joint trial of two opposing factions See (9) Enquiry and Procedure (126)
220. (c) Order handing down several persons in one proceeding without specific finding against each. See (9) Enquiry and Procedure (129)
221. (d) Order under S. 107 made in a proceeding taken under S. 145 Cr. P. C. [14 A. J 784].
222. (e) Order under S. 107 made in a proceeding started under S. 110 without issue of fresh notice 30 M. 282 But see 14 Cr. 65 (M)
223. (f) Omission on the part of the Magistrate to adjudicate on evidence or to allow the accused opportunity to show cause See (9) Enquiry and Procedure (108). (10) Evidence and witnesses. (132).
224. (g) Order *ex parte*. See (9) Enquiry and Procedure. (120)

(2) Irregularities which do not vitiate.

225. (1) Omission to set forth substance of information in notice and to serve a copy of the order under S. 112 where there is no prejudice, 5 D. C. 313
- But see (6) Notice
226. (2) Omission to insert in the notice the amount of security required
- S. C. 724 Con.—20 W. R. 86 3 N. P. 96.
227. (3) Order under S. 110 after summoning accused under S. 107 Cr. P. C. Where no prejudice has been caused 14 Cr. 65 (M)
228. (4) Omission to draw up a proceeding under S. 107 by a District Magistrate before referring the case to a subordinate Magistrate having no local jurisdiction over the accused 19 Cr. 266 (C)—But see 41 M. 246 1 C N 380
229. (5) Recording evidence in vernacular in disregard of S. 366 Cr. P. C.—See 13 W. R. 20

XVII. APPEAL REFERENCE ETC.

(1) Appeal.

230. There is no right of appeal by the person bound over in a proceeding taken under S. 107 read with S. 114, 35 A. 109, 37 A. 623, 14 A. J.

268. 2 A. J. 716 32 C 948 10 J. 511 11 B R 740 19 Cr. 246 [247] (Pat).

231. (b) Letters patent appeal.—No appeal under S. 15 of the Letters patent against the judgment

of a single Judge of the High Court desisting with a revision petition presented against an order of a Magistrate under S. 118 Cr. P. C. read with S. 107 27 N. 510. 41 C. 719. 10 Cr. 701 (31)

(2) *Reference by District Magistrate.*

233. It is only in the power of the District Magistrate to examine the record, and if he finds that an improper order has been passed, to submit the case to the High Court for the exercise of its revisional powers. 35 A. 103

(3) *Cancellation of bond by Magistrate.*

234. (a) The District Magistrate's powers do not extend to cancellation of the bonds on *meats*. Under S. 123 he can cancel the bonds *only on the ground that they are no longer necessary*. (15 A. 103 32 C. 019 10 J. 511) A District Magistrate has power to direct the cancellation of a bond executed on an order by a Subordinate Magistrate on *other grounds than that the bond is no longer necessary*. The words "sufficient reasons" do not necessarily mean reasons in connection with something which has occurred after the execution of the bond (34 C. 1 (F. B.) 12 P. W. 1904 11 N. 104 (05) A. N. 113 19 Cr. 140 (N) 11 Cr. 546 (F. B.) (M))

235. (b) *Nature of Proceedings under S. 125 Cr. P. C.*—A District Magistrate acting under S. 125 Cr. P. C. is neither a Court of Appeal nor of revision. No party has therefore any right to be heard either personally or by Pleader—19 Cr. 246 (Pat)

233. (c) *On transfer.* Where a proceeding under S. 107 is transferred from one district to another, the bond taken can be cancelled only by the District Magistrate of the latter place. 20 Cr. 337 (C)

(4) *Revision by the High Court.*

237. *Principles to be observed.*—In questions arising under S. 110 and what is really a cognate section S. 107, the moment it is shown, speaking for myself, *prima facie* that there is something which the Courts below have done either in excess of their powers or by a too summary exercise of their powers or by misapplying the rules of evidence or by not giving due effect to the evidence for the defence, I should have no hesitation in

admitting an application for revision, *but the High Court will not interfere on the merits except in very exceptional cases*.—Mr. Walsh J. in 17 Cr. 461 (A) 2 I. C. 225 17 C. P. 107 10 Cr. 600 (N)

238. *High Court will not interfere.*

When there is evidence to justify the finding of likelihood of a breach of the peace [4 M. H. ap. 34], or where the irregularity in proceedings has caused no prejudice (14 Cr. 65 (N) 9 A. 432. 31 I. H. 52 50 C. 413. 8 C. 721)

239. *High Court will interfere.*

When there is no evidence on the record to justify an order under the section. [See (10) Evidence and witnesses (112)]

240. *Order dropping proceedings under S. 145.*

Can not be interfered with during the pendency of a proceeding under S. 107 Cr. P. C.—21 Cr. 134 (C) But see 13 C. N. 125 28 C. 416

241. *Right of audience.*—A party interested in the result of the revision proceedings is not entitled to be heard on a rule being issued to the District Magistrate—25 C. 709

(5) *Further enquiry.*

242. It is now fairly well established in spite of several rulings to the contrary, that S. 487 Cr. P. C. applies to a proceeding taken under the section

Pro—3 P. R. 1911 (F. B.) [(03) P. R. 24. (03) P. R. 33 O. V.] 42 P. M. 1905 33 M. 85 G. N. T. 133 See 9 A. 432 6 O. C. 202; 27 C. 002

Con—11 A. 107; 2 L. B. 80; 15 P. R. 1900 35 B. 401 9 C. N. 283; 24 A. 148 (10)

243. (6) *Review.*—A Magistrate, one month after passing an order requiring the accused to furnish security in a certain sum, to keep the peace, directed him to furnish security in a larger sum. Held—the order was *ultra vires*. He had no jurisdiction to alter his order—20 Cr. 456 (A)

244. (7) *Revival.*—Proceedings may be revived in the same facts. S. 403 Cr. P. C. does not apply to Security Proceedings. Where the Magistrate by mistake endorsed the word "acquitted" on a petition for withdrawal of proceedings (an act absolutely unwarranted by any section of the Cr. P. C.)—Held—that Ss. 405 and 403 did not apply and there was no bar to a revival—36 M. 315

VIII. TRANSFER AND WITHDRAWAL.

(1) *Transfer by High Court (S. 526).*

- 245 Cases under S. 107 Cr. P. C. are Criminal cases "Subject to the application of cl. (5) of S. 526 Cr. P. C. and the Magistrate trying a case under S. 107 Cr. P. C. is bound to misconstrue the case if on application is so made [11 C. 719] But it must be an extremely exceptional case that would justify the interference of the High Court of the jurisdiction of the Magistrate of the District taking preventive action within his own bounding area and imposing such foreign and extraneous duty on the Magistrate of another District [14 Cr. 382 (C)]. The fact that the District

Magistrate visited a place where a rival market

17 C. A. 300

(2) *Withdrawal by District Magistrate and Chief Presidency Magistrate.*

246. A Chief Presidency Magistrate, District Magistrate and Subdivisional Magistrate have authority under S. 529 Cr. P. C. to withdraw or recall a case from the file of a Subordinate Magistrate

and try it himself.—31 C 350, 29 C 349; See 10 C 1025 2 C J. 611.

(3) Powers under S. 107 (2) and 528 Cr. P.C.

- 247 The section confines the power of the District Magistrates to transfer proceedings taken under the special powers conferred by S 107 (2) to a Subordinate Magistrate not having local jurisdiction over the person proceeded against, only after initiating it but not before.—27 C. 314. 31 C 350 24 A 151 (07) Smith 2 Con. 11 M 216, 13 C N 560

[Note.—A Magistrate to whom proceedings are transferred can amend the proceedings.—29 C 353]

- 247A. Appointment of the party as Special Constable as a ground for transfer.—The appointment of the party against whom proceedings under S 107 were instituted as special constables, might raise a reasonable apprehension that they would not have a fair and impartial trial, although the order was in allayance to the time, they moved the High Court.—H C. N 121.

XIX. MISCELLANEOUS.

248. (1) Order for compensation under S.

250 Cr. P.C.—An order for payment of compensation cannot be made against a person who has petitioned a Magistrate to take action under S 107 Cr. P. C.—36 A 382 7 A J 743, 25 B 49, 33 P R 1903 37 P R 1881 See also 16 P R 1893 4 P R 1896, 9 P L 1903

249 (2) S. 349 (2) does not apply to proceedings under S 107 Cr P C.—7 P R 1909

250. (3) Ss. 403 and 495 are not applicable to security proceedings.—36 M 315

251 (4) S. 443 Cr. P. C. applies to proceedings

under S 107 Cr. P. C.—36 C. 163, Con. (100-102) F N, 275

252. (5) Court fee.—No court fee is necessary for security bonds taken under S 107 Cr. P. C.—See Gaz. of India Pt. I, 5001

(6) Miscellaneous.

253. (a) Right of taking procession along public street [See, 7 A 401 (F.B.); 12 A 494 (F.B.); 13 A 419 (F.B.) 18 C. 144 (F.C)] 12 C. N 703
254. (b) Is the person proceeded against, an accused person? See (5) Proceeding (5)

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Security for good behaviour from per. Magistrate of the first class specially empowered by the Local fons disseminating seditious matter. Government in this behalf, has information that there is within

the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(a) any seditious matter that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, or

(b) any matter the publication of which is punishable under section 153A of the Indian Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, or printed or published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, except by the order or under the authority of the Governor-General in Council or the Local Government or some officer empowered by the Governor General in Council in this behalf.

Proposed amendments to the Sections.—In section 108 of the said Code, after the words "in writing," the words "or in any other manner" shall be inserted, and after the figures "1867," the words "with reference to any matter contained in such publication" shall be inserted

Notes.

1. Object of the Section.—The provisions of Chapter VIII. Cr. P. C. are preventive in their scope and object and are aimed at persons who

are a danger to the public, by reason of the commission by them of certain offences. The test under S. 104 Cr. P. C. is whether the person proceeded

against has been disseminating seditious matter and where there is a fear of the repetition of the offence. In each case, it is a question of fact, which must be determined with reference to the antecedents of the person and other surrounding circumstances.—11 B. R. 743. See 10 B. 174 2 A. 835 6 A. 132 (137) 3 M. 248 6 B. R. 34 (35) 27 C. 741

2. Deliberate intention to provoke feeling of hatred. In order to sustain an order under S. 108 (b) Cr. P. C. it is not sufficient to prove that the language used was highly offensive to a community, but it must be shown that the appellant intended to provide feelings of enmity or hatred between two communities. It is not necessary, however, that he should have succeeded in exciting such feelings, if deliberate intention to do so can be inferred. 124 M. C. 397 [4 Bar. T. 81 See Beatty v. Gilbanks (1915) 11 B. 308. Stato v. Erons 124 M. C. 397 (see 11 C. 591). In estimating the intention and probable effect of a man's public utterances it is proper to consider not only the personality of the speaker but the time and spirit of the speeches and also the circumstances in which he spoke (ibid). To justify an order under S. 108 (b) one has only got to find that there are words used in the speech or the matter complained of, which are likely to provoke feelings of enmity and hatred and one finds such words present, there is an *necessity* in finding intention as would be necessary if the person was placed under his trial under S. 133 A. [41 C. 571]

3. Religious preaching.—Preachers are at liberty to decant on the errors of other religions and to extol their own faith to the skies. But they may not consciously inflame the minds of their hearers by holding up the ministers and followers of other religions to public execrations. Such an act may come within the purview of S. 108 (b). 4 Bar. T. 81 See Wise v. Dunning 18 T. L. R. 65.

4. European British Subjects.—S. 151 Cr. P. C. applies only to trials, and an enquiry under S. 108 (b) is not a trial. A Magistrate who is a European British subject and a Justice of the Peace is competent to hold an enquiry under S. 108 Cr. P. C. against a European British Subject.—4 Bar. T. 84

5. Mode of constructing seditious speeches

(1) The speeches on the basis of which proceedings under S. 108 Cr. P. C. are taken must be read as a whole. A fair construction must be put on them straining nothing either for the Crown or the accused, and paying more attention to the whole general effect than to any isolated words or passages. The question is,

whether upon such fair constructions, these speeches offend under S. 121 A. or not.—Per Bacheval J in 18 Cr. 567 (10)

- (2) The speeches must be read as a whole "in a fair and liberal spirit." In dealing with them one "should not pause upon an objectionable sentence here or a strong word there." They should be dealt with "in a spirit of freedom" and "not viewed with an eye of narrow criticism." The case should be viewed "in a free, bold, manly and generous spirit towards the petitioner" (See Reg. v. Burns (50) 10 Cox. C. C. 357 (302)). Per Shah J. (ibid)

- (4) The test.—The test is, whether the accused has been disseminating seditious matter, and whether there is a fear of a repetition of the offence. In each case, it is a question of fact which must be determined with reference to the antecedents of the person and other surrounding circumstances. 11 B. R. 743. See Bar. T. 81

6. "Swaraj"—The word "Swaraj" does not necessarily mean Government of the country in the exclusion of the present Government. The word if literally translated, means "Self-Government" or Government by the people themselves under the King and under British sovereignty, i.e., Home Rule under the present Government. When a person used the word "Swaraj" in addressing his audience and invited the members of the meeting to exert themselves to secure Swaraj—that there was nothing which could bring the case within the purview of S. 124 A, 1, P. C. or S. 109 Cr. P. C.—21 C. 601. See however 32 M. R.

7. Ss. 108 and 110 not mutually exclusive.—The mere fact that S. 108 Cr. P. C. may have been applicable in a case, does not necessarily make S. 110 Cr. P. C. inapplicable.—23 C. N. 101.

8. Reason.—"We have considered the question whether these orders should be subject to appeal in revision; and we have come to the conclusion that they ought to be subject to revision, as the High Court can then act of its own motion as well as on the petition of the party aggrieved. In case there should be any doubt on this point, we have provided in S. 109 (b) that all orders under the Code (not expressly excepted) made by an inferior Court shall be subject to revision by the High Court."—Sd. Caw. Rep.

9. For Definition.—Of Criminal Intimidation (See S. 501, 1, P. C.) Defamation (S. 499 1, P. C.) Judge (S. 10, 1, P. C.)

10. Form of Bond.—See Sch. V. Form No. 11.

11. Procedure.—See S. 112 (particulars of the proceedings) S. 117. (For procedure enquiry) S. 118 (Searches) Cr. P. C.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class

deems it necessary for good behaviour from grants and suspected persons.

gives information—

- (a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show why he should not be ordered to execute a bond, with sureties, for his good behaviour for a period not exceeding one year, as the Magistrate thinks fit to fix.

S 109=S 205 (1861)=S 504, 515 (1872)

Arrangement of Notes.

- I. Object and Scope
- II. Information.
- III. Jurisdiction
 - (1) local limits.
 - (2) of Magistrate's
- IV. Procedure and Evidence
 - (1) Procedure
 - (2) Evidence

- (2) Order under S. 109 as well as S 110
- V. Concealment—meaning and application
- VI. Want of ostensible means—Do.
- VII. Satisfactory account —Do.
- VIII. Bond and Sureties.
- IX. Miscellaneous.

I. OBJECT AND SCOPE,

1. **Object of the Section**—The power conferred by this section is for summary disposal of cases of vagrants in whose staidy regions are found to be lurking about [1 O S. 13] Action under the section is intended to be taken not against persons suspected of any offence but from persons lurking within the jurisdiction of the Magistrate and having no ostensible means of livelihood or who are unable to give a satisfactory account of their presence [Nat 63 Rat 23 39 C. 456]
2. **The Section is preventive and not punitive**—The object of the Section is the protection of society against the perpetration of crimes by individuals and not as punishment for crimes committed [2 Weir 52]
3. **Scope of the clauses**
 - (a) **Scope of clause (a)**—The whole of cl. (a) S. 103 Cr. P. C. must be read together and the object of concealment must be with a view to committing some offence, mere concealment with a view to avoid observation is no offence at all [49 C 456 22 C N 163 (Per Huda J)]
 - (b) **Scope of clause (b)**—The whole object of the second part of cl (b) of S 109 is to enable

Magistrates to take action against suspicious strangers lurking within their jurisdiction [C. 456] Cl. (b) of S 109 Cr. P. C. applies only to vagrants but it covers suspected persons of any class who cannot give a satisfactory account of themselves [13 Cr. 230 (c)] Cl. (a) gives a Magistrate very wide discretion [A. J. 253],

4. **Association with political suspects**—Where a person was found in a District other than in which he resided, and at the house of a man who was suspected of being a dangerous political conspirator and to have collected large amount of seditious literature, Held that an order by a Magistrate requiring a person under S 109 cl (b) Cr P C to give security was justified—[13 Cr 230 (C)]
5. **The Section is not applicable to respectable and well-to-do citizens**—S VII. Satisfactory account. [42]
6. **Magistrate must form his own independent opinion as to necessity of action**—See IV. Procedure and Evidence (24)

II. INFORMATION.

7. **Must be credible**—A Magistrate is empowered to act whenever he has credible information of the nature required by the section—31 C 577 See 6 A. J. 253
8. **Police report**—Both sections 109 and 110 show that the Magistrate's action must be based on information received, and there is no reason why the information should be from the police. C. R. [1905] 10 people to be taken into consideration the opinions of police witnesses are unfavourable to them [Nat 7231]

9. **Information on oath taken in the presence of the accused**—The reference to "for the evidence" in S 117 infra, indicates that some evidence may be taken before a preliminary order is made under S. 112 Cr P. C. A Magistrate would generally exercise a wise discretion by taking some evidence on oath before framing the order under S 112 infra—(1905) U. B. 29
10. **Report by constable**—A report of crime made by a constable is no evidence on which a Magistrate may act—[Nat 23]

III. JURISDICTION.

(1) Local limits.

11. Residence within jurisdiction not necessary.

It is not necessary that a person against whom proceedings are taken should have been taken at all before a Magistrate within the jurisdiction of the Magistrate who is asked to exercise the powers conferred by S. 109 Cr. P. C. 2 Weir 53.

12. How the accused came to be within limits need not be considered.

Whether the person before the Magistrate is under lawful arrest or not is immaterial. It is sufficient that he is at the time the proceedings are taken, within the local limits of the jurisdiction—H. C. 557. See 20 M. 121.

13. A person cannot be called on to furnish security for acts committed outside jurisdiction.

It is a fact that a person had been previously connected with any criminal conspiracy or might still be in correspondence with any criminals outside the jurisdiction of the Magistrate would not be relevant in a case under S. 109 Cr. P. C. 39 C. 450.

(2) Of Magistrates.

14. Honorary Magistrates may be empowered to put in force the provisions of S. 109 Cr. P. C.—11 C. 557.

15. Magistrates not empowered.—If a Magistrate not duly empowered demands security, his proceedings are void—See S. 520 (d) post.

IV. PROCEDURE.

(1) Procedure.

16. Opportunity to show cause must be given.

In a case of security for good behaviour, the accused must be given an opportunity of entering upon his defence, and of citing witnesses and must be clearly informed of the nature of the accusation which he has to meet—H. C. 11.

17. The preliminary order.—The proceedings taken must clearly specify why the accusation which the accused has to meet is one under this section or S. 110. The two sections overlap, each other. They must be carefully worked and given if care shall be bestowed not to abuse them—M. P. M. p. 69.

18. Bail.—A person against whom proceedings are commenced under the section should be given the option of bail—14 A. 47.

19. Joint enquiry.—Separate proceedings should be instituted against each accused unless there is association between them [2 Weir 51, 2 Weir, 52 6 P. R. 1896]. A joint trial in the absence of connection between the accused is illegal [See Rat 529, 9 A. 452; Mad. H. Pro 17-3-03].

A Magistrate should not hold a single enquiry under Ss. 109 and 110 Cr. P. C. in the case of two persons unless he is satisfied that the two men were acting in concert i.e. were associated in the acts charged—[11 Cr. 50 (3)]. The two sections deal with essentially different matters and proceedings against one person under Ss. 109 and 112 should not be amalgamated with proceedings under Ss. 110 and 112 against another person [80 C. 91].

20. Prosecution in the Punjab.—As to how such prosecution should be conducted, See Punjab R. and O. chap. XLIV, p. 392.

(2) Evidence.

21. Evidence must be legally sufficient.—To justify a Magistrate in passing an order under

S. 109 Cr. P. C., there must be evidence before him and that evidence must be legally sufficient to establish the fact that the person charged is a person of the character mentioned in the section. He cannot proceed to pass an order either without evidence or in opposition to the evidence before him. An order so passed is illegal—2 N. P. 435.

22. Evidence must be recorded.—Evidence to the effect specified in the section must be recorded in force security is ordered—11at 44.

23. Evidence of past misconduct.—Where previous conviction for a simple breach of the

person had been previously connected with any

24. Police Report.—The report of a police officer is not evidence except against the officer making it [3 W. R. 2, 11 W. R. 35]. A Magistrate must form his own independent opinion as to the necessity of passing an order under this section. He should not send people to jail simply because the opinions of the Police witnesses are unfavourable to them. [Rat. 727].

25. Confession before the Police.—Inability to give a satisfactory account of oneself or the want of ostensible means of living is not an offence. So the statement made by a person proceeded against under S. 109 Cr. P. C. to a police officer are not confessions, and they may be proved—3 N. 51.

(3) Order under Ss. 109 as well as S. 110.

26. A person cannot be bound down both under Ss. 109 and 110 at the same time. —There is no provision for bonds.

from an accused person both under S. 109 and 110 Cr. P. C.—38 M. 555; 38 M. 556 (N); 11 Cr. 50 (M); 6 M. T. 159; Rat 946. See also S. C. N. 543.

27. Order under S. 110 during continuance of order under S. 109 is illegal.

See 109 and 110 Cr. P. C. having the same object, an order under S. 110 is not valid during the continuance of an order under S. 109—S. C. N. 543.

V. CONCEALMENT MEANING AND APPLICATION.

28. Change of Law.—In the Code of 1872, the words "lurking within the jurisdiction" were used instead of "conceal."

29. Meaning.—Concealment within S. 109 Cr. P. C. means concealment with a view to commit offences and not merely temporary concealment with a view to avoid observation [39 C. 456] Cl. (a) of S. 109 Cr. P. C. refers to a continuous act and does not therefore apply to a case where there is a momentary effort at concealment to avoid detection or arrest—Per Huda J. in 22 C. N. 161 [See also Rat 63].

30. Secret gambling. Members belonging to gang of ring game players, who secretly carry on their trade cannot be proceeded under S. 109 Cl. (a) as the game may be legal or illegal according to the manner in which it is played, but they may be bound down under sub Cl. (b)—6 A. J. 213.

31. Secret delivery of letters and giving a false name.—A person who gives a false name and secretly delivers letters arranging for the commission of atrocities or demanding money for the means of committing crimes falls within S. 109 cl. (a) Cr. P. C.—15 Cr. 251 (C).

32. Habitual offenders should be produced before the Magistrate.—When well known habitual offenders are found under distinctly suspicious circumstances lurking at night in suspicious places in possession of house-breaking instruments or implements for coming, travelling on the railway for no ostensible purpose except crime or in possession of suspicious property which cannot be accounted for, such men should be put up before the Magistrate and an order if possible obtained—Mad. Pol. Man p. 69.

VI. WANT OF OSTENSIBLE MEANS—MEANING AND CASES.

28. Meaning of 'vagrancy'.—A vagrant is one who having no visible means of subsistence lives in idleness or in the practice of drinking or gaming and who by the whole of his conduct and character gives just reason to believe that he gains his subsistence by illegal means [New York Cr. P. Code S. 973]. The word "vagrant" has been defined in S. 3 of the European Vagrancy Act (IX of 1874).

34. Young man supported by his father is not a vagrant.—Where a young man out of house and home, he means of means of) S. 109.

35. Gambling habit.—Opium smoking and gambling are not sufficient proof of vagrancy—[1 Bur. S. 246].

36. Living by means of Ring Game.—It is not an offence under the Gambling Act, to conduct the ring game which can be honestly conducted. Consequently the mere fact that a person lives by means of that game, does not justify the

conclusion that he has no ostensible means of subsistence. 1 O. C. 702. See 6 C. J. 708. B. H. See 6 A. J. 254.

37. What does not amount to vagrancy.

(1) Previous conviction for bad livelihood is no indication by itself of vagrancy—3 C. N. 28.

(2) The mere fact that a person "does no work" does not necessarily imply that he has no ostensible means of livelihood—3 C. N. 28.

(3) The fact that the accused is a member of a wandering tribe does not necessarily bring him within Cl. (b). M. H. P. 137-83. 2 Weir 53.

38. Proof of want of ostensible means not sufficient by itself.

Mere proof of want of ostensible means of subsistence is not by itself a sufficient reason for issuing an order under S. 118 Cr. P. C. A Magistrate is bound by the Section to consider whether the order is really necessary in order to secure good behaviour which is a matter for the Magistrate's own judicial discretion [Rat 723. See 2 Weir 53].

VII. SATISFACTORY ACCOUNT—MEANING AND APPLICATION.

39. The meaning.—The words "give a satisfactory account of himself" in S. 109 Cr. P. C. do not mean that a person spends his time or at least his leisure moments in a satisfactory manner—8 A. J. 1047.

40. Cl. (b)—applies not only to vagrants but it covers suspected persons of any class, who can not give a satisfactory account of themselves [13 Cr.

239 (C)]. The whole object of the second part of Cl. (b) is to enable Magistrate to take action against suspicious strangers lurking within their jurisdiction [39 C. 456].

41. False explanation of presence under suspicious circumstances.
Where the petitioner's occupation and residence within the Magistrate's jurisdiction is well known

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate Security for good behaviour for or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction—

- (a) is by habit a robber, house-breaker or thief, or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or
- (d) habitually commits mischief, extortion or cheating or counterfeiting coin, currency notes or stamps or attempts so to do, or
- (e) habitually commits or attempts to commit, or abets the commission of, offences involving a breach of the peace, or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Proposed amendments to the Section—In section 110 of the said Code—

(i) In clause (i), the word "in," where it first occurs, shall be omitted, and after the word "thief" the words "or forger," shall be inserted

(ii) For clause (i) the following clause shall be substituted, namely —

"(i) habitually commits the offence of kidnapping, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, or habitually attempts so to do or."

Arrangement of Notes.

S 100—Ss 505, 503 (1872)—Ss 296, 297 (1861—6)

I. Object and application of the Section.

- (1) Object is to ensure future good behaviour and not to punish for past offences.
- (2) Section enacted for protecting society from habitual offenders
- (3) Great caution necessary in applying the provisions
- (4) Section should be put in motion in the interest of public welfare only
- (5) Offender to be put under substantial but not excessive security
- (6) Distinction between regular prosecutions and
- (7)
- (8)
- (9)

II. Information.

- (1) No restriction as to source of information.
- (2) Power of Magistrate to proceed on his own knowledge.
- (3)
- (4)
- (5)

III. Jurisdiction.

1. Local Limits.

- (1) Meaning of the expression, "Any person" within the local limits.
- (2) Miscellaneous

B. Jurisdiction.

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- (2) The contents of the Preliminary Order
- (3) Procedure
- (4) Is omission to draw up a proceeding fatal?
- (5) Materials justifying proceeding

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- (1) What the notice should contain
- (2) Procedure
- (3) Notice should be issued only after due consideration of materials.

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A. Enquiry.

- (1) Shewing cause
- (2) Accused to come ready with evidence
- (3) Onus on the prosecution
- (4) Miscellaneous.
- (5) Nature and scope of the enquiry.

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- (1) At in warrant cases
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- (5) Accused can not be detained pending enquiry
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- (1) Evidence of General Reputation
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- (6) Evidence under subcl. (a)
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- (9) Evidence under subcl. (d)
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- A—Previous conviction
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- (1) Object of taking security.
- (2) Security difficult to had should not be demanded
- (3) Discretion of Magistrates.

- (4) Sureties can be rejected only after judicial enquiry
- (5) General grounds on which sureties may be rejected
- (6) Who may be sureties
- (7) Magistrate should not impose arbitrary conditions
- (8) Illegal orders
- (9) Rules and formalities which must be observed
- (10) The character of the bond
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- (2) Ss 109 and 110 Cr P C.
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XIII. Irregularities which vitiate

XIII. 1. Irregularities which do not vitiate.

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- (1) Penalties for false prosecution
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- (3) S 370 Cr P C does not apply.
- (4) Bail
- (5) Admissibility of previous orders under S 110 Cr P C in a trial under S 101 P C.
- (6) S 167 does not apply to proceedings under S 110
- (7) Proceedings against persons registered under the Criminal Tribes Act
- (8) S 517 Cr P C applies to property produced in the course of an enquiry under Ch VIII
- (9) Sections 403 and 405 Cr P C does not apply to security proceedings
- (10) Analogous Law
- (11) Principle of S 190 (c) Cr P C applies to proceedings under S 110 Cr P C.
- (12) S 397 does not apply to imprisonment in default of security.

I. OBJECT AND APPLICATION OF THE SECTION.

(1) *Object is to ensure future good behaviour, and not to punish for past offences.*

1. The object of S 110 is the prevention, not the punishment, of crime, and to take good and sufficient security for the purpose of securing future good behaviour. Any attempt to use it for the purpose of punishing for past offences is wrong and not sanctioned by law. 31 C. 350. 27 C 781, 1 C. L. 288 (271). 9 C. N. 808 (903). 17 C N. 238. 13 C N. 318. 20 Cr 30 (C). 10 M. T. 333. 3 M. 238; 6 B B 34. 10 B 174. Rat 830. 7 A 67 (72). 2 A 835. 2 Weir 62. O S 73. 6 O C. 199. 28 P. R 1901. 23 P. R. 1899. 43 P. R. 1885 (Per Barkley J.) See (93-90) L B 179; Cr R 36 of 12-5, '03 (13) U B. 1 159.
2. Note.—The intention of the law in the matter of sureties for good behaviour and so forth is not

Ss 113, 21 Cr P C (D)

- (2) *Section enacted for protecting society from habitual offenders.*
3. The statutory provisions of S. 110 Cr. P. C were enacted by the Legislature for the purpose of

of their estate the efficiency of which, very foolishly perhaps, they might not appreciate—Per Mookerjee J. 17 C N. 238. (69) A N. 114

4. Section not limited to offences menacing safety—S 110 is not limited to offences in which the safety of property is menaced, but

applies also to a case where the objects of the accused are primarily directed against the security of person only.

FOU—23 C N 193 [17 C N 218 D]. 11 C N. 789
CON—17 C N 238, 2A 835.

(3) Great caution necessary in applying the provisions

5 (1) The preventive power with which the Magistrate is vested is a powerful means to secure the interests of the community from injury at the hands of hardened criminals of the most dangerous class. The very fact, however, renders it necessary that those powers should be exercised with caution and discretion. 17 C N 238 See 5 P R 1892

6 (2) A Magistrate can not be too cautious in making sure that proceedings are not utilized for wreaking private vengeance under the aegis of a crown prosecution—Per Chatterji J 38 C 156 4 P. R. 1898

(4) Section should be put in motion in the interest of public welfare only.

7 The powers with which officers in charge of Police Stations and District Magistrates have been armed under the Code for the purpose of putting bad characters under restraint are exceptional powers, and should be put in motion with the greatest deliberation and only when the Magistrate is convinced of the absolute necessity of action in the interest of public welfare. 17 C N 238 1 C L 208 6 C 14; 39 C 156 See 2 Weir 52 16 B 372 3 M 238; 14 A 45 5 P R 1892 4 N P 117 (193) A N 181 1 A J 616

(5) Offender to be put under substantial but not excessive security.

8 The object of the section is not to obtain money for the Crown by forfeiture of recognisance, but to ensure good behaviour [20 A 206]. Habitual and possible offenders should be put under such substantial but not excessive security as will prevent them from resorting to evil courses [189) A N 114]. It is always to be borne in mind that the object is not to put the habitual offender into jail, but to secure his good behaviour outside [Cr R 17-4-96].

(6) Distinction between a regular prosecution under the Penal Code and a prosecution under S. 110.

9. A person required to furnish security for good behaviour is not charged with an offence within the meaning of S. 44 I. P. C. [7 A. 67]. The exercise of powers under S. 110 is not confined to cases in which positive evidence is forthcoming of the commission of crime by persons against whom it is sought to enforce the law [3 M. 238]

Where there is direct evidence of the commission of an offence, a regular prosecution for the offence must be made; but where there is no direct evidence but only hearsay evidence amounting to a balance of general reports, action under S. 110 is to be taken [6 B R 34]. It is not necessary for the purposes of S. 110, that specific instances of crime should be given, for if specific instances are established, the accused should be charged with the offences under the I. P. C.—9 B R. 164 [See 1 C L 268, 27 C 78; 6 C N. 594]. But the section does not provide for the hindering down of persons on an indefinite charge after prosecution against them on definite charges under the Penal Code has failed. [11 C N 418; 6 A. J. 487. (4) S. 70 (Con—32 A. 55).

(7) Section should not be put in illegit. mode etc.

10. (1) Opportunity to police to detain suspects.—The section is not intended to afford the police an opportunity of detaining suspects until they are able to work out a case against them—10 A. J. 351, 12 A. J. 338, 43 P. R. 1885

11. (2) Unnecessary harassment.—The powers under the section should not be used to unnecessarily harass persons. It is incumbent on Magistrates to exercise the greatest caution and impartiality and to be careful not to be influenced by outside gossip and vague rumour 1 P R. 1899; See 30 P. L. 1910

(8) The section applies only to habitual criminals.

12. The section applies only to persons who habitually commit offences [24 W R 37]. It can not apply to persons of "a violent and turbulent character" [3 W R 6]

(9) The section is inapplicable when.

13. (1) The section is not intended to be applied to co-erce landlords, however recalcitrant, to adopt methods of management of their estates, the efficiency of which they might not appreciate 17 C N. 238

14. (2) The fact that a landlord has tenants of bad character, that he lends money or paddy when the latter are in difficulty, and because they are his tenants, and he settles disputes between two men, one of whom is a thief and the other is not, does not subject him to a proceeding under S. 110 Cr P. C.—6 C J. 711

15. (3) The section is inapplicable in the case of persons who as businessmen in a zemindari community act of extortion in the performance of their duties in the interests of their employers, and not in their own private capacities. The proper course for dealing with the case is to prosecute them for specific acts of oppression—27 C 781.

II. INFORMATION.

(1) No restriction as to source of information.

16. The Magistrate may initiate proceedings on information from any source; the Statute does not

impose any restriction as to the quarter from which the information may be derived. The Magistrate is further not bound to reveal the source of his information; it is sufficient if he

under the relevant Chapter of the Criminal Code based on the trial stage, seek to name the witnesses who will support the case by their evidence. 15 C N 238 210 212 15 C 203 42 27 A 172

17. Magistrate not bound to reveal the source of his information. See above Note No 16

(2) *Power of Magistrate to proceed on his own knowledge.*

18. (1) A Magistrate should not pass an order upon knowledge locked within his own breast and not put upon his oath to do so. His personal knowledge is to be proved. 27 P R 1803 See 6 A 172

19. (2) Although S. 110 does not expressly prohibit for a case under S. 110 still when a Magistrate institutes proceedings under S. 110 in some cases, if not usually, on his own knowledge of the character of the accused, he is not the proper person to proceed with the case. 29 C 832 4 P J 7 27 P R 1803 6 A 172

20. (3) Conversations out of court with persons, however respectable, are not legal or proper material upon which to get proceedings under S. 110. 6 A 182 But See 27 A 172

21. (4) The language of the section places no limit to the source of information. The language of S. 110 and 112 does not place any limit as to the source from which a Magistrate may derive his information regarding the accused. The sections are not controlled by Ss. 181 and 191 Cr P C. That the Magistrate has acted on private information is not, therefore, a ground for applying for the transfer of such proceedings. 27 A 172 See 17 C N 238 Con.—20 C 392 4 P J 7 4 P R 1803

(3) *Magistrate ought to sift the information.*

22. (1) Although the information may be, to some extent, of hearsay and general description (6 A

142) a Magistrate ought to be careful not to act on information based on gossip and vague rumour (1 P R 1808 27 P R 1803) He is bound to test the information given if the accused wants enquiry [(62-73) U B.] A Magistrate need not confine himself to the information contained in the Police papers. He may take information on oath in the accused's presence.

23. A Magistrate is bound to set forth the substance of the information received, in his preliminary order.

[12 A J 336] See—Enquiry and Procedure

(4) *What is credible information.*

24. (a) The *Key to a Subordinate Magistrate is credit*. The information justifying the issue of notice. 6 A 26 (F. B.)

25. (b) *Information under Burma Gaming Act [S. 5, Act XXI of 1884]*

26. (c) *Punjab rules*—No information should be acted upon unless it comes from a trustworthy source and is not obtained by intimidation. 1 P R 1803

19th Cr Dig. p. 4.

27. (d) *What is the law regarding the source of information?*

Order.

(5) *Detention of accused illegal in the absence of information.*

28. A Magistrate acts illegally in authorising detention of persons against whom action is contemplated, before he has before him information against them as required by S. 112 Cr P C 12 A J 346 10 A J 351 43 P R 1885

29. Magistrate's jurisdiction based solely on receipt of information. See—(3) Jurisdiction—Juridical.

III. JURISDICTION.

A. Local Limits.

1 *Meaning of the expression "Any person within the local limits."*

30. The words "any person within local limits" in S. 110 mean any person who is within the local limits at the time when the Magistrate takes action under the section. It is not necessary that

local
Pro
20 Cr

153 (C) 39 A 139 9 P R 241 36 M 96
17 Cr 319 (t. B.) Con.—27 C 983 (1905), 21
B 32 3 C J 195, 12 P R 1901; 4 L B. 148.
14 B R 684

31. *Note*—Proceeding taken against a person who is outside the jurisdiction of the Magistrate at the time of the institution of proceedings, are void 3 C J 195 See 14 B R 684.

32. *Object of restricting action to Magis-*

33. Person undergoing imprisonment.—The words apply also to a person undergoing a sentence of imprisonment in a jail within the local limits of the Magistrate's jurisdiction 8 L B 343 (F. B.) [4 L B 119 O]

34. Person arrested outside, but within jurisdiction when proceeding initiated.—A person who has been arrested outside the local limits of the jurisdiction of a Magistrate for an offence committed within the local limits of his jurisdiction, can, on failure of the charge for the substantive offence, be proceeded against under S 110 Cr P C Pro—23 C N 100 23 C N 197 24 Cr 133 (C) 8 L B 375 17 Cr 319 (L B) Con—43 P R 1886 P J L B 204

35. Note.—But the rule will not apply if the Magistrate had a hand in the arrest and if he caused the arrest to be made to give himself jurisdiction 20 Cr 133 (C)

(2) Miscellaneous.

36. Detention under the Defence of India Act.

ordinarily res.
is under deten.
Act within such
B 32.

Note.—In 23 B 32 it has been held that detention in Police custody could not constitute residence within the meaning of this section even where such detention is legal 23 B 32

37. Object of the omission of the word "residing".

(a) It is not necessary to prove that the accused resides permanently within the limits
—and the
strate to
angerous
to place

and have no well-known residence.—9 B R 244. 23 M. J. 335 See 30 M. 96

(b) If the Magistrate's jurisdiction were confined to persons residing within local limits, it would defeat the object of the section.—viz. prevention of crime, as then it would be impossible to deal with wandering gangs of criminals having no fixed residence, or with habitual thieves of desperate character belonging to foreign territories, who infest British India.—36 M 96 See 43 C. 153.

38. Magistrate not having local jurisdiction cannot act though directed by District Magistrate.—If the accused is not within the local limits of the Magistrate's jurisdiction, the Magistrate cannot proceed to deal with him, though he is ordered to do so by the District Magistrate who has local jurisdiction over the accused (18) M. N. 751. 41 M 246 31 C 550 14 C. N. 540: 21 A. 151 Con—19 Cr 206 (C)

39. Enquiry must be held within local limits.—An enquiry under S 110 should not be held at a place which is outside the local limits of the Magistrate's jurisdiction and where he has no power to conduct any proceedings.—3 C J 19

40. Persons residing occasionally within local limits.—A Magistrate has jurisdiction on a person occasionally residing within "local limits", if the offences were committed while
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charg-
nent :

41.
its Notification did not put any restriction upon his jurisdiction over the whole district—held that he had jurisdiction to take proceedings under S 110 Cr. P. C. upon a police report in respect of persons residing outside his local jurisdiction, but within the District—21 Cr. 321 (Pat) : 29 C 349 See 10 C. N. 1095

B. Juridical.

42. Jurisdiction is based solely on receipt of information.—A Magistrate has no jurisdiction of any kind to act under S 110 Cr P C, until he has such information before him as will suffice for his making an order in writing, setting forth its substance and the further particulars required by S 112 Cr. P. C.—12 A J 336

43. In the Punjab.—All First class Magistrates have been specially empowered to act under S 110 See Pan, Gaz Fely 3, 1882 Pt 1 p. 32

44. A Magistrate of the First class having jurisdiction throughout the District.—but not specially empowered under S 110 Cr P C cannot exercise jurisdiction in a case arising under that section upon transfer thereof to him by the District Magistrate—Rat 838

45. Local Governments.—[and not District Magistrates] can only empower Magistrates to act under S 110—Rat 838, See 22 C. 894 (901)

46. District Magistrate—

(1) cannot pass orders in a proceeding initiated by a subordinate Magistrate but sent up to him for orders—14 B R. 714

(2) cannot authorize a subordinate Magistrate not having local jurisdiction to try the case (14) M. N. 751.

(3) nor can he authorize a Magistrate not especially empowered to act under the section—Rat. 838

47. Magistrate ceasing to have jurisdiction after initiation of proceedings.—Where a Magistrate not specially empowered, commenced proceedings on being appointed to act as Sub divisional Magistrate, but ceased to be so before he passed the final order—held—that the order was made without jurisdiction—17 Cr. 141 (A)

48. Magistrate's jurisdiction to act on his own knowledge.—See (2) Information (1419)

49. by consent
if the accused
istrate jure
P. W. 1911

But See (15) M. N. 751.

50. Detention of persons against whom action is contemplated.—A Magistrate acts illegally in authorising detention of persons against whom action under S 110 Cr. P. C.

cannot proceed, before he has before him information against them as required by S. 112 Cr. P. C.—12 A. J. 276.

[Note: That the police can arrest such a person under S. 55 Cl. (C) Cr. P. C.—11 Cr. 618 (A).]

IV. PROCEEDING (PRELIMINARY ORDER).

1. Initiation of Proceedings.

51. (1) **Condition Precedent.** A Magistrate has no jurisdiction of any kind to act under S. 110 Cr. P. C. until he has before him information before him as well as evidence for the making an order in writing setting forth its substance and the further particulars required by S. 112 Cr. P. C.—12 A. J. 276.

52. **Proceedings are initiated as soon as the Magistrate draws up a proceeding order in writing setting forth:**

- (1) the substance of the information received;—(81) A. N. 17; 20 W. R. 47;
- (2) the amount of bond to be executed;
- (3) the term for which it is to be in force;
- (4) the number, character, and class of sureties (if any) required. See S. 112.

53. **Magistrate may record evidence before making the preliminary order.**—2 Weir 51.

(2) The contents of the Preliminary Order.

54. (a) **The substance of the information.**

(1) The Magistrate is not bound to reveal the source of his information if it is sufficient if he states the substance thereof. [17 C. N. 278; 35 C. 243; 20 C. 312; 27 A. 174.] The setting forth of the information received from a police officer is a sufficient statement [35 C. 213.] A Magistrate is bound to set forth the substance of the information received, in his preliminary order. Omission to do so is bad [12 A. J. 336.] The preliminary order should not merely be a reproduction of the language of cl. (a) to (f) of S. 110 Cr. P. C. A notice under the time and should be a sufficient indication of the time and place of the acts charged, with sufficient details to enable the accused to know what facts he has to meet.—Per Moore J. [21 Cr. 351 (M).—Con 35 C. 213.]

55. The Magistrate should give notice to the party who is to be affected by the order, of the particular conduct on his part which is complained of.—11 C. 13; 21 W. R. 6; (81) A. N. 155; 17 P. W. 1910.

56. **Amount of security required, etc.**—The summons should distinctly specify the amount and nature of the security required, and the time for which the security is to run.—[20 W. R. 36.] See 17 P. W. 1910.

(3) Procedure.

57. **Separate proceedings may be drawn up against each individual accused.**—Where a general report is made by the police

against a number of persons, the Magistrate should set the case against each, and proceed to pass an order against each, under S. 112 Cr. P. C. A 'whole sale' order is illegal.—2 Weir 51.

59. **Order must be signed, and not merely initialed.**—The original order was only initialed, and not signed, by the Magistrate.—*held*—that this was a material defect.—See 17 P. W. 1910.

4. Is omission to draw up a proceeding fatal?

60. An omission on the part of the Magistrate to make an order in writing setting forth the substance of the information received etc is not in itself a fatal irregularity unless a failure of justice has been occasioned thereby.

Pro—(91) A. N. 40; 8 C. 524; 15 W. R. 43; 11 B. R. 710; 10 O. C. 365; 20 Cr. 703 (N).
Con—30 M. 282; 17 M. J. 434; 2 Weir 55; 10 W. R. 16; 21 W. R. 6; 17 P. W. 1910; 18 P. W. 1910; 12 A. J. 336.

[Note—Where the order is passed in open court in the presence of the parties, and they are fully informed of the grounds of the order, there is no necessity of issuing a summons.—3 B. L. (ap.) 28.]

5. Materials justifying proceeding.

60. (1) **Previous conviction.**—by itself not sufficient for initiation of proceedings.—13 C. N. 318; 12 C. 520; 10 B. 174; 2 A. 835.

61. (2) **Materials of a trial which has terminated in acquittal.**—Proceedings may be insti-

11 C. N. 129

62. **Second prosecution on nearly the same materials.**—Where about a year before, the accused were prosecuted under S. 110 but discharged and a fresh case was started in which almost all the witnesses who figured in the first case gave evidence, and it was not proved in the subsequent proceeding "that since those orders were passed, the petitioners had acquired the reputation of being habitual thieves or receivers of stolen property,

Held—there is no sufficient proof on the record against the accused to justify an order for security. 31 P. W. 1913; 19 C. N. 223.

63. **Proceeding under S. 110 taken after issuing notice under S. 107 Cr. P. C.**
See (13) Allied Sections.

V. NOTICE.

1. What the notice should contain.

64. A notice which does not set forth the substance of the information received by the Magistrate as required by S 112 Cr P C is utterly void [12 A J 336]. Notices under S 110 must contain something more than a reproduction of the clauses of the section. There should be sufficient indication of the time and place of the acts charged, and sufficient details which would enable the accused to know what facts he has to meet, but it is not necessary to give a list of witnesses [45 C 243 ('18) M N 751].

2. Procedure.

65. Every summons or warrant under S 114 shall be accompanied by a copy of the preliminary order made under S 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same (*vide* S 115 Cr P C). [See Ss 69, 70, 71 Cr P C (Summons) and S 75 to 80 Cr P C (Warrant)] S. 20 W R 36. Proceedings were set aside on the ground that the

notice was not personally served upon the person to whom it was given—18 P. W. 1910.

66. **Return of service.**—The serving officer in certifying service must also certify the date of the copy of the order. See S 70 and 71 Cr C. as to service of summons.
67. **Service of notice, condition precede to jurisdiction.**—Notice to show cause under S 112 Cr P. C. must be served before a magistrate can pass an order requiring security.—9 W R 6.
68. **Sufficient time should be given.**—1 notice should give the accused sufficient time to produce evidence.—20 W. R. 18.
69. **Notice should be issued only after a consideration of the materials before the Magistrate.**
70. The issue of a Notice under S. 110 Cr P. C. being a judicial act to be exercised after a consideration of the materials placed before the Magistrate, and not merely an executive order he passed as a matter of course on the compulsion of the police. ('18) M. N. 751.

VI. ENQUIRY AND PROCEDURE.

A.—Enquiry.

(1) Showing cause.

70. Meaning of "showing cause."

"I am wholly unable to accept this contention, nor am I able to understand the English phrase "to show cause" as implying that the Legislature intended that all the fundamental principles of jurisprudence in connection with criminal cases should, by dint of such an ambiguous phrase, be reversed. It is not for him who is free and who has not transgressed the law, to show why he should remain free and why his freedom should not be qualified. It is for him who wishes to take away that freedom or wishes to qualify it to establish circumstances which by the force of law would operate either in defeasance or in derogation of that freedom"—Mahmood, J 9 A 452.

72. **Magistrate's record must show parties had opportunity of showing cause.**

juries were not heard, but were simply directed to execute recognizance. ('81) A N. 155 See 11 C 13.

73. **Reasonable time should be allowed.**

74. **Ex parte order can not be made on failure to show cause.**

Even where the accused on being required to show cause, fails to do so, an ex parte order under section binding him down can not be made in the absence of evidence. Rat 585.

(2) Accused to come ready with evidence.

75. The person who is called upon to show cause for good behaviour must be ready with his evidence at the time of the notice; if

when he appears, to apply at once for summons to the witness he proposes to call. 9 R R 13. See 23 W R 9 (Per Ansell, J).

(3) Onus on the prosecution.

76. The order to show cause is not in the nature of a rule nisi throwing the burden on the person called upon. 27 C. 761. 3 B. R. 269. 9 A 4. 2 N. P. 431. 4 B. L. 16 (T B). 12 W. R. 60.

(4) Miscellaneous.

77. **Magistrate bound to assist accused produce witnesses.**

A Magistrate is bound to assist the accused to produce the attendance of his witnesses (if he has any) by issuing summonses to attend. 22 W. R. 70. 1 C 130.

(4) Prosecution witnesses cannot be cross-examined a second time.

90. It is beyond dispute that S. 256, Cr. P. C. which gives the accused a right of double cross-examination, is confined in its operation, to warrant cases, and that it does not apply *proprio iure* to security proceedings.

In security cases, the order passed by the Magistrate under S. 112 is equivalent to a charge in warrant cases, and the person against whom the order is made, is fully aware of what is alleged against him. The evidence is thereafter recorded in his presence, and he has every reasonable opportunity of cross-examining the witnesses. There is consequently no conceivable reason why he should be allowed the right of a second cross-examination, and why he should thereby protract the proceedings unnecessarily. The reason which underlies the rule as to double cross-examination is absent here, and the principle of *cessante ratine legis cessat ipsa lex* is fully applicable." Shadi Lal J

Pia—1 P R 1916 35 C 243 *Con*—12 Cr. 89 (L B) 25 M J (S N) 15 10 A J 383, 20 Cr 436 (Pat)

91. **Note.**—Where the notice contains no detailed information as to the nature of the evidence which the prosecution intend to adduce at the trial, and if the evidence takes the petitioner by surprise, then clearly the petitioner has a right to ask the Magistrate for sufficient time after the evidence has been disclosed, to commence their cross examination. 20 Cr 436 (Pat)

(5) Accused can not be detained pending result of enquiry.

92. The law does not empower a Magistrate to detain the accused in custody until the completion of the enquiry. He should be released on bail. 32 C 80 16 B R 943 14 A 45 1 C L 130 39 M 829

(6) S. 202 Cr. P. C. does not apply to proceedings under S. 110.

93. A Magistrate before whom an enquiry is pending under S. 117 Cr P C is not competent to take action under S. 202 Cr. P. C after the person who was the subject of the enquiry has been called upon to show cause. See (56) A N 140

(7). Principle of S. 191 applies to proceedings under S. 110.

94. Although S 190 (C) does not in terms apply to proceedings of a miscellaneous character, the principle applies. Therefore the proceedings of a Magistrate are preliminary finding as S 110 Cr

Enquiry to be held at some central place near the residence of the accused

Where a large number of persons are to be proceeded against, and the case involves examination of a large number of witnesses, the trial should be

conducted at some central place as near as possible to the place where the accused and the witnesses live. 26 B. 418 (121) : See 3 C J 195

(8). Presidency Magistrates.

95. S. 382 Cr. P. C. does not apply to proceedings under S. 110 Cr. P. C.

The Presidency Magistrate in cases where he makes

as in a case from a Magistrate's jurisdiction. 33 C. 1036, 13 C. N 318 See 13 C 1120

(9). Accused can not be called on to enter into defence before prosecution evidence is closed.

96. Under Sub-S. 2 of S. 117, a case under S. 11 to be conducted as if it were a warrant case, the procedure to be observed in the trial of a warrant case is laid down in Ss. 231 to 256 Cr P. According to the said sections, an accused can be called upon to enter on his defence until prosecution closes its case. No further evidence can be admitted against the accused except as S. 510 for which there must be valid reason which must be recorded. 10 A. J. 353

97. Opportunity to produce defence evidence must be given.

A person who has such a serious charge alle against him as an accusation under S. 110 P C must have time to bring his witnesses have their evidence recorded. Where such opportunity has not been given, the proceedings must be set aside. 41 C. 606

98. Procedure in the case of absconding accused.

A Magistrate proceeding under S. 110 can not under S. 87 Cr. P. C against an absconding accused. 14 B. R. 889

99. Right of accused to be defended by pleader.

A person proceeded against under S. 110 Cr P has the right to be defended by a pleader [3 493-25 A 376 See 4 C N. 707] But he is not permitted to appear by an agent. [2 N 54]

(10). The case of each accused must be independently considered.

100. The case of each accused should be considered itself and on its own merits [6 A. 214] E accused is entitled to an entirely independent examination of his case. [25 P. W. 1909]

101. For (I) Evidence to be recorded etc See (VII) Evidence and Witness.

(11). Magistrate instituting the proceedings must himself try the case.

102. When proceedings under S. 110 Cr P. C. are once initiated before a Magistrate, the Magistrate must dispose of them himself. It is not competent

to him to put up the case, which he is trying, to the District Magistrate for action under Sec VII of 1827. 11 B R 713

(12). *Procedure and Rules as to joint trial.*

103. Joint trial legal only on proof of association

"Where two or more persons have been associated together in the matter under enquiry they might be dealt with in the same or separate enquiries as the Magistrate shall think just." S. 107 (1) Cr. P. C. [27 C 781 35 M. 555 3 P. W. 1917 80 C. 61; (14) M. N. 751 28 P. B. 1911 20 C. 151 (1) 23 Cr. 750 (4) 4 L. B. 49 6 B. B. 31 The law was different under the former code. See 6 A. 214 11 A. 452 Bat 556 Bat 585

The mere acquiescence of the accused in a joint enquiry can not give the Magistrate a jurisdiction which he does not otherwise possess. 1 P. W. 1917

104. Does S. 117 (4) Cr. P. C. apply to proceedings under S. 110?

A doubt on this point has been raised in L. B. 19 where it has been held that the clause does not apply. But this view has not been accepted elsewhere. See 13 C. N. 211 37 C. 91 27 C. 781 6 B. B. 31 9 C. C. 69 Where the accused were not shown to have jointly committed the offence, but were members of a gang of persons associated together for the purpose of committing theft, and the evidence is generally to the effect that they are persons of bad livelihood who associate with other burglars, and evidence is also given of specific acts against each accused, — Held that this was a case where S. 117 (4) did not apply. 18 Cr. 617 (P)

3. Meaning of the words "associated together."

The words "associated together" apply to persons acting in concert whether that concert is due to mutual agreement amongst themselves or to the order of a common master. 80 N. 2055.

"act that persons among is not 1895."

(105) A. N. 41] The evidence should show that the accused have formed a gang for the purpose mentioned in s. 117 (4) Cr. P. C. [37 C. 4 C. N. 895]

cannot be an association within the meaning of the section, where several persons are arraigned under Cl. (f) [27 C 781. (18) M. N. 751] But where the existence of a habitual connection between the different persons is proved, joint trial may be legal [6 B. B. 31] If the facts, viz. that the accused were seen together at meetings, that these meetings were followed by offences against property, and that on numerous occasions after theft had been committed, some or other of the accused demanded and obtained payment in redemption of property stolen, were proved by reliable evidence, there would be good reason for treating the men as associates.—20 Cr. 551 (c).

107. Joint trial illegal in cases under Cl. (f).—

It is not legal to try jointly two or more persons charged under S. 110 Cl. (f).—Pro. 27 C 781; (18) M. N. 751 Con. 6 B. B. 31

108. The mere acquiescence of the petitioner in a joint enquiry.—cannot give the Magistrate a jurisdiction which he did not otherwise possess. 3 P. W. 1917

13. *Facts which are evidence of association.*

109. (a) Relationship. Where it was clearly established that the accused were members of the same family, being the father and his three sons, and formed a gang.—Held—a joint trial was legal.—13 C. N. 211

110. (b) Formation of a gang.—The fact that the accused have formed a gang for the purpose of committing association. 21 C. 6 B. B.

111. (c) Habitual connection.—The existence of a habitual connection between the accused is relevant [6 B. B. 31] But where the connection is that of a master and servant, and there is no proof of habitual connection, a joint trial is not legal [9 C. C. 69 See 6 C. N. 219] Persons can be proceeded against notwithstanding that the acts were committed by them not as individual members of a society but as servants of another person [8 C. N. 895; 6 B. B. 31]

14. *Law as to joinder of charges does not apply.*

112. The law as to the joinder of charges against a person accused of definite offences has no application in an enquiry under S. 110.—11 C. N. 789 See 37 C. 91.

15. *Evidence must be recorded against each individual accused.*

113. In a joint enquiry—it is essential for the prosecution to establish what each individual implicated has done to furnish a basis for the prosecution. The Magistrate is bound to insist that definite charges be made against each.

114. Specific finding must be arrived at against each accused.—In a joint enquiry a specific finding must be arrived at against each individual. 21 C. N. 895

115. Note.—A separate examination of the evidence against each accused was however considered unnecessary where they were members of a joint family associated together and forming a gang and where evidence against all of them was the same.—13 C. N. 211

116. As to various matters connected with Evidence and witness. See VII. Evidence and witness.

VII. EVIDENCE OF WITNESS.

(A) Evidence of General Repute

117. Hearsay evidence.—Hearsay evidence amounting to evidence of general repute is admissible to the purposes of proceedings under Chapter VIII. 6 B R 14 5 L B 72 (74) 8 Cr 3 M 238 9 B R 164 19 Cr 269 (A) 10 M T 334 17 C N 238 Cr R 36 of 12th May 1903 1904 (18) M N 751

Note.—This evidence admissible under this section is not confined to positive evidence of the commission of crime. 3 M 238 17 C N 238 10 M T 334 6 B R 14 Cr R 36 of 12th May 1903

118. Evidence not legally admissible must not be brought on record. s 118 read with s 117 gives the Magistrate extensive powers but these powers should be exercised with scrupulous care. Materials not legally admissible in evidence should not be brought on the record. 23 Cr 689 (A)

119. Exception.—But evidence of general repute is no good for the purposes of a case under O 1 (1). 24 C 779 27 C 113 13 C N 211 11 C N 189 5 C N 244 Rev No 148 of 1903 (C) 13 A 372 13 A J 112 12 A J 197 13 Cr 9 (A) 25 A 273 44 M 255 (11) M N 34 21 Cr 354 (N) 6 B R 34 9 O C 163 19 Cr 871 (N) 8 P C 1907 8 Bur T 53

120. Evidence of general repute though unsupported by evidence of particular instances of crime is admissible.—27 C 781 31 C 370 43 P R 1887 9 B R 164 10 P R 1890 But see below

121. Evidence based on mere belief.—Evidence relating to mere beliefs and opinions without reference to acts or instances which have induced the witnesses to form the opinion, can hardly be regarded as evidence of repute. 43 M 470 44 C 1129 35 C 243 29 C 779 40 M 3 M 218

122. Evidence of general repute admissible only as proof of habitual offences.—It is only in the case of a person who is a habitual offender and is called upon to furnish security for good behaviour that the fact of his being a habitual offender may be proved by evidence of general repute.—25 A 273 8 M T 347

123. Distinction between general reputation and rumours.—It is hardly necessary to say that evidence of rumour is mere hearsay evidence and hearsay evidence of a particular fact. Evidence of repute is a totally different thing. A man's general reputation is 'the reputation which he bears in the place in which he lives amongst all the townsmen; and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of that character. On the other hand, if the state of things is that the body of his fellow-townsmen who know him look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a

man of bad character; but to say that, cause there are rumours in a particular among a certain class of people that a man does particular acts or has characteristic in certain kind, those rumours are in themselves evidence under this section, is to say what does not justify us in saying; and consequently we think that the evidence of general repute in this case is evidence of little or no value. Per Petherick C J. in 23 C 621 (625) See 603 - 35 C 213; 21 C 354 (M) & 1 A J 1 A J 616; 10 A J 353; (10) A N 15 L B 71; 1 L B 90; 1 O C 168 50 C 200 Cr 512 (B).

124. Evidence of general repute need not necessarily be evidence given only by neighbours.—Evidence of general repute given by people of the village where the crime had taken place is certainly to be treated as evidence of general repute required by s 35 C 247 & 11 C N 789. (16) M N 751

125. When the accused is a well-known resident of a City his fellow citizens do not living in the neighbourhood are common witnesses to prove his general repute. [1 N 789]

Note.—A contrary view indicated in 23 C 621 C 603. (103) A N 181; 10 O C 189

126. Evidence of witnesses speaking matters within personal knowledge must be given.—Vague and general statements that a man is a habitual offender is sufficient evidence on which an accused person is liable to be bound down under s 110 P. C. The evidence of repute must be the evidence of persons who are speaking to me within their personal knowledge and not mere hearsay. 1 A J 616 20 Cr 354 (10) C 69; (16) M N 751 27 C 779 8 Bur T See 8 C N 513; 13 A J 412

127. Mere Evidence of suspicion is not sufficient.—The mere statement of witnesses that they suspect or are under the impression the persons proceeded against are thieves or cheats where no fact is mentioned to which there is sufficient reason for the suspicion or impression is not sufficient for the purposes of s 110 Cr. P. C. 11 C N 113; 2 P. R 11 (18) M N 751; 215 P L 1815 See 6 C 14 372 11 A J 461; (10) A N 34; 1 O C 1 1 Bur. S. R 422-8 Bur T 53; 1 A J 611-211 1907; 12 Cr 512 (B) 20 P. W. 1412 R Y Set A. H. C. unreported Cr Appeal No 169 of 1903 Specific instances of crime in which the accused suspected were not good evidence and cannot be said to fall within the meaning of "general repute" under s 117 Cr. P. C. [11 A J 4 12 A J 937; 20 Cr 659 A]

128. [Note.—But evidence need not necessarily be evidence of the commission of definite offences in the accused. [10 P. R. 1894. 3 M 238] In C 1128, although the High Court held that there were grounds for suspecting that the accused were members of a gang of pick-pockets

139. **Intention of returning to dishonest course must be proved.**—The fact, therefore, of a person having been convicted on a former occasion will not justify his being treated as a habitual offender under this Chapter, unless it is shown that since his release, he has indicated an intention of returning to a dishonest course of livelihood. O S 70 23 P L 1907; 29 P. R 1910 2 A 835 G A 132. See G W R 16 (11) M N 355 C H Pro 29-7-62 12 C. 520: 10 B 174

140. **Proof should be of habitual offence, and not merely bad character.**—It is not sufficient that a person is a 'bad character,' it must be proved that he is a habitual offender. The mere statement of the accused, 'I am a bad character, and have been to jail' is not sufficient [3 B R 266]. The section does not apply to 'a by no means reputable character' [6 C 14]. See also 24 C 779 Rat 44

141. **Proof of habit.**—It is necessary to prove habit by an aggregate of similar acts [1 Weir. 452 36 P W 1912]. The evidence that some of the several accused who have been charged with larceny were

36 P W 1812] Evidence of general repute is not of much value, unless the witnesses can adduce instances of the misconduct imputed [3 M 235]. To constitute a habitual offender within the meaning of the section it is necessary that subsequent offences charged should have been committed by the accused after the previous conviction [Rat. 143]. The fact of a person having been convicted on a former occasion will not justify his being treated as a habitual offender.

10 B 101] were evidence of general repute as a habitual offender will not do, unless it is so overwhelming as to leave no doubt in the mind of the Magistrate [Rat 639]

142. **Proof of actual previous conviction unnecessary.**—In a case under S 110 Cr P.C. it is not enough to prove by evidence of general character that a man is by repute a habitual thief, robber or house-breaker. It must further be

[2 B R 57] proof of actual previous conviction

143. **Evidence should be carefully tested.**—Where actual convictions are not relied on, great care should be taken to test the evidence on behalf of the prosecution with a view to ascertain what their witnesses' means of knowing the facts stated by them may be, e.g. 'the accused's movements, his constant companions, his way of earning his livelihood, his antecedents, etc.' 2 B R 57 1 B R. S 412, 35 C 244 20 Cr. 680 (1)

144. **Evidence of witnesses examined in batches.**—Where the witnesses for the prosecution were examined in three batches on three different dates, and the evidence of the witnesses on

the first two dates were of little help to the prosecution, the evidence of the witnesses examined the last date is open to suspicion, and should be received with great caution. 12 Cr. 542 (9) Past misconduct is proof of the formation of habit

See C. No. above

145. **Is proof of specific acts necessary?** There is a conflict of rulings on this point. Bomby [See 9 B R. 164], it has been held to be a finding, that the accused person was by general repute a habitual offender committing mischief and protecting thieves, is sufficient to support action being taken under S 110 Cr P.C. and not necessary to give or establish specific instances of such offences. [See also 12 P. R 189] A contrary view is taken in 27 C 779 [See a Rat 44 which was decided in 1870]. In 8 C 543, it was held that the evidence must be of a nature as would lead to a reasonable and sufficient ground for coming to the conclusion that the accused is a habitual thief [See O S 70 43 1125]. Where two sub-inspectors and some private witnesses say that the accused has been a man of bad character, but it is not very clear from their evidence what exactly he has been doing and how he has been living since the occasion on which he ceased to be on surveillance—held—that there was an absence of proof that the accused had in recent times lived a reputable life—[30 P. L. 1916]

146. **Evidence of previous convictions is evidence of habit.**

See (8) Previous Conviction and Acquittal

147. **Habitual offenders not within the section.**

(a) **Habitual forgers.**—25 P R 1900 21 F J 1914.

(b) **Persons in the habit of bringing false claims by means of forged entries in account books etc. for the purpose of extortion.**—23 P R 1884; 28 P. R 1913 4 O J 143; 19 Cr 685 (1) See 16 A. J. 776.

(c) **Persons committing extortion not as individual capacity but as servants of and for the employer, e.g. barkaudazars or agents of zemindars.** 27 C 781

(4) **Facts relevant as proof of bad character.**

148. **What the Magistrate is to ascertain from the witnesses.**—The Magistrate is to ascertain from the witnesses (1) what the witnesses' means of knowing anything about the accused are; (2) whether the accused is known to have associated with criminals; (3) whether he has frequently been known to have been near the place where thefts etc. have been committed; (4) whether he has any, and what, means of livelihood; (5) whether there has been any quarrel in which the accused was concerned which would supply a motive for bringing a false charge; and (6) whether any instances of the commission of

offences by the accused, even if no conviction has been had, are known to the witnesses.—*Per Agnew J. in Cr. Ref. 5 of 1891* [Special Court, Lower Burma]

(5) *Evidence for the Prosecution.*

140. (1) Previous conviction (if any)

See (4) Previous Conviction

Also S. 54 of the Evidence Act Expt 2

150. (2) Evidence of specific acts.

(a) Acts committed long time ago. Such evidence is admissible as evidence of the formation of habit. 35 C 150 11 C N 784

(b) In cases under cl. (a).—There must be satisfactory evidence that the accused has done something or taken some step that indicates an intention to break the peace, or that is likely to occasion a breach of the peace [6 A 132 See also W. R. 79]. The view taken in 2 A 835 6 A 132 (187), 17 C N 218 that S. 110 applies only where the safety of property is menaced and not the security of person alone is repudiated has been disavowed from in 23 C. N. 181 which followed 11 C N 784

(c) General evidence that a man is a suspect or a bad character is insufficient.—See below

(d) Instances of the commission of offences by the accused, known to the witnesses (though no conviction has been had). See E. above

151. The fact that the accused comes within the category of persons mentioned in S. 110 must be established.

It is not sufficient to give general evidence as to bad character. Facts must be established to show that the accused had done something or taken some step indicating an intention to commit any of the offences mentioned in the various clauses, or indicating the formation of a habit falling within the scope of the section. So where the only evidence on record consisted of accused's confession that he was of bad character and had been in jail—the Court held that, that did not prove that the accused was a habitual thief [3 B R 260]. See also 1 Bar 422 5 W R 2 5 P R 1892; 4 P L 241 6 A 132 21 C 621 6 A 214 24 W R 37.

152. (4) Association with bad characters. See—Bulch (2) above

153. (1) Evidence of the formation of a gang in joint trials.—See VI Enquiry etc (106)

154. (6) Evidence showing that there is no reasonable prospect of future good behaviour must be given. 10 B 174 12 C 320, O. S. 70 See 23 P L 1907 29 P R 1910-30 P L 1916

(6) *Evidence under Sub-clause (c).*

155. Evidence of intention.—In order to amount to "harbouring or protecting thieves" [cl. (3)] the acts must be done with the intention of screening the offenders from punishment, and with the object of preventing them from being apprehended.

U B (1910) 64

160. Employment of bad characters.—The fact that the applicant employed or associated with two convicts one of whom was subsequently sent to jail, or that he employed or associated with two persons who were reputed to be thieves and one of the latter was convicted for committing larceny at the applicant's house, it was held that in neither case, there was protection or harbouring within the meaning of S. 110 (c) Cr P C [U B (1916) 1 q 4]

167. Alleged place of concealment not private property of accused.—A manager of a public shrine which does not belong to him and is freely open to the public and which is used generally as a gambling resort, can not be protected against because some thieves have been arrested there on several occasions [37 P. W. 1910]

168. Occasional visits to the kothar of the accused.—Where the evidence amounted to nothing more than that persons said to be of bad character, had been seen on occasions at the kothar where the accused did his work,—held that it did not justify the Magistrate in holding that the accused habitually protected and harboured thieves. 15 O C 253

169. Shelter given out of motives of humanity.—A person who from mere motive of humanity and without any intention of enabling the fugitive to escape from justice gives food to a starving man and surgical assistance to a wounded man even with full knowledge of his character, can not be bound down under cl. (c)

(1910) U B 64

100. Failure to actively oppose dacoits.—"It must be borne in mind that neither the applicant (Zemindar of the village) nor any of his villagers could be bound down merely because they did not actively oppose the dacoits. It would be very well if the Zemindar and others recognised their duty to give assistance to the police, when gangs of dacoits settle in their neighbourhood, but their omission to do so does not render them liable under S. 110. There is no evidence that the applicant is in the habit of harbouring thieves"—Richards, C J.

13 A J 1046

(7) *Evidence under sub-clause (d).*

161. Habitual extortion.—Habitual extortion within cl. (d) must be committed by an accused as an individual member of the community. If he commits these acts as servant or agent for the benefit of his master, the clause will not apply. 11 C N. 789 See 27 C 781.

162. Habitual cheating.—When the question is

163. Person who brings false civil Civil Courts by means of forged documents.—The obtaining of decrees by forged documents is an offence under S. 209 C, but is neither cheating nor extortion as

139. **Intention of returning to dishonest course must be proved.**—The fact, therefore, of a person having been convicted on a former occasion will not justify his being treated as a habitual offender under this Chapter, unless it is shown that since his release, he has indicated an intention of returning to a dishonest course of livelihood. O S 70 23 P. L. 1807 29 P. R. 1910 2 A 835 G A 132 See G W R 18 : (11) M N 355 C H P. 29-7-62 12 C 520 10 B 174

140. **Proof should be of habitual offence, and not merely bad character.**—It is not sufficient that a person is a 'bad character, it must be proved that he is a habitual offender. The mere statement of the accused, "I am a bad character, and have been in jail is not sufficient [3 B R 264] The section does not apply to a by no means reputable character [6 C 14] See also 29 C 779 Rat 44

141. **Proof of habit.**—It is necessary to prove habit by no *aggregations of similar acts* [1 Weir 452 36 P W 1912] The evidence that some of the several accused who have been charged with larceny were previously convicted of theft is not sufficient to convict all the accused with association for habitually committing the offence, even if the evidence were admissible [27 C 139 (132) See 9 P R 1880 40 P W 1912] Evidence of general repute is not of much value, unless the witnesses can adduce instances of the misconduct imputed [3 M 235] To constitute a habitual offender within the meaning of the section it is necessary that subsequent offences charged should have been committed by the accused after the previous conviction [Rat 144] The fact of a person having been convicted on a former occasion will not justify his being treated as a habitual offender, unless it be shown that since his release he has indicated an intention of returning to a dishonest course of livelihood [O S 70] Mere evidence of general repute as a habitual offender will not do, unless it is so overwhelming as to leave no doubt in the mind of the Magistrate. [Rat 639]

142. **Proof of actual previous conviction unnecessary.**—In a case under s 110 Cr P C it is not enough to prove by evidence of general character that a man is by repute a habitual thief, robber or house-breaker. It must further be

convicted by proof of actual previous conviction [2 B R. 57]

143. **Evidence should be carefully tested.**—Where actual convictions are not relied on, great care should be taken to test the evidence on behalf of the prosecution with a view to ascertain what their witnesses' means of knowing the facts stated by them may be, e.g. *the accused's movements, his constant companions, his way of earning his livelihood, his antecedents, etc.* 2 B R. 57. 1 Bur 4 512. 35 C 243; 20 Cr. 689 (1)

144. **Evidence of witnesses examined in batches.**—Where the witnesses for the prosecution were examined in three batches on three different dates, and the evidence of the witnesses on

the first two dates were of little help to the prosecution, the evidence of the witnesses examined on the last date is open to suspicion, and should be received with great caution 12 Cr. 642 (O). Past misconduct as proof of the formation of habit.

See C No. above.

145. **Is proof of specific acts necessary?**—There is a conflict of rulings on this point. In *Bombay* [See 9 B R 164], it has been held that a finding, that the accused person was by general repute a habitual offender committing mischief and protecting thieves, is sufficient to support action being taken under s 110 Cr. P. C. It is not necessary to give or establish specific instances of such offences. [See also 12 P R. 1892] A contrary view is taken in 27 C 770 [See also Rat 44 which was decided in 1870]. In 8 C N 543, it was held that the evidence must be of such a nature as would lead to a reasonable and definite ground for coming to the conclusion that the accused is a habitual thief [See O S. 70; 43 C 1124] Where two sub-Inspectors and several jurate witnesses say that the accused has been a man of bad character, but it is not very clear from their evidence what exactly he has been doing and how he has been living since the last occasion on which he ceased to be on surveillance—held—that there was an absence of proof that the accused had in recent times lived a disreputable life—[30 P L 1016]

146. **Evidence of previous convictions as evidence of habit.**

See (6) Previous Conviction and Acquittal.

147. **Habitual offenders not within the section.**

(a) **Habitual forgers.**—23 P. R. 1900 21 P R. 1914

(b) **Persons in the habit of bringing false claims by means of forged entries in account books etc for the purpose of extortion**—25 P R 1884; 28 P. R. 1914; 4 O J. 143; 19 Cr. 685 (N) See 16 A J 776.

(c) **Persons committing extortion not in individual capacity but as servants of and for the employer, e. g. barkandazs or agents of zemindars** 27 C 781.

(4) **Facts relevant as proof of bad character.**

148. **What the Magistrate is to ascertain from witnesses.**—Magistrates ought, specially when no conviction is proved, to take great care to test the evidence for the prosecution. The Magistrate should ascertain (1) what the witnesses' means of knowing anything about the accused are; (2) whether the accused is known to have associated with criminals; (3) whether he has frequently been known to have been near the place where thefts etc. have been committed; (4) whether he has any, and what, means of livelihood; (5) whether there has been any quarrel in which the accused was concerned which would supply a motive for bringing a false charge, and (6) whether any instances of the commission of

in the Indian Penal Code, and S. 110 Cr. P. Code does not apply to the case of a person who has the reputation of bringing false claims based on forged entries in account books.—28 P. R. 1914; 25 P. R. 1884; 20 O. C. 129 19 Cr. 835 (N). See 16 A. J. 776

(8). *Evidence under Sub-clause (c)*

164. **Offences involving a breach of the peace.**—Meaning.—The expression means offences in which breach of peace is an ingredient, and not merely offences provoking it or likely to lead to it.—43 C 671 30 C 366 30 C 393 33 C 156 25 C 629 20 M 190 26 M 469 6 A 132 20 Cr 543 (B) 9 O C 991

165. **Nature of evidence to be given.**—“Offences involving a breach of the peace” means offences of which breach of the peace is an ingredient, and persons cannot be bound down unless they are found habitually committing, attempting to commit, or abetting the commission of, such offences.—39 C 156 See 6 A 132

166. **Habitually fomenting riots etc.**—Where a zemindar's *nab* had led several riots in his master's interest and had been convicted in several such cases and had always employed certain *lathials* to help his cause—*held* the particular *co-shares* who was proved to be implicated came under Cl. (c) as having abetted the commission of offences involving a breach of the peace but an abettor co-sharer who was not proved to be implicated was excepted.—38 C 156

167. **Compulsion on rayats to pay enhanced rent.**—Where a zemindar abetted other people to commit offences involving a breach of the peace in order to compel the rayats to pay him enhanced rents—*held* that his conduct came within S. 110 (c) although he was a man of considerable means 31 C 419

168. **Acts of immorality which may pro-**

169. **Merely previous conviction for a simple breach of the peace is not sufficient.**—4 N P 117

(9) *Evidence under Cl. (f).*

170. **Meaning of ‘desperate and dangerous.’** A man of desperate and dangerous character means a man who shows a reckless disregard of the safety of the persons or the properties of his neighbours

Pr. 11 C N 749 23 C N 103 6 W R G. 16 A J 776 8 P W 1407 19 Cr 871 (N)

Cr. 17 C, N 214 2 A. 835 (37)

VII. EVIDENCE AND WITNESS.

Evidence for the Defence.

176. **Accused must be given an opportunity of citing witnesses.** In case of security

171. **Evidence of general repute not admissible under Cl. (f)**—See 7 (1) General repute. No. 119 above

172. **Evidence must be specific.**

(1) When the evidence was that the accused were *Mevatis* of a particular place and were looked upon generally and collectively as dangerous persons—*held*—that there being no specific evidence against each accused individually, proceedings did not lie.—(5) A N 41, 19 Cr 871 (N). 8 P. W. 1917: See 29 C 779; Rev. C N 445 of 1900 (C)

(2) To prove a charge under Cl. (f) of S. 110, there should be proof of specific acts showing that the accused, to the knowledge of some particular individual is a dangerous or desperate character. It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and dangerous character, when they themselves have no personal knowledge of, or acquaintance with, him.—29 C 779 34 M. 235. 25 A 273 9 O. C 69 8 P. W. 1917 See 6 C. N 219.

173. **Persons instigating armed revolution come within Cl. (f).**—Where the evidence and finding were to the effect that the accused persons were engaged in inculcating ideas of armed revolution in the mind of school-boys and students, and that they were also connected with an organisation for the collection of money by dacoity—*held*—that the facts were sufficient to bring them within S. 110 (f) Cr. P. C.—20 C N 183

174. **General Principle.**—Where the offence does not necessarily involve a breach of the peace, the clause does not apply.

175. **Illustrations:—**

(a) Extortion not committed under circumstances involving a danger to life and property.—11 C N 789.

(b) Promotion of litigation.—The mere fact that a man has influence with *Patwaris* and promotes litigation without there being anything to show that he habitually takes or attempts to take money from litigants by offering in them threats to support their opponents would not raise the inference that he is dangerous or desperate within the meaning of Cl. (f)—16 A J 776. See (a) above.

(c) Gambling.—Especially when the accused is a man of means.—33 P. R. 1880

(d) Annoyances by knocking at doors and throwing bricks and insulting respectable women by lewd acts 5 C N 219

(e) Indecent overtures.—A person, who makes indecent overtures to school-boys, is a troublesome man and a man who declines to pay his debts and abuses people who sell goods to him, does not fall within cl. (f)—16 C 582 (1)

(f) Keeping a disorderly house.—A person, who earns his livelihood by prostituting one of his wives, is not a dangerous person within the meaning of the section. [5 P. R. 1892].

for good behaviour the accused must be given an opportunity of entering upon his defence or of citing witnesses.—11 C. 806, 11 C. B 13; See 2 C 384

177. Magistrate cannot put arbitrary limit on defence witnesses. Where the Magistrate after examining only 20 defence witnesses out of 42 present, declined to examine the remaining 22 on the ground that the number examined was equal to that of the prosecution witnesses, *held* that it was not open to the Magistrate to put such arbitrary limit on the witnesses whose evidence the defence desired to adduce. 20 Cr 201 (C) But where the Magistrate examined 24 witnesses in 27 sittings by which time the time limit had expired, and refused the demand of the defence to examine all the 170 witnesses cited, *held* that the Magistrate was justified in fixing a time limit. 35 C 244
178. Position and property of accused should be considered.—The fact that the accused has some property and position ought to be considered when dealing with a person under the provisions of s. 110 Cr P C.—13 A J 1055
179. Accused entitled to give evidence of good character. Where the accused was a servant of a *Tashildar* for a period of 10 or 11 years and was suspected of and tried for burglaries, but acquitted, *held* that in a subsequent proceeding under s. 110 Cr P C. the accused was entitled to show that his character, while in the service of his former master, was satisfactory. (6 A J 145 21 W R 37 54 30 P L 1010)
180. Evidence of good character by neighbours. "Speaking generally I think that a person who really is unimpeachable had character would find considerable difficulty in getting a large number of his neighbours to come forward and speak to his good character." *Hague*, 13 A J 1051 13 A J 1046
181. Magistrate bound to specifically consider defence witness.—If the Magistrate does not specifically consider the evidence for the defence, the High Court would remand the case to him for further consideration. Where a Court disbelieves the evidence adduced by an accused person, it ought to read specific reasons for such disbelief. 14 C N 214 (218) 13 A J 1046 13 A J 1055 20 Cr 459 (A) 17 C N 22 30 P L 1016 12 Cr 512 (C)
182. Duty of appellate court. It is the duty of the appellate court on an appeal being preferred from an order under s. 110 118 Cr P C to look into the evidence for the defence, and after dealing with it to come to a decision, even though the appellant's counsel has practically ignored it when arguing the case.—40 C 370
183. Where defence evidence is equally good with that of prosecution, accused is entitled to acquittal.—Where the evidence for the defence to the effect that the accused is a man of good character is as weighty as, if not weightier than, the evidence for the prosecution, it can not be held as proved that the accused is, by general repute, a bad character. 20 Cr 716 (A) 11 A J 461 10 A J 388 13 A J 611 12 Cr 542 (C) 30 P L 1, 1016 4 P R 1898
184. Note.—Where a Magistrate admits that the defence witnesses are such that "against them no allegation can be made," he would not be justified in disbelieving their evidence. 13 A J 1046 13 A J 1057
185. Evidence of respectable men in the locality should prevail over the evidence of police-officers. 37 P W 1010
186. Evidence of accused's caste-fellows and relatives. The evidence of the accused's caste-fellows and relatives and neighbours is, from one point of view, the best sort of evidence, available in connection with an inquiry into general repute. Such evidence should not always be brushed aside on the ground that a man's caste fellows and relatives are biased up in such proceedings to perjure themselves on his behalf. 12 Cr 512 (C) 21 Cr 60 (A) 13 A J, 1016 (1015)
187. Defence entitled to show proceeding is mala-fide. An extract from a volume of a *Gazette* was held to be admissible in evidence, in order to show that the defence of the accused, viz. that the prosecution has been started in order to coerce him to appoint a European manager, found support in that extract. 17 C N 234
188. [Note.] But where the proceedings are challenged as *mala-fide*, the allegation must be established conclusively either by direct evidence or by evidence of surrounding circumstances which leave no reasonable doubt as to the true nature of the proceeding.—*ibid*]
189. Evidence of reformation of character.—Where there is strong evidence of apparently respectable men on the record to show that a certain person has not, in recent times, lived a disreputable life, and such evidence has not been rebutted, security for good behaviour ought not to be demanded from such person. 30 P L 1916
190. Evidence should be tested by quality, and not by quantity.—Evidence should, as a rule, be tested by its quality rather than by its quantity, and where the quality on both sides is indifferent, the prosecution must fail. When the quality is good on both sides, the case must fail if the evidence for the defence altogether outweighs that for the prosecution. 4 P R 1898 11 A J 461
191. [Note.—Where the whole village is divided by acute party-feeling, and hith the prosecution and defence witnesses belong to that village, the Court ought to give this important fact their very best consideration. 20 Cr 551 (C)].

(11) Evidence of police officers and police papers.

192. Value to be attached to police-evidence. "To my mind, it is always strange that Magistrates in the present day attach so much weight and examine at such inordinate length the Police Officers who appear before them in proceedings under s. 110. These Officers, generally speaking, know nothing more than this, that there is current in the circle, a rumour to the effect, that a certain person is an associate of bad characters or otherwise a person who needs watching under the section. There may be cases in which such Officers do see something with their own eyes; and in that case their evidence is of course valuable; when it is evidence based upon hearsay

213. (c) Admission by the accused that he has been in jail - and that it is a bad charge, when there is nothing to show that he is a habitual offender - 3 B R 229
214. (f) Evidence of unsuccessful police-searches - 21 P W 1912
215. (g) A weak and unsupported charge of mischief by fire (where the accused's good character is proved by respectable witnesses) - 24 W R 37
216. (i) Evidence of suspicion - See VIII (1) Evidence of general repute (127)
217. (i) Evidence taken in previous trials, ending in acquittal - See (8) Previous Acquittal
218. (i) The fact that the accused has tenants of bad character to whom he lends money in difficulty, etc. - 6 C J 711
219. (k) Report by police officer unsupported by evidence - 5 W R 2

Cases.

220. (1) A landlord cannot be bound down under S 110 C- P C on the following grounds: (1) that he is landlord of tenants of bad character (2) that he is the employer of almost all the bad characters (3) that he constantly associates with them, knowing them to be thieves and bad characters and (4) that he is a mediator between thieves and their victims - 6 C J 711.

VIII. PREVIOUS CONVICTIONS AND ACQUITTAL.

A. Previous Convictions.

224. Previous conviction is not substantive evidence.

Previous convictions are not substantive evidence in a case under S 110 Cr P C though they may have an effect in deciding for what length of time the accused is to be bound down - 13 C N 318, 10 B 174, 2 A 835, 12 C 520

Note.-Evidence of previous conviction for offences is admissible as evidence of 'habit'

See 38 C 404, 3 P R 1915, 15 I C 811

225. Magistrate's duty when no previous conviction.

Magistrates ought, specially where no previous conviction is proved, to take great care to test the evidence for the prosecution and to assure themselves beyond reasonable doubt that the accused is really a habitual offender of the class named - 1 Bur S R 512, 2 B R 87, 12 C N 299

See 13 C 1124

226. Previous conviction must be legally proved.

Whenever it is required to prove a previous conviction, whether it be for the purpose of enhancement of punishment under S 75 I P C or in proceedings under Chapter VIII Cr P C, such previous conviction must be proved strictly and in accordance with law. Unless they are so proved

221. (2) The following circumstances are not sufficient for placing a man on security under S 110 (specially where these circumstances are shown to have occurred a year after the dismissal of a complaint of bribe preferred by the accused against two police Sub-Inspectors) (1) Two unsuccessful searches of his house; (2) His having been seen in the company of some suspected persons none of whom has ever been convicted of theft (3) Allegation of some *zafisposhes* and *hambardas* to the effect that people of their villages know him to be a *La tawak*, while no complainant has ever suspected him in a theft case - 20 P W, 1912.

(11) What is evidence-Cases.

222. (1) Where when charged with robbery in some and guns any satisfied that this meaning of S 110 C- P C - 15 Cr 235 (C)
223. (2) Where the evidence is to the effect that the accused persons were engaged in inculcating ideas of armed revolution in the mind of school boys and students, and that they were also connected with an organization for the collection of money by dacoity - *Hebt*-that the facts were sufficient to bring them within S 110 (f) Cr P C - 21 C N 183

no Court, whether it be that of a Presidency Magistrate or not, can properly take such previous convictions into consideration as against an accused person. - 43 C 1125,

227. Proof of previous conviction.

Previous conviction can not be proved by the mere production of an extract from the jail register and certified copies of previous convictions, without proof of identity. - 43 C 1124

228. Additional evidence to show an intention to return to former course of life necessary.

"The mere fact that the person, from whom the security was demanded, had been previously convicted of offences against property is not, in itself, sufficient to justify proceedings under S 110 Cr P C, unless there is additional evidence that the person complained against has done some act or required avocations which indicate on his part an intention to return to his former course of life and to pursue a career of preying on the community." - *Straitt*, J. 2 A 835; 6 W R 14, 12 C 520, 10 B 174, 6 A. 132. See *Panj Cr. Chapter XLIV P. 167*.

229. Previous conviction for a paltry offence not sufficient.

Previous convictions for a simple breach of the peace are not sufficient to justify a Magistrate in demanding security for good behaviour. - 4, N. P. 117.

241. Time not considered sufficient for locus penitentie
(a) 15 months in 31 C 783

- (f) 10 months in 40 J 319
(i) 2 months in (07) A N 31-43 C. 1128
(j) one week in 24 A 306

X. FINAL ORDER.

(1) Final order should correspond with preliminary order.

242. The final order must correspond with the notice to show cause under S. 112 and should not impose conditions as to the amount, nature and period of the security which were not entered in the original order (18) A N 276 41 R 135 26 M 371 9 B L (ip) 41 7 M T 182 11 O C 267 10 P W 1910 25 W R 50 11 P W 1907 See S. 118 proviso (i)

[Note. In cases where further security is deemed necessary, the Magistrate ought to issue fresh summonses. 9 B L (ip) 41]

243. Final order is illegal when necessary formalities have not been observed.

(2) Requirements of a valid final order.

- (1) When substance of the information received as required by S. 112 Cr. P. C. has not been given in the notice. 17 P W 1910 18 P W 1910
(2) When the notice has not been personally served on the person to whom it is given. 18 P W 1910 30 M 282 See also 2 W R 56 Rat 121.
244. Final order cannot be made on the basis of a notice under S. 107 Cr. P. C. Where the notice requires a person to show cause why he should not be bound to keep the peace, order can not be made binding him to be of good behaviour. 25 C 708 See 30 M 282 (see case)
245. Final order cannot be made ex parte. Order cannot be made *ex parte* without enquiry and proof even in cases where the accused, on being required to show cause, fails to do so. Rat 585 See 1 C L 48 9 A 152

246. Final order must be based on clear and legal evidence.—Order must be based on

discretion is not confined to cases in which positive evidence is forthcoming of the commission of crime by the accused. 3 M 248

247. Magistrate should give reasons for the finding based on legal proof.—The mere finding that a person was of bad character is not sufficient for binding down the accused. 8 M T 246 10 B 174 See 27 C 658

248. Note.—A Magistrate making an order under this section, or a Sessions Judge confirming the same under S. 123, is bound to find a specific ground on which the order may be based. When there is a finding in general terms, e.g. that the order is required in the interests of the community at large, such finding is not sufficient for the purposes of S. 110. 27 C. 656 [See also 5 L. B. 72] But a finding that the accused was by general repute a habitual offender is sufficient

to support the order. It is not necessary to give or establish specific instances. 9 B L 161

249. Order must show that Judge has considered the case of each individual prisoner.—In cases of joint enquiry under S. 110 Cr. P. C. each accused is entitled to an entirely independent examination of his own case. There must be a separate finding against each accused. 37 C 19 35 C 929 4 P R 1909 1 P R 195 25 P W 1909

250. Magistrate should discuss evidence of either side in the judgment.—30 P R 1916 When evidence on both sides is of an indifferent and interested character, the prosecution must fail. 4 P R 1899 27 P R 1903

251. What is not sufficient evidence for the purposes of an order under S. 110. Persons cannot be bound down on mere evidence of suspicion when sufficient reasons for the suspicion are not given [11 C N. 413] Mere association with men of bad character is not sufficient, unless the association is for the purpose of committing any of the offences enumerated in the Section [6 C J 711] Nor is evidence of witnesses who say that they began to suspect the accused since he was tried for, but acquitted of, a charge of dacoity, sufficient [11 C N. 129]

(3) Miscellaneous.

252. Persons liable to be prosecuted under the Penal Code should not be bound down.—In a case where certain persons are liable to be prosecuted for acts of extortion committed by them, an order requiring them to

- 253.

the number, character and class of sureties (if any) required. 20 W. R. 86

254. Final order, based on materials of a previous proceeding which failed on technical grounds, is not illegal.—Proceedings drawn up against certain persons terminated

drawn up fresh proceedings on the police report of 29th July. Held that the present proceedings,

- 255.

largest limit to be adopted except in very bad cases.—16 Cr 614 (H)

any honours from the Government are not necessarily not respectable [Cr R 9 of 1905]. The High Court altered the terms of the security by substituting the words "persons of respectability and substance" for the words "respectable land holders" in Rat 876.

(6) *Who may be sureties.*

- 267 (i) *Pairabikar.*—Friends although they might have evidenced their interest in the accused to help him in his defence.—16 A 1 263.
- 268 (i) *Ex-convict.* The fact that the proposed surety has on one occasion been convicted of offences under Sec 117 and 325 I P C does not of itself render him for ever afterwards unfit for being a surety. 20 A 189. See 21 C—35 (A).
269. (i) *Caste-fellows.* Sureties should not be rejected merely on the ground that they are caste fellows or relatives of the accused [16 H R 38 S S 17]. The mere fact that the surety belongs to the same tribe as the accused is no disqualification. Cr R 21 of 11.3.01.

(7) *Magistrate should not impose arbitrary conditions.*

- 270(a) *The amount should not be excessive.* A Magistrate should consider the station in life of the person concerned and should not go beyond a sum for which there is a fair probability of his being able to find security [1 W H (ap) 16 2 C 384 22 W H 37 23 A 80 3 S 10 16 B 372].

The means of the accused should be considered in fixing the amount [6 C 14 2 C 110 2 C 384 1 C 1 264 22 W H 74 19 W H 1 23 A 80 (100) A N 204 16 B 372 4 M H (ap) 46 1 P R 1883 30 P R 1890 17 P H 1000 24 P H 1000 30 P R 1900 28 P H 1901 60 C 109].

- 271 *Note.*—Amounts considered excessive—
19 W R 1 [One in sum of Rs 50,000, two, Rs 10,000 each, and three, Rs 5,000 each].
22 W R 74 [One in sum of Rs 10,000 with two sureties of Rs 5,000 each].
2 C 110 [Bonds amounting altogether to upwards of Rs 60,000].
1 C 1 264 [Security of Rs 20,000 in 4 sureties of Rs 5,000 each].
1 M H (ip) 16 [Security of three persons in two sureties of Rs 500 each].
16 B 372 [A bond for Rs 500 for one year with sureties for the like amount].
- 272 *Note.*—The High Court will reduce the amount of security if unreasonably excessive.—16 B 372. 21 A 80 28 P R 1901; 2 C 384 3 S 10.

- 273(b) *Magistrate should not rule out a security merely on the ground of relationship.*

A Magistrate has no right to impose an arbitrary condition requiring that the sureties to be furnished must not be related to the person bound down

[22 W H 37 10 C N 1027 4 C N 707 25 A 131 16 H H 134 60 C 189 39 P R 1880 24 P H 1000 6 P R 1914 8 S 173 1 S J (11) 1 B H 31—Con—24 C 155]. A little reflection will show that a relation is more likely than any other person to have influence over a man, and will be able to keep an eye on him. In short relationship is a recommendation [6 P R 1014 23 A 131].

- 274(c) *A surety is not necessarily unfit because he is not a neighbour.*—There is some divergence of opinion on this point. Residence in the neighbourhood at least at a place not far off from the place where the accused resides, has been deemed necessary, because otherwise the surety is too likely to be able to exercise any control over the accused [See 24 A 47 20 A 209 (18) A N 199 1 B R 359]. But later rulings are against the imposition of such restrictions [See 10 A J, 374 15 A J 845 16 A J 263 14 Cr 214(A) 21 Cr 377 (H) 17 Cr 95(C) See (15) U B H, 86]. In S A J 785 it was held that "if the Magistrate is satisfied that the surety is able to exercise proper influence over the accused, it is immaterial where that person may reside."

- 275(d) *Ability to exercise control over the accused.*

The much debated point—Should the surety be able to control the accused?—has been the subject of discussion in quite a host of rulings. The preponderance of judicial opinion seems to be now on the side of the negative; that is to say, it is not a necessary condition for the fitness of a surety that he should be able to control the accused [43 C 1024 37 C 140 37 C 91 35 C 100 (401) 6 C N 393 1 C N 797 4 C N 130 15 C 254 (C) 10 B R 198 10 A J 371 14 Cr 214 (A) 11 C C 267 60 C 199 24 P R 1900 1 S J 14 (14) U B H 41]. The contrary view has been taken in 20 A 209 21 A 471 (199) A N 199 (101) A N 143 12 A J 785 44 C 747 11 C 764 21 C 155 13 C N 80 1 S 46 3 S 230 8 S 229 8 Bur T. 53].

- 278 [Note.—It is not proper to call upon sureties to state in writing what influence they have over the accused and to reject them if they fail to do so.—37 C 91].

- 277 *Pecuniary fitness of surety.*—A Magistrate can not direct the exclusion of immovable property from the security to be furnished [18 P H 1906]. See Cr R 8 of 24-1-1903; Cr R 28 of 4-1-03.

- 278 *The condition that sureties should be inhabitants of one village is arbitrary and illegal.*—(15) U B H 84.

(8) *Illegal Orders.*

- 279 (i) *Order directing that the surety should pledge his proprietary right in land.*—7 N P 219.
- 280 (2) *Order directing the accused to deposit cash in lieu of taking a bond for good behaviour.*—6 C 14 1 A 751 Rat 671 Con—7 W R 30.
- (3) *Order directing sureties to state in writing what influence they have over the persons bound down for good behaviour, and rejecting them for failing to do so.*—24 C N 41 1 S 11.

(9) Rules and Formalities which must be observed.

281 (1) Personal bond of accused—Sureties without the personal bond of the accused is contrary to law, and no legal order can follow in pursuance thereof.—27 A 262

282 (2) Separate bonds from accused and sureties—There is no warrant in law for taking separate bonds from the accused and his sureties individually and severally exceeding in aggregate, the amount of security demanded.—30 P R 1890

283 (3) Bond on which bond is not the period

for which security is required, commences, it should plainly state the date on which the period expires.—4 Bur 270 (97-01) U R I 119 See 3 M. 238.

284 (4) Period and Amount for which security is to be taken—Security cannot be required for a longer period or for a larger amount than that mentioned in the notice issued under S 112 Cr P C.—26 M. 471, 38 239 & S 229 (90) A N 276 110 C 267

285 (5) Provision as to payment of penalty.—It is a serious mistake in the bond to make each of the sureties liable for the full penalty of the bond.—1 Bur 270 (97-01) U R I 119

[Note—A mistake in the form of bond cannot be rectified under S 537 Cr. P. C.—32 P R 1803]

(10) Character of the bond.

286 (1) Liability of principal and surety joint and several—The principal and sureties

XII. ALLIED SECTIONS.

291. (1) Ss. 104 and 110

The mere fact that S 104 Cr P C may be applicable does not oust the jurisdiction of the Court under S 110 Cr P C.—24 C I 25

292. (2) Ss. 104 and 110

Proceedings under S 110 should not be initiated during the continuance of an order under S 109 [8 C. 543] A joint trial of two persons, one under S 109 Cr P C, and the other under S 110 Cr P C, is illegal [8 C 91] See 39 M. 555 A magistrate cannot legally amalgamate Ss. 109 and 110 and require the execution of two bonds for an aggregate period of 18 months [Rat 946] A person cannot be bound down simultaneously under Ss 109 and 110 [6 M T 138 39 M 555 39 M 556 (N)]

293 (3) Ss 106 and 110 Cr. P C

When the evidence shows that there is an apprehension of

to a bond are on forfeiture jointly and severally liable for the amount fixed in it. The usual practice should be to require the principal and the sureties together to pay the amount forfeited. All three of them cannot be called upon to pay the full amount; the sum named can be recovered only once [74-06] U. B. I 13-31 (13) U B I 159 S. S. 173 Can—26 C. 562.

287. (2) Bond becomes extinct on payment of penalty.—A bond becomes extinct as soon as the penalty due upon default is exacted, and it ceases to be in force.—11 P. R 1889 (97-01) U B I. 20. 20 117 (13) U. B. I 159 26 P R 1891

(11) Miscellaneous.

288. Simultaneous bonds under Ss. 109 and 110 illegal—A Magistrate cannot require the execution of two security bonds, one under S 109 Cr P C. and the other under S 110 for an aggregate period of 18 months—Rat 946 See 39 M 555 39 M 556 (N). 11 Cr. 50 (M). 6 M. T 138. also S C. N 543

289 Security for more than one year should not be demanded except in very bad cases.—18 C 614 (M)

290. Cancellation of bond with a view to take fresh security.—The District Magistrate can not cancel a bond accepted by the trying Magistrate and call for fresh security on objection being taken by the police.—20 C 475. 1 C. N. 394 10 W R 40. (105) A N 143 16 P R 1905 29 P R 1901

[Note.—For further information if required, See Notes under S 122 Cr P C infra]

hension of any one using violence towards a particular person or persons [and not the community as a whole], he ought to be bound over to keep the peace as provided by S 107, and ought not to be proceeded against under S 110 Cr P. C [27 A 92 G A 32 2 A 837]

294. Proceedings under S 110 Cr P C taken as summons issued under S. 107 Cr P C—Where summonses were sent out under S 107 Cr P C, while the parties were cross examined in fact there has been a failure of justice—Held—that the irregularity in procedure was clearly cured by S 537 Cr P C.—14 Cr 65 (M) But See 30 M 282, 27 C 798 (x02)

XIII. IRREGULARITIES WHICH VITIATE.

295. (1) Institution of proceedings under S 110 Cr P C upon information suggesting the likelihood of an assault being committed and the public peace being endangered.—6 A 132

296. (1) Issue of notice to an accused person residing beyond the local limits of the Magistrate's jurisdiction See (78) M N 751

297 (c) Institution of the accused in jail pending trial 16 P R 917

298. (d) Joint trial of persons against whom there is no evidence of association See—Enquiry and Proceedings

299. (1) Holding of enquiry at a place outside the local limits of the Magistrate's jurisdiction.

300. (c) Proceedings under S. 110 during the continuance of an order under S. 104 Cr P C
S C N. 511
301. (a) Omission to state the amount of security, the period for which it is required, and the full particulars of the bond livelihood complained of.
17 P W 1910 See 18 P W 1910
302. (f) The fact that the preliminary order has been framed in such a way as to leave it in doubt as to whether the proceedings are under S. 104 or S. 110 Cr P C 11 C 14
303. (c) Entertainment of appeal under S. 106 Cr P C by a District Magistrate with whom the proceedings originated [although the objection was waived by the accused] 18, 98
304. (j) Requiring the security for a larger amount than stated in the order under S. 112. 18 P W 1910
305. (4) Where the Magistrate has not given the accused sufficient time to bring witnesses and have their evidence recorded, the proceedings will be set aside. 41 C 806
306. (f) Omission to refer the case to the Sessions Court where the order for security specifies a term exceeding one year. 6 P R 1914

XIII. (A) IRREGULARITIES WHICH DO NOT VITIATE.

307. (a) Transfer by a Magistrate not empowered.
37 C 244
308. (b) Omission to insert in the summons the amount of recognizance and security required. Pw S C 721. Com 17 P W 1910
309. (c) Failure to record a preliminary order. See Proceeding
310. (f) Institution of proceedings under S. 110 after issuing notice under S. 107 Cr P C (where the evidence was recorded at length and the parties had opportunity to cross-examine all the prosecution witnesses and were not prejudiced). 14 Cr 65 (M)

XIV. REVISION, REFERENCE AND REVIEW.

The High Court will interfere in revision

311. (1) When the failure to observe the necessary formalities has occasioned a miscarriage of justice. 18 P W 1910 17 P W 1910 (59) P R 24
312. (2) Where there is an utter and fatal want of discretion on the part of the Magistrate. 1 C L 208 See 2 C 110
313. (3) When the lower court has not exercised any discretion at all or exercised its discretion in a manner wholly unreasonable in the absence of the law. 14 B 331 6 B R 31
314. (4) To insure that the provisions of the Section are not made engines of oppression or instruments for the gratification of a private grudge. 12 Cr 512 (O) 34 C, 156
315. (5) When the defence evidence has been arbitrarily rejected or rejected on insufficient grounds. 13 A J 1046 13 A J 1055
316. (6) When on the facts forming the basis of the order the accused had previously been acquitted. 17 P W 1910 See—Previous Acquittal
317. (7) On failure to give sufficient opportunity to the accused, to bring his witnesses and have their evidence recorded. 41 C 106 See—Showing cause
318. (8) Where the appellate judgment of the District Magistrate is short and sketchy. See Appeal
- Powers in Revision**
319. (1) High Court can stay proceedings. See 14 C N CLXVII
320. (2) High Court can interfere at any stage of the case (but will do so only on exceptional grounds). 17 P W 1910. 18 P W 1910 17 C N 234 See 22 C 131 25 C 234 29 B 543 23 Cr 30 (C)
321. (3) High Court in revision can reduce the amount of security. 10 B 372 25 A 40
322. (1) High Court can interfere in revision with the appellate order of the District Magistrate.
10 P R 1599
323. **Rules for interference in revision**—The High Court will be justified in interfering when it is shown *prima facie* that there is something which the courts below have done either in excess of their powers, or by too summary exercise of their powers, or by misapplying the rules of evidence, or by not giving due effect to the evidence for the defence. The High Court will not interfere on the merits except in very exceptional cases. 17 Cr 461 (A) See 20 Cr 659 (A) 13 A J 1055
324. **Findings of fact**—The High Court will not ordinarily enter into the merits of the case. It will interfere with findings of fact only on the very clearest and strongest grounds—23 P R 1589 See 14 B 331 (343) 6 A J 157 17 Cr 461 (A)
325. **Reference**—See 121 (2) Cr P C [Principles applying to all non-applicable orders govern references in S. 110 cases—See 2 C 110 1 C L 208 14 B 331 Rat 708 10 P R 1899 11 P R 1893 13 Cr. 9]
326. **Review**—The power to review is vested in the District and Chief Presidency Magistrates. They have the power to release persons imprisoned for failure to give security or make an order reducing the amount of security or the number of sureties or the time for which the security is required [S. 121 Cr P C]. They can cancel any bond for good behaviour for sufficient reasons [S. 125]
327. **Further Enquiry**—An order for further enquiry can be made in the case of a person against whom proceedings under S. 110 have been taken and who has been released. If it be considered by the Magistrate that it is necessary to

(9) Rules and Formalities which must be observed.

- 281 (1) Personal bond of accused—Smecties without the personal bond of the accused is contrary to law, and no legal order can follow in pursuance thereof—27 A 262
- 282 (2) Separate bonds from accused and sureties—There is no warrant in law for taking separate bonds from the accused and his smecties individually and severally exceeding, in aggregate, the amount of security demanded—30 P. R. 1890
- 283 (3) Bond should state the date on which the period expires—When the bond is not executed till after the date, on which the period for which security is required, commences, it should plainly state the date on which the period expires—4 Bur 270 (97-01) U B I 119 See 3 M. 238.
- 284 (4) Period and Amount for which security is to be taken—Security cannot be required for a longer period or for a larger amount than that mentioned in the notice issued under S 112 Cr P C—26 M 471, 38 S 239. 8 S 229 (06) A N 376 110 C 267
- 285 (1) Bond should state the date on which the period expires—When the bond is not executed till after the date, on which the period for which security is required, commences, it should plainly state the date on which the period expires—4 Bur 270 (97-01) U B I 119 See 3 M. 238.

[Note—A mistake in the form of bond cannot be rectified under S 337 Cr P C—32 P. R. 1903]

(10) Character of the bond.

- 286 (1) Liability of principal and surety joint and several—The principal and sureties

XII. ALLIED SECTIONS.

291. (1) Ss 105 and 110
The mere fact that S 105 Cr P C may be applicable does not vest the jurisdiction of the Court under S 110 Cr P C—28 C J 23
292. (2) Ss 109 and 110
Proceedings under S 110 should not be initiated during the continuance of an order under S 109 [8 C N 543] A joint trial of two persons, one under S 109 Cr. P. C and the other under S 110 Cr P. C is illegal. [8 C N 91 See 38 M. 555] A Magistrate cannot legally amalgamate Ss 109 and 110 and require the execution of two bonds for an aggregate period of 18 months [Nat 946] A person cannot be bound down simultaneously under Ss 109 and 110 [6 M T 158 38 M. 555. 38 M. 556 (N)]
293. (3) Ss 107 and 110 Cr P C
When the violence shows that there is an apprehension of any one using violence towards a particular person or persons [and not the community as a whole], he ought to be bound over to keep the peace as provided by S 107, and ought not to be proceeded against under S 110 Cr P C [27 A 92 6 A 42 2 A 835]

XIII. IRREGULARITIES WHICH VITIATE.

295. (a) Institution of proceedings under S 110 Cr P. C upon information suggesting the likelihood of an assault being committed and the public peace being endangered—6 A 132
296. (b) Issue of notice to an accused person residing beyond the local limits of the Magistrate's jurisdiction See (18) M. N 751
297. (c) Detention of the accused in jail pending trial to a bond are on forfeiture jointly and severally liable for the amount fixed in it The usual practice should be to require the principal and the sureties together to pay the amount forfeited All three of them cannot be called upon to pay the full amount, the sum named can be recovered only once. (01-06) U B I 13 31 (13) U B I 159 88. 173 Con—34 C. 562
298. (d) Joint trial of persons against whom there is no evidence of association See—Enquiry and Procedure
299. (e) Holding of enquiry at a place outside the local limits of the Magistrate's jurisdiction.

300. (1) Proceedings under S 110 during the continuance of an order under S 101 Cr P C
S C N 543
301. (a) Omission to state the amount of security, the period for which it is required, and the full particulars of the last livelihood complained of, 17 P W 1910 See 18 P W 1910
302. (b) The fact that the preliminary order has been framed in such a way as to leave it in doubt as to whether the proceedings are under S 101 or S 110 Cr P C 11 C 13
303. (c) Entertainment of appeal under S. 106 Cr

P. C. by a District Magistrate with whom the proceedings originated [although the objection was waived by the accused]. 18 98

301. (b) Requiring the security for a larger amount than stated in the order under S 112 18 P W. 1910
305. (d) Where the Magistrate has not given the accused sufficient time to bring witnesses and have their evidence recorded, the proceedings will be set aside 41 C 806
308. (f) Omission to refer the case to the Sessions Court where the order for security specifies a term exceeding one year 6 P R 1914

XIII. (A) IRREGULARITIES WHICH DO NOT VITIATE.

307. (a) Transfer by a Magistrate not empowered 35 C 241
308. (b) Omission to insert in the summons the amount of recognizance and security required Pro S C 721 Cou 17 P W 1910
309. (c) Failure to record a preliminary order See Proceedings

310. (f) Institution of proceedings under S 110 after issuing notice under S 107 Cr P C (where the evidence was recorded at length and the parties had opportunity to cross examine all the prosecution witnesses and were not prejudiced) 14 Cr 65 (M)

XIV. REVISION, REFERENCE AND REVIEW.

The High Court will interfere in revision

311. (1) When the failure to observe the necessary formalities has occasioned a miscarriage of justice 18 P W 1910 17 P W 1910 (69) P R 23
312. (2) Where there is an utter and fatal want of discretion on the part of the Magistrate 1 C L 268 See 2 C 110
313. (3) When the lower court has not exercised any discretion at all or exercised its discretion in a manner wholly unreasonable or in defiance of the law 14 B 311 6 B R 14
314. (4) To ensure that the provisions of the Section are not made engines of oppression or instruments for the gratification of a private grudge 12 Cr 542 (H) 35 C 156
315. (5) When the defence evidence has been arbitrarily rejected or rejected on insufficient grounds 13 A J 1046 13 A J 1055
316. (6) When on the facts forming the basis of the order the accused had previously been acquitted 17 P W 1910 See Previous Acquittal
317. (7) On failure to give sufficient opportunity to the accused, to bring his witnesses and have their evidence recorded 11 C 106 See Showing cause
318. (8) Where the appellate judgment of the District Magistrate is short and sketchy See Appeal

Powers in Revision.

319. (1) High Court can stay proceedings See 14 C N CLXVII
320. (2) High Court can interfere at any stage of the case (but will do so only on exceptional grounds) 17 P W 1910 18 P W 1910 17 C N 234 See 22 C 131 25 C 231 20 B 543 29 Cr 30 (C)
321. (3) High Court in revision can reduce the amount of security 16 B 372, 23 A 80

322. (1) High Court can interfere in revision with the appellate order of the District Magistrate 10 P R 1899

323. Rules for interference in revision.—The High Court will be justified in interfering when it is shown *prima facie* that there is something which the courts below have done either in excess of their powers, or by too summary exercise of their powers, or by misapplying the rules of evidence, or by not giving due effect to the evidence for the defence. The High Court will not interfere on the merits except in very exceptional cases. 17 Cr 461 (1) See 20 Cr 684 (4) 13 A J 1055

324. Findings of fact.—The High Court will not ordinarily enter into the merits of the case. It will interfere with findings of fact only on the very clearest and strongest grounds.—21 P R 1889 See 14 B 311 (341) G A J 487 17 Cr 461 (A)

325. Reference. See 124 (2) Cr P C [Principles applying to all non-appellable orders govern references in S 110 cases.—See 2 C 110 1 C L 268 14 B 311 Rat 708 10 P R 1899 11 P R 1899 14 Cr 11

326. Review.—The power to review is vested in the District and Chief Presidency Magistrates. They have the power to release persons imprisoned for failure to give security or make an order reducing the amount of security or the number of sureties or the time for which the security is required [S 124 Cr P C]. They can cancel any bond for good behaviour on sufficient reasons [S 125]

327. Further Enquiry. An order for further enquiry may be made in the case of a person against whom proceedings under S 110 have been taken and who has been released. If it be considered by the Magistrate that it is necessary

institute further proceedings, he is competent to do so on fresh information received.

Per—27 C 622 33 C 5 31 M 85 (1893) A. N. 200 60 C 262 (267) : *See* 6 P. R. 7911 (F.B.) 12 P. R. 1905

XV. APPEAL.

328. An appeal lies to the District Magistrate.

Where the accused has been bound over by a subordinate Magistrate S. 406 applies to final orders but not to preliminary orders under S. 112.

24 P. R. 1856 15 P. R. 1903 (P. 34) A.C. 878 *But See* 18 P. W. 1910 17 C. N. 239.

But where the District Magistrate as the executive head of the District has been actually concerned in the institution of proceedings he is debarred from entertaining an appeal *he* S. 556 Cr. P. C. [1 S. 95]

329. No appeal lies.

(a) From the order of the District Magistrate to the High Court—9 C 978 (98) A. N. 127 23 Cr. 689 (A).

(b) From the order of a District Magistrate after confirmation by the Sessions Judge under S. 123 Cr. P. C.—1 C 974.

(c) From the order of a Sub-Divisional Magistrate after confirmation by the Sessions Judge under S. 123 Cr. P. C.—(87) L. B. 381 15 P. B. 1903.

(d) From an order by a Presidency Magistrate S. 406 Cr. P. C.

(e) From preliminary orders under S. 112—21 P. R. 1856 15 P. R. 1903 77 P. R. 1891

Appellate judgment to show examination of evidence on record.—A District Magistrate's appellate judgment must show that

Con—36 A. 117 24 A. 149; 24 A. 107; (97) A. N. 201 20 Cr. 701 (A) 36 C. 163 23 C. 493 24 P. R. 1903 2 L. B. 89 24 P. R. 1903 33 P. R. 1905 [overruled in 6 P. R. 1911 (F.B.)] 16 B. 661 31 R. 491.

he has considered and appreciated evidence both for and against the accused. If the record does not show this, the High Court will remit the case for further consideration [4 O.J. 141. 38 A. 333; 14 A. J. 279 17 Cr. 9 (A). 6 A. J. 457 *See* 17 C. N. XX; 6 P. R. 1903; 12 P. R. 1885. 30 P. R. 1916 23 Cr. 551 (C). 12 Cr. 542 (O)]. It is the duty of the appellate Court to look into the evidence adduced by the defence in the case although that evidence is ignored by the counsel for the defence in the appeal [14 Cr. 419 (C)]. But the High Court will not interfere except in exceptional cases and provided that the judgment of the Court hearing the appeal under S. 426 Cr. P. C. shows that it has really and not merely nominally gone through the record [6 A. J. 457; 17 Cr. 461 (A) 13 Cr. 9 (A)].

District Magistrate cannot order further enquiry.—A District Magistrate on appeal can not order further enquiry to be made after setting aside the order—33 C. S. Appeals from orders under Chapter VIII should not be summarily rejected.

"It is not unreasonable for the High Court to insist that the District Magistrate should not dispose of an appeal of this nature otherwise than by a judgment showing on the face of it that he has applied his mind to a consideration of the evidence on the record and of the pleas raised by the appellant both in Court below and in his memorandum of appeal." *Per* Pigott J. in 39 A. 393.

XVI. TRANSFER.

District Magistrate.

(1) All transfer cases under S. 110 to any subordinate Magistrate under S. 102 Cr. P. C. The words 'my case' in S. 102 include a case under S. 110 Cr. P. C. and are not limited to criminal cases only—35 C. 241 [*See also* 31 C. 350 26 M. 188] 10 C. N. 1035 2 C. J. 614 (616) 5 P. R. 1905

(2) District Magistrate acting under S. 110 Cr. P. C. may transfer the case for enquiry to a sub-Divisional Magistrate 2 L. B. 89

The fact that the Magistrate has acted on private information is a ground for transfer. Section 190 (1) (e) applies to proceedings under S. 110 and *See* 6 L. B. 191 Cr. P. C. *also*—S. 29 C. 392 *See* 19 Cr. 891 (P.B.) 1 *Contra* 27 A. 172

High Court.

Cannot transfer a case in which the Magistrate has acted within the meaning of S. 117 Cr. P. C. 19 A. 291

[But the ruling must be held to be absolute. The word 'acted' has been omitted in S. 117 as enacted by the Code of 1909]

Has the High Court power to transfer the case to a Court outside the District?

The Allahabad High Court has held the view that it cannot in these cases [*See* 16 A. B. 19 A. 231. 39 A. 47]. This view has not been accepted in a later ruling of the same Court [32 A. 612. 12 A. J. 336] and *also* here [*See* 3 O. C. 247. 1 S. 98] in Punjab following the ruling in 2 L. B. 179 and 28 C. 709 (cases under S. 145 Cr. P. C.) the Chief Court held that it had no power under S. 326 Cr. P. C. to transfer a case under Section 110 Cr. P. C. [13 Cr. 563 (P)]

A case under S. 110 cannot be transferred

(1) by a Magistrate not empowered; but the irregularity will not vitiate proceedings in the absence of prejudice [35 C. 249] *See also* 4 C. N. 821 [*Subsequent* 31 R. 145]

(2) to the file of a subordinate Magistrate not empowered to act under the section by the District Magistrate. If the former tries the case even after transfer the proceedings will be illegal—*But* 878 *See* S. 530 (1); 22 C. 698 *Contra*—1 S. 2 *See also* 31 C. 350. 21 A. 151.

Magistrate bound to postpone proceedings.

—A Magistrate, on an application for postponement being made under S. 230 (4) is bound to adjourn proceedings—12 P.W. 1912 21 P. L. 1103 11 C. N. cccvii

Case not to be submitted to District

Magistrate for orders. A subordinate Magistrate after instituting proceedings under S.

110 Cr. P. C. cannot submit the case to the District Magistrate for orders—14 B. R. 713.

What is not a sufficient ground for transfer.

—It is not a sufficient ground for transfer that the case is causing considerable excitement in the District and most of the inhabitants had their sympathies enlisted on one side or the other—36 A. 231 See 6 C. P. D. 21 C. P. D. 19 A. 61

XVII. MISCELLANEOUS.**(1) Penalties for false prosecution.**

A private complainant who sets the law on foot in motion, can be prosecuted under Sec. 211 P. C. [18-132]

A Police Officer can not be prosecuted on the faith of the prosecution—13 A. J. 112

(2) Damage suit lies for malicious prosecution.

—A person having information on the basis of which proceedings under S. 110 are drawn up may be liable for damages for malicious prosecution.

Pro—10 C. 377. Con—13 M. 1 350

(3) S. 250 Cr. P. C. does not apply.

S. 250 Cr. P. C. does not apply to miscellaneous proceedings like proceedings under S. 110 (1) P. C.—13 A. 365 25 B. 48 See 42 P. R. 1905

(4) Bail.

Magistrate is empowered to require bail from the accused 12 Cr. 533 (B)

Arrest without warrant of person against whom proceedings are contemplated.

Under s. 53 cl. (c) an officer in charge of Police station can not arrest without warrant a person against whom proceedings under S. 110 are contemplated 14 Cr. 618(A)

(5) Admissibility of previous orders under S. 110 Cr. P. C. in a trial under S. 401 P. C.

Previous orders under S. 110 Cr. P. C. hindering the accused over to be of good behaviour on the ground of his being a habitual thief are relevant evidence for the purpose of proving association and intention to habitually commit theft within the meaning of S. 101 1 P. C.—16 Cr. 300 (F)

(6) S. 167 does not apply to proceedings under S. 110—See 167 Cr. P. C.

applies to proceedings under Chapter XIV, and not to those under S. 110 Cr. P. C., and therefore a second class Magistrate has no power to remand the accused to custody and to keep him in sub-jail as prisoner with a view to proceedings being taken under S. 110—39 M. 925 36 A. 262

(7) Proceedings against persons registered under Criminal Tribes Act.

The fact that the persons proceeded against are already registered under the Criminal Tribes Act

may be a factor and an important factor which the Magistrate should take into consideration before he makes any order against them under S. 110 Cr. P. C.—23 Cr. 30 (C)

(8) S. 517 Cr. P. C. applies to property produced in the course of an enquiry under Chapter VIII.

Courts acting under the preventive sections 107 to 110 Cr. P. C. have power to make an order under S. 517 Cr. P. C. with regard to property which has been properly produced before them in the course of the enquiry under S. 117 Cr. P. C.

Pro—20 C. 135(M) 34 C. 347

Con—16 Cr. 811(M)

(9) S. 103 and S. 495 Cr. P. C. do not apply to security proceedings.

In proceedings under S. 110 Cr. P. C. no charge is framed. The proceedings commence with the order made under S. 112 Cr. P. C. The accused is merely "released", he can not be "discharged", or "acquitted". Ss. 495 and 403 Cr. P. C. do not, therefore, apply to security proceedings 36 M. 315 21 Cr. 386 (C)

(10) Analogous Law.

Analogy with S. 36 of the Legal Practitioners Act (Touts).

The recognised principles applicable in cases under S. 110 Cr. P. C. are applicable to proceedings under S. 36 Legal Practitioners Act (XXVIII of 1879) i. e. to say hear say evidence is admissible in both cases—19 Cr. 269 (A)

The procedure applicable to proceedings under S. 110 Cr. P. C. is applicable to proceedings under S. 3 of the Burma Opium Law Amendment Act and also S. 1 of the Gambling Act—20 Cr. 424 (L B)

(11) Principles of S. 190 (c) Cr. P. C. applies to proceedings under S. 110 Cr. P. C.

Where the trying Magistrate was considerably influenced by his own enquiry before he drew up proceedings under S. 110 Cr. P. C., held—that he was really in the position of a prosecutor and should not have tried the case himself—4 Pat. J. 7 21 C. 392 See Cr. R. No. 491 of 1906

(12) S. 397 does not apply to imprisonment in default of security.

See Notes under S. 123 Post

111. The provisions of sections 109 and 110 do not apply to European British subjects in
 Prison as to European vagrants where they may be dealt with under the European Va
 Act 1874

Notes.

1. **Meaning of "vagrant"**—A vagrant is a person of European extraction found asking for alms or wandering about without any employment or visible means of subsistence—See s 3 of the European Vagrancy Act (IX of 1874)
2. **Where they may be dealt with**—The European Vagrancy Act has been declined to be in force in
 - (a) Upper Burma generally—See Part I Sch II of Act XX of 1886
 - (b) Southern Persia—See S P Laws Reg—III of 1886
 - (c) The Districts of Hazaribagh, Lohardigha, and Manbhum and Pergana Dhalbhum and the Kolhan in the District of Singhbhum—See *Gaz of Ind* Oct 22 1891 Pt I p 504

(d) The scheduled district of the North-Provinces *Tamul-Gaz of Ind* Sept. 23, 1890

3.

Chapter VIII of the same) applicable to a not being a British subject—See s 38 Act

4. **European British subject**—For s 4 (i) upon For person of European extraction—See s. 3 (a) and (b) of Act IX of

112. When a Magistrate acting under section 107, section 108, section 109 or section 110
 Order to be made it necessary to require any person to show cause under
 section he shall make an order in writing, setting forth the substance of the information and
 the amount of the bond to be executed, the term for which it is to be in force, and the
 character and class of sureties (if any) required

Arrangement of Notes.

I. Scope and object.

II. Nature and contents of the order.

- (1) Substance of information—meaning and case
- (2) Amount and term of the bond
- (3) Sureties
- (4) Procedure

III. Notice to show cause.

IV. Irregularities.

- (1) Which vitiate.
- (2) Which do not vitiate

V. Miscellaneous.

- (1) Revision by the High Court
- (2) Power to cancel order.
- (3) Transfer and stay of proceedings
- (4) S 167 Cr P C does not apply.
- (5) Conditional Bail

I. SCOPE AND OBJECT.

1. **The object**—The intention of the law in the matter of sureties for good behaviour and so forth is not that the person called upon to furnish them should be sent to jail but that if possible he should be kept out of jail—Per Henton J in 16 B R 138 See R S. 137
2. **Application**—The two Sections Ss 55 and 112

provide very strong remedies and should put in force without the greatest delay 14 A 15.

3. **Provisions merely directory**—Provisions of this Section are merely directory imperative.—R C. 724 See 5 O C 313

II. NATURE AND CONTENTS OF THE ORDER.

(1) Substance of information—meaning and case.

4. **Meaning**—The 'substance of information' means something more than a mere assertion in writing by the Magistrate that he has been informed that

a breach of peace is likely to take place to enable accused to bring evidence to truth of such information [6 A. 214] 35. See 1 C L 130.

5. Not to be a mere reproduction of the language of clauses (a) to (f) of S. 110.

(1) The preliminary order under S. 112 should not merely be a reproduction of the language of clauses (a) to (f) of S. 110 Cr. P. C. A notice under the section should be a sufficient indication of the time and place of the acts charged with sufficient details to enable the accused to know what facts he has to meet—*Per Moore J* 21 Cr. 374 (W) 1 C L 130 11 C 13; (18) M. N. 751 11 W R 35 15 W R 2 G. W. R. 191. 2 H. L. (wp) 7: G. A. 214 Cow—35 C 243.

6(2) The discretion in this section that the order should set forth the substance of the information received is not complied with by the mere repetition in general terms of one of the headings of the clauses specified in S. 110 or by mere mention of the personal statements made to the Police. The order must set forth the particular circumstances of a previous conviction, suspicion of connection with certain offences, which form the grounds of the accusation—and when the enquiry is directed against more than one person the circumstances justifying the institution of joint proceedings with sufficient detail to give the accused a clear understanding of the matter he is required to meet in his defence.—Cr R 12 of 2-03 *See* 12 A J 36 *See* 1 N. P. 304 3 N. P. 96 G. A. 132 17 C 571

7. What is substance of information—A statement in the order that the Magistrate has received information that the person to whom the order was addressed was a habitual thief and receiver of stolen properties is a sufficient compliance with the provisions of this section—16 A N 73

8. An order under this Section corresponds to a charge in a warrant case.

(5) U B 29

9(A). An order under the Section is not in the nature of a rule nisi. The onus *probandi* is on the prosecution. 9 A 452 1 C L 18

(2) Amount and Term of the Bond.

10(a) Amount—In fixing the amount of security the Magistrate should consider the station in life of the person concerned and should not go beyond a sum for which there is a fair probability of his being able to find security—[4 M H (ap) 46 47 2 C 384 22 W R 37 24 A 80 16 B 372 4 S 10 Cr R 17-4-06] When the Magistrate fixed the amount (Rs 500) after taking into consideration five previous convictions recorded against the accused and the fact of his being a habitual thief, held that the Magistrate had not exercised a proper discretion [16 B 472] *See* notes under S. 110 (11) Security and surety

11(h). Term—In S. 107 cases security should not be demanded for the extreme term of one year except when absolutely necessary [6 A 214] Security for more than one year should not be demanded, except in very bad cases [16 Cr 911 (W)] The order should set forth a definite

period for which security is required [3 M. 238; 20 W R 30]

(3) Sureties.

12. The words "character and class of sureties," in this Section include both respectability and solvency [8 S 173, 3 S 240; 20 A. 206; Cr II of 17-4-06] The Magistrate is entitled to lay down the number of sureties—the character of the sureties—i.e., they should be men of good character and the class of sureties—that is they should be men of sufficient substance to furnish security, but we do not think that the restriction to local men is in any way contemplated by S. 112 Cr. P. C.—Holmwood J 15 Cr 234 (C).
13. Magistrate should not act arbitrarily.

(1) In imposing restrictions and limitations on sureties, Magistrate should not act arbitrarily or unreasonably

(14) U B 4th q 44 (85-01) U B I 228 22 W H. 37 37 P R 1840 7 A J 903

(2) A Magistrate should abstain from imposing conditions likely to unduly embarrass the persons to be bound over 16 B R 138 (80) A N 114-1 M H (wp) xlv G O C 189 8 S 173 *See* 2 C 381 1 C L 268

14. Onerous and arbitrary conditions should not be imposed.

See S. 110 (11) Security and surety.

15. Conditions which may be imposed.

See S. 110 (11) Security and surety.

(4) Procedure.

16(a). The Magistrate may record evidence before making the preliminary order—2 Weir 51

17(b). The order must be in writing—36 A 262. 10 A J 351

18(c). The order should contain particulars of the security required—20 W R 36 15 W R 43 17 P W 1010 1 N P 301

19(b). It is unnecessary to give a list of prosecution witnesses—35 C 273 15 M N 751

20(c). If a printed form is issued, special details applicable to each individual must be filled. Cr B 12 of 2-2-03 12 A J 336

21(i) There is nothing irregular in a Magistrate calling for a report from a subordinate Magistrate before issuing notices if he doubts the truth of the information—2 Weir 51

21A(a) Where a general report by the Police against a number of persons is made to a Magistrate, the Magistrate should sift the case against each individual upon a separate preliminary order against each under this Section—2 Weir 55

21B(b) Where a Magistrate binds S. 110 with reference to each notice under S. 112 Cr. P. C. was issued is applicable to a case, he ought not to proceed to deal with the case as one under S. 107, without first issuing a fresh notice under S. 112, with reference to the altered view of the circumstances. 30 M. 22

115 Every summons or warrant issued under section 114 shall be accompanied by a copy of the Copy of order under section 112 to the order made under section 112, and such copy shall be accompany summons or warrant delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Notes.

1. Shall be accompanied by a copy of the order made under S. 112.—This provision, was wanting in the Code of 1861 under which it was a order [20 W. imperative on with the summings in the absence of prejudice [21 Cr. 321 (Pat) 11 B R 740 (741) 7 O C 313 20 Cr 763 (N) Con—2 Weir 55 17 M, J 438 ('97-'01) U, B 16]
2. Mode of service.—There must be a separate

summons to each person and for each charge [3 N- P. 96 2 Weir 55] The service should be effected in the manner provided by Ss 69 to 71 *supra*. The serving officer in certifying service must also certify to the delivery of the copy of the order See Ss 70 and 71 *supra*.

3. Object.—The object is to provide the person called upon to show cause with proper information as to the materials upon which process has been granted against him—G A 214 See 1 C L 130 See 20 Cr. 354 (M) (Per Sashagiri Aiyar J.)

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Notes.

- 1 Application of the section.—The Section applies only to proceedings under S 107 Cr. P. C and not Ss 108 to 110 [2 Weir 54]
2. Exercise of discretion.—Where the person against whom proceedings were taken was at a

distance and there was no special circumstance making his personal attendance necessary, it would be a very *unwise exercise of his jurisdiction*, seeing that the Magistrate could under S 116 allow him to appear by a pleader—12 C 133

117. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed

(3) For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

Proposed amendments to the Section—In section 117 of the said Code—

(1) In subsection (1), after the word "formed," the words "nor shall any witness be recalled for cross examination except with the permission of the Court" shall be inserted

(2) After subsection (4), the following sub-section shall be inserted—

"(7) Pending the completion of the inquiry under subsection (4), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility, or the commission of any offence, or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded."

Provided that the conditions of such bond, whether as to amount or as to the number of the sureties or the nature of their liability, shall not exceed those specified in such order.

(iii) Sub-section (3) shall be re-numbered (4), and alter the words "habitual offender" in the said sub-section, the words "or is so desperate and dangerous as to render his being at large without security hazardous to the community" shall be inserted, and the words "or otherwise" shall be omitted.

(ii) Sub-section (4) shall be re-numbered (3).

Notes.

1. Nature of the enquiry under the Section.

"Enquiry under this Section amounts to a judicial proceeding and must be conducted judicially—[10 P. R. 1899 18 W. R. 2 See 25 A 273 4 M. R. xxi] The institution of proceedings under S. 117 Cr. P. C. is not an accusation for an offence triable by a Magistrate [2 B. R. 339]."

2. Place where the enquiry should be held.

(1) An enquiry under S. 110 should not be held at a place which is outside the local limits of the Magistrate's jurisdiction and where he has no power under the law to conduct proceedings—3 C. J. 193.

(2) ... sible, in the ... as to avoid ... and to en- ... procure the ... speak in his ... re- ... nance

3. Procedure where the Magistrate has personal knowledge.

If a Magistrate institutes proceedings on materials based on his own knowledge, he should not proceed with the trial [29 C. 392 See 22 W. R. 79]. The proper procedure where it is necessary to utilise the personal knowledge of a Magistrate, is that the case should be tried by another Magistrate and the Magistrate with the personal knowledge should be examined as a witness [27 P. R. 1903 See also 2 A. 405 4 P. R. 1899].

4. Terms explained.

(a) Meaning of "further evidence."—The words "further evidence" in S. 117 mean evidence *excludenda genera* with the evidence described in and the words "enquire into the truth of the information upon which action has been taken" and therefore can not go outside the information—36 A. 239.

(b) ... "or otherwise" ... ed to ... and not ... police

list of cases where the accused were suspected [12 A. J. 937]. The effect of the words "or otherwise" is to render admissible any evidence which would be relevant if the accused person or persons were being tried on a charge of being habitual offenders—per Piggot J. [20 Cr. 206(A)]. Though it is not very clear what the precise meaning of the words "by evidence of general repute or otherwise" may be, it is the intention of the Legislature that the Magistrate should use a very large discretion as to the evidence which he may admit in proceedings under S. 110. Applying the principle of "*excludenda genera*," the nearest approach to general repute would be hearsay not amounting to general repute [(4) A. N. 146].

5. Powers to be exercised with scrupulous care.—Sec. 110 read with S. 117 gives very extensive powers to magistrates and should be administered with scrupulous care and materials ought not to be brought in to the record which are not legally admissible in evidence and which are liable, if on the record, to prejudice the accused [20 Cr. 689 (A) Rat 641 Rat 640]. It is incumbent on the Magistrate to exercise the greatest caution and impartiality and to be careful not to be influenced by outside gossip and vague rumor [Rat 639 4 P. R. 1899 27 P. R. 1903 29 C. 392 2 A. 405].

6. Enquiry not strictly limited by the terms of order under S. 112.—The enquiry provided by Ss. 117 and 118 is not strictly limited by the terms of the order drawn up under S. 112, though if the person eventually bound down can show that he was misled or prejudiced by the terms of the order he would be entitled to relief—17 C. N. 331.

7. Evidence of general repute.—See 7 (A) Evidence of general repute—S. 110 Cr. P. C.

8. Meaning of Habitual offender.—See 7 D. Evidence of Habitual offender—S. 110 Cr. P. C.

9. As to procedure.—See (IX) Enquiry and Procedure S. 107: (IV) Procedure and Evidence S. 109: (6) Enquiry and Procedure S. 110.

10. Joint trial—Meaning of "associated together."

See IX (3) Joint Enquiry under S. 107.

6 D.—Procedure and rules as to joint trial under S. 110.

11 [Note—The different parts of the section applicable to Ss 107, 109 and 110 Cr. P. C. have been dealt with exhaustively under appropriate headings in those sections]

12 **Statements in the nature of confessions**—Statements made by one of several persons against whom a joint enquiry is being made under S 117 Cr. P. C. which are in the nature of confession and contain incriminating matter against the other accused are admissible in evidence—20 Cr. 206 (A)

118 (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or (Order to give security) maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided—

first that no person shall be ordered to give security of a nature different from, or of an amount larger than or for a period longer than, that specified in the order made under section 112 :

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive

thirdly, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Notes.

appropriate chapters, sub chapters and headings in the notes under sections 107, 109 and 110 Cr. P. C. They have not been repeated here in order to increase the bulk of the book without in any way enhancing its usefulness

[See Chapters—(10) Final order and (11) Security and surety under S 110: Chapters (11) Final order and (13) Security under S 107: Chapter 4(3) and (8) under S 109 Cr. P. C.]

1 **Who can act under S 118 Cr. P. C.**—Where the Magistrate who tried the case was at the time of the investigation a Sub-judicial Magistrate but ceased to be so at the time when he made the order (and was not a Magistrate of the first class)—held that the order was invalid and without jurisdiction (17 Cr. 14(A)). When an enquiry was held under S 117 Cr. P. C. by one Magistrate and the order under S 118 Cr. P. C. was passed by another—held that the order was illegal [(25) A. N. 30]

2 **Prosecution of defence witnesses during enquiry is highly improper**—The accused had 60 witnesses in attendance. On the first day he examined 18 only. At the close of the day's proceedings the Magistrate at the instance of the public prosecutor called on 2 of the witnesses to show cause why they should not be prosecuted under S 193, P. C. On the following day 12 more were examined of whom at least 4 did not support the defence. On the day following out of the remaining witnesses the defence

13. ~~Section 118~~

five sections (Ss 107 to 110) have power to make an order under S. 117 Cr. P. C. with regard to a property which has been properly produced before it in the course of the enquiry under S 117 Cr. P. C. though there was no proof that any officer has been committed with reference to the property [21 Cr. 135 (M) 34 Cr. 347 Cow 16 Cr. 811 (M)]

ventured to examine only 3. Held that the action of the Magistrate in taking action against the two defence witnesses during the pendency of the proceedings was highly injudicious and was calculated seriously to hamper and prejudice the accused in their defence—18 Cr. 114(C)

3. **Order for imprisonment in anticipation.**

(1) *person give notice 303.*
(..) [Per
Irwin J]

(2) *person give notice 303.*

18 P. R. 1906

4. **Order must correspond to the grounds of complaint in the notice.** A Magistrate who, on the accused showing cause, finds that the particular facts alleged against him and forming the basis of his preliminary order is unfounded, can not proceed to found his order on an altogether different set of facts in the same proceeding [21 W. R. 6]. If he wishes to proceed further, he can do so only after issuing a fresh notice under S 112 Cr. P. C. drawn up with reference to the altered view of the circumstances [30 M. 242] so where an order under S 112 was recorded with reference to S 109, the Magistrate was not competent to pass a final order, demanding security for good behaviour under the provisions of S 110 [(197-01) U B 24]

4A. Order must be based on formal proceedings.—An order of a Magistrate under S. 118 Cr. P. C. can not be supported where it appears that the procedure prescribed by S. 112 Cr. P. C. was not followed by him—2 Weir 561.

5. Minors.—Minors can be detained in reformatory on default. Minors should not be detained in reformatory merely for being unable to furnish security. [4 C. P. 17]

6. Third proviso does not apply to S. 503 Cr. P. C. The third proviso to this Section that a bond for keeping the peace or for good behaviour in respect of a minor shall be executed only by his sureties does not apply to bonds of first offenders released on probation under S. 502 *infra*.—4 L. B. 12

7. Order under this section can not be treated as previous conviction.—A previous order under S. 118 requiring security for good behaviour can not be taken into consideration for the purpose of enhancing sentence, upon the accused being subsequently convicted for an offence under the I. P. C.—1 Bur. S. R. 190 See 21 Cr. 347(C)

8. Final order should be postponed to give accused reasonable opportunity to furnish security.—If for any cause, the accused has not had a reasonable opportunity of furnishing sureties with which he ought under normal circumstances, to come already furnished, the only legal method of giving him time for his purpose is to postpone the making of the final order under S. 118 for such period, as may be deemed necessary. After order is passed, it is illegal to allow time to find sureties.—[any Cr. Chap. XLIV para 13a p. 108]

[Note.—But See S. 120(2) Cr. P. C. *infra*]

9. Restrictions of 1915.—118 Cr. P. C. (of 1915). 118 Cr. P. C. to furnish security for good behaviour it is illegal to make an order at the same time under S. 7 of the Punjab Restrictions of Bahadur Officers Act the restricting his movements.—21 Cr. 387(P)

10. S. 403 Cr. P. C. inapplicable to orders under Ss 110-118 Cr. P. C. An order under S. 118 Cr. P. C. is merely preventive and does not amount to a punishment for any offence. Consequently there is no bar to the subsequent punishment of a person bound down for an offence under S. 401 I. P. C. [being members of a gang associated for the purpose of habitually committing crimes].—24 Cr. 386(C) 36 M. 315

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Notes

1. Meaning of "discharge".—The term "discharge" in S. 119 has been used in a non-technical

11. Bond can be taken for future good conduct of the person under trial only. A condition inserted in a bond for keeping the peace that the person executing it should be responsible for any breach of the peace by his servants and dependants is illegal.—(1881) A. N. 152

Appeal.

12. Orders confirmed under S. 123 Cr. P. C.

(i) Orders under S. 118 for the purposes of appeal under S. 406 Cr. P. C. do not include orders requiring confirmation by the Sessions Judge under S. 123 *infra* and affirmed by the latter [23 P. R. 1886 (on 20 C. 307)]. No appeal lies to the High Court from an order by the District Magistrate confirmed by the Sessions Judge under S. 123, detaining a person in prison till he is able to furnish security for good behaviour [9 C. 575 15 P. R. 1900 See (93-00) L. B. 381]

13. Orders for security to keep the peace.—No appeal lies from an order requiring a person to furnish security to keep the peace. 35 A. 103; 27 A. 623 14 A. J. 268 2 A. J. 716 32 C. 918. 10 J. 541 11 B. R. 740 19 Cr. 216 (Pat) [217]

14. Letters Patent appeal.—Proceedings taken for finding over persons to keep the peace under Chapter VIII are criminal trials within the meaning of S. 15 of the Letters Patent. No appeal does not lie from the judgment of a single Judge dealing with a revision petition presented against the order of a Magistrate under S. 118 Cr. P. C. 16 Cr. 303 (M) 27 M. 610 11 C. 719

15. Appeal to Privy Council under S. 41 Letters Patent.—No appeal lies to the Privy Council from an order passed by the High Court affirming an order passed under S. 118 under which the petitioners have been bound over to be of good behaviour for a period of 3 years.—18 C. J. 119

16. Applicability of S. 118 Cr. P. C. to special acts.

(i) An order under S. 3 of the Burma Opium Law Amendment Act (VII of 1909) should be made in terms of S. 118 Cr. P. C.—30 Cr. 321 (U. B.)

(2) Similarly the provisions of S. 118 are applicable to proceedings under S. 17 of the Burma Gambling Act—See (37-01) L. B. 1. 227

17. Magistrate bound to supply High Court with reasons.—On a revision being made by the High Court the Magistrate is bound to state the grounds on which he fixed the amount of security.—2 C. 384

sense, it merely means "a permission to depart"—[Per Miller J. in 33 M. 45.] The word

"discharged" has not been defined in the Code and there is no valid ground for departing in respect of it from the rule of construction, that where in a statute the same word is used in different sections, it ought to be interpreted in the same sense throughout, unless the context in any particular section plainly requires that it should be understood in a different sense.—[Per Chaudhary and Hutton J J in 35 B 401.] The word "discharge" is used in contradistinction to the word "release." It does not amount to an acquittal [(93) A. N. 293].

2. Is S. 437 Cr. P. C. applicable to the case of a person 'discharged' or 'released' under S. 119. The language of S. 437 Cr. P. C. is wide enough to cover the case of a person in whose case an order of release or discharge (both of which are really to the same effect) has been passed under S. 119 Cr. P. C.—[Per Tudhal and Piggott J J in 36 A. 147.]

[*Pia*—35 B 401 16 B 661-24 A 149 21 A 107 (109) (99) A. N. 204-119 P. L. 1905. 21 P. R. 1903 2 L. B. 80]

C—Proceedings in all Cases subsequent to Order to furnish Security.

120 (1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date

Notes.

1. Sub-clause (1)—See 120 (1) contemplates an order under S. 118 Cr. P. C. being made at a time when the person against whom it is made is in the jail and S. 121 does the same.—[Per Robinson J (S. L. B. 353 (F. B.))] The order of a Magistrate that the period of rigorous imprisonment imposed upon the accused under S. 114 Cr. P. C. was to run concurrently with the sentence which the accused was at the time actually undergoing in another case is illegal with reference to the terms of S. 127 (1) Cr. P. C. read with S. 123 (1) Cr. P. C.—[16 Cr. 272 (M)]
2. Sub-clause (2)—The object of sub-clause (2) is to allow a Magistrate to grant time to the accused instead of at once proceeding to order imprisonment as if in default [1 C N. 121 (123)] But cl (2) does not enable a Magistrate to pass, during the subsistence of the first, a second order for

security to keep the person and postpone its operation till after the expiry of the first order [ibid] See Cr. R. 14 of 28-7-02

3. Extension of the period.—Once the date from which the period for which security is required has commenced to run, it cannot be altered or a fresh date fixed so as to enlarge the period [Cr. R. 3 of 6-6-02 4 Bar. T. 270] A District Magistrate who released the appellants pending the appeal on bail, cannot add the period of bail to the time for which the security is to run, as it would have the effect of extending the period [Cr. R. 3 of 8-4-02]
4. For further notes.—See Notes—under S. 123 Cr. P. C.
5. Sections 120 to 126 have been declared to apply to the security required under S. 31 A. of the Bangoon Police Act 1877 (Bar. Act IV of 1897)

121. The bond to be executed by any such person shall bind him to keep the peace and to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Notes.

1. Analysis of the Section.—A distinction is drawn between a bond for keeping the peace and the same for good behaviour. In the case of

former, a forfeiture takes place only on the commission of an offence involving a breach of the peace [See 18 W. R. 63. 7 P. R. 1903]. In the case

of the latter a conviction for *any offence* punishable with imprisonment is sufficient. [See 10 P R 1915]

2. **Form and Contents of the bond.**—See Sch V p 61 A. It is a common mistake to make each of the sureties liable for the full penalty of the bond [(17-01) U R 1 119; 1 Bur 1 27]. Where the bond is not executed till after the date on which the period for which security is required commences, it should state plainly the date on which the period expires (1 Bur T 270). Where a bond ordered under § 110 is in mistake taken on a form appropriate to an order under § 107 Cr P C—*h t*—it was not enforceable in law [32 P R 1904].

3. **Application of S 121.**—S 121 Cr P C is explicit, and as far as bonds for good behaviour are concerned is exhaustive, though it might not be so as regards bonds for keeping the peace. Where an accused is not shown to have committed an offence, to have attempted to do so, or to have abetted such a thing—his bond for good behaviour cannot be forfeited under § 121 Cr P C—S P R 1910 [2 M 169] Not F. So a bond is not forfeited merely because the accused was found within the period of his bond under § 101 Cr P C in possession of costly clothes for which he could not satisfactorily account but there was no proof that an actual theft had taken place [3 Weir 57]. A second order for security for good behaviour during the term of the first one will not justify forfeiture [(192-96) U B 20].

4. **Change of law.**—The penultimate clause of § 102 the corresponding section in the Code of 1872 "The commission or attempt to commit or abetment of any offence *whatsoever* and wherever it may be committed is a breach of the bond," was interpreted as an illustration of some modes in which the peace may be broken [2 M 169]. But the addition of the words "and in the latter case" obviously makes the following words applicable only to a case where the bond was taken for good behaviour. In this view 2 M 169 can hardly be regarded as binding under the Code of 1898 [See 18 W R 163; 7 W R 1906].

5. **Forfeiture of bonds for keeping the peace.**—A bond for keeping the peace cannot be enforced on conviction for "any offence punishable with imprisonment." The offence must be one *in* *violation* of the W R.

will not justify the forfeiture of the bond, where the terms of the bond are general. The bond may be forfeited upon conviction for assault committed upon a person other than the man on whose change the bond was originally taken [15 W R 11]. Before a bond can be forfeited it must be proved that the person under security has either personally broken the peace or abetted some other person or persons in breaking it. The mere fact that the accused is a servant of one of two rival parties for whose benefit the breach took place is not sufficient [11 W R 32].

6. **Forfeiture of bond for good behaviour.**—It should be observed that the section refers

to "any offence." It is therefore unnecessary in the case of a bond for good behaviour that the offence justifying an order for forfeiture should correspond to the particular kind of offences mentioned in the schedule of § 110 under which the bond was taken [See 28 A 629]. So a person bound over for being a receiver of stolen property and also a dangerous man and the son of a notorious Jacobite forfeits his bond on a conviction under S 325.1 P C [10 P R 1915; Con 15 P R 1913; 15 P R 1905]. The dictum of Kensington J in 15 P R 1913, "No man would ever undertake to be a surety if he was thereby compelled to undergo liability for any conceivable form of offence committed by the person for whom he stood security" has not been accepted in 10 P R, 1915 and 62 P L 1914. A conviction under § 13 of the Gaming Act III of 1867 would lead to a forfeiture [(96) A N 13].

7. **Exercise of moderation necessary.**—A Magistrate should always treat a man who has stood surety for another in a considerate manner. It would be contrary to all principles of justice to make him liable for a sudden act of violence—15 P R 1913. See 15 P R 1905.

8. **"Wherever"—moaning.**—A British subject under security forfeits his bond upon being convicted for dishonest receipt of stolen property in a Native State (28 P R, 1910). A executed in District T a recognizance to keep the peace against B. A was afterwards convicted in the District S of having assaulted B in that District—held—that A had forfeited his recognizance and the Magistrate of T could proceed against him under this section [2 B L (np) 11].

9. **Effect of omission to direct forfeiture of bond on conviction.**—If in convicting a

make any order for forfeiture, he must be taken to have decided not to take any action on the bond in respect of that particular breach of the peace and he cannot thereafter reconsider and add to his order by directing forfeiture of the recognizance—6 P L W. 1913 (F. B.); 26 P. R. 1901; 1 C L 134; 3 C L 406; Con. 26 A, 202.

10. **Order for forfeiture must be passed after taking evidence in the presence of the surety.**—The mere fact of the person for whom another stands as surety being convicted of a breach of the peace ought not to be sufficient to make the surety bond executed by the latter liable to forfeiture without any evidence being taken in the presence of the surety to show how the forfeiture has been incurred—25 C 410; See 4 C. 865 (F. B.); 10 C L 671; 9 C P 8. Con. 32 P. R. 1903; 4 M 11. xxxvii. See also 18 Cr. 508 (P.)

11. **Accused entitled to show cause.**—A Magistrate ought not to forfeit a recognizance to keep the peace without giving the person charged with the breach an opportunity of cross examining the witnesses upon whose evidence he relies to show cause has been issued.—4 C. 865 (F. B.) See 7 N. P. 375; 12 W. R. 34; 11 R. 11, 170.

12. **Procedure on forfeiture.**—It is not competent to a Magistrate to direct that in default of payment, the person whose recognizance is forfeited shall be imprisoned without first issuing a warrant for the attachment and sale of his immoveable property.—10 C. L. 571, 29 A. 629
13. **Bond cannot be forfeited by instalments.**—The accused who was under security for good behaviour for three years in a sum of Rs 150 was convicted under S 352 I P C. The Magistrate thereupon ordered a partial forfeiture to the extent of Rs 25. He again committed an assault under S 352 I P C. within the said 3 years and the Magistrate proceeded to enforce another sum of Rs 25 out of the bond. *Held*—that a penalty once remitted ceases to be in force and cannot be enforced. The Magistrate's second order was therefore illegal.—11 P. R. 1859

14. **Fresh security cannot be taken without fresh proceedings.**—A bond cannot be renewed without fresh proceedings being taken under S. 112 Cr. P. C. [T. M. T. 90]. There is no power to demand fresh security or to imprison the person under security for the period of the bond [(192-96) U. R. 21]
15. **Power to reduce the amount forfeited.** Under the old Codes, neither the Magistrate nor the High Court had power to reduce the amount due as penalty on bonds and the only remedy was to refer the matter to the Government [3 C. 757, 19 W. R. 1-8 C. L. 72 Rat 20; 2 P. R. 189]. But under the present Code a Magistrate himself has power to remit a portion of the penalty [15 P. R. 1905]. In 6 P. R. 1915 the Chief Court further reduced the amount confiscated by the Magistrate (Rs. 250 only out of Rs. 1000) to Rs. 50 only

122 A Magistrate may refuse to accept any surety offered under this Chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person

Proposed amendments to the Section.—For section 122 of the said Code, the following section shall be substituted namely—

"122 (1) A Magistrate may refuse to accept any surety offered under this Chapter on the ground that such surety is an unfit person for the purposes of the bond

Provided that, before refusing so to do, he shall either himself hold an enquiry on oath into the fitness of the surety, or cause such enquiry to be held and its report to be made thereon by a Magistrate subordinate to him

(2) *In every such enquiry the Magistrate holding the same shall record the substance of the evidence adduced before him*

(3) *If the Magistrate by whom the order for security was made is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept such surety and recording his reasons for so doing "*

Notes.

1 Powers of the Magistrate under the Section.

The powers of the Magistrate under the Section are wide. The question of fitness is left to his discretion which is not fettered in any way [13 C. N. 80 44 C. 737 41 C. 764 37 C. 416 60 C. 109-1 S. 3 Cr. R. 3 of 8-1-02]. But though the discretion is a wide one and not to be lightly interfered with, it must be exercised with moderation and impartiality [15 Cr. 747 (A), 27 A. 294, 16 Cr. 54(A)]. The ground for refusal of a surety must be valid and reasonable [22 W. R. 37 41 C. 764, 10 C. N. 1025]. If the Magistrate acts in an unreasonable and arbitrary manner his order will be set aside [43 Cr. 1025 17 Cr. 95(C), 33 C. 400 60 C. N. 593 15 Cr. 727(A) 7 N. P. 219, 8 S. 173, 7 S. 94 1 S. 18-2 S. 11]. *Mere caprice and whimsy are not valid grounds for rejecting a surety* [10 C. N. 1025]

- 1A. The word "Magistrate" in S. 122 Cr. P. C. includes the Magistrate who made the order under S. 115 Cr. P. C. or his successor in office who is properly seized of the inquiry.—5 S. 87.

2. **Meaning of discretion.**—When a power is coupled with a discretion as to its exercise, the discretion does not mean that the Magistrate is

left to exercise that power at his sweet will and pleasure, but that he has to determine whether an occasion for its exercise has arisen in the particular case.—See 2 S. 11 Maxwell p. 345

3. **Nature of proceedings under S. 122 Cr. P. C.**—Proceedings under S. 122 Cr. P. C. are judicial proceedings, as defined in S. 1(1) (a) Cr. P. C. and S. 5 of the Oaths Act (X of 1873) and are therefore governed by the regular rules as to the admitted facts and legal evidence under the Evidence Act or other law relating to evidence. A person making a false deposition in the course of an enquiry under S. 122 Cr. P. C. is liable to be prosecuted under S. 122 Cr. P. C.—26 A. 371 (198) A. N. 151 (10) A. N. 36, 10 C. N. 220 47 C. 1021 7 S. 94 5 S. 87; 4 S. 18; 2 S. 15 2 S. 11 S. 1 also 16 Cr. 54(A) and 21 Cr. 377(B)

4. Procedure

- (i) **Magistrate bound to take evidence.**—In all cases under S. 122 Cr. P. C. it is the duty of the Magistrate to examine the sureties offered as to their fitness and to take such other evidence as he deems may call on the same point [2 S. 11 7 S. 91, 1 S. 18-2 S. 15, 27 A. 297, 20 A.

detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court, and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate

(5) Imprisonment for failure to give security for keeping the peace shall be simple

Kind of imprisonment

(6) Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Proposed amendments to the Section—After sub section (3) of Section 123 of the said Code, the following sub-sections shall be inserted namely —

(3a) If a writ has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub section (2), such reference shall also include the case of any other of such persons who has not given the security ordered to be given by him, and the provisions of sub sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security

"(3b) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub section (3a) to an additional Sessions Judge or Assistant Sessions Judge, and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings"

Notes.

(1) Nature and object of imprisonment in default.

1. **Object of the imprisonment.**—The imprisonment is provided as a protection to society against the perpetration of crime and not as a punishment for crime committed; and being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance of complying with the required condition of security.

See—2 Weir 52 1 M H (Ap) xvi 14 C N 709
1 C. L. 147 22 W. R. 37 19 W. R. 1. 16 B. 372.
10 B 171 21 A. 80 1 P R 1883

2. Kind of imprisonment to be awarded.

- (1) An order directing that imprisonment in default shall be rigorous indicates an unreasonable exercise of discretion especially when the Magistrate gives no reason why with a view to the prisoner's good behaviour, it is desirable that the imprisonment shall be of the more severe kind—1 C. L. 268

- (2) **Solitary Imprisonment.** A Magistrate has no power to order solitary imprisonment of any kind in the case of a person imprisoned in default of security for good behaviour—36 A 14

3. **Order cannot be made in anticipation of default.**—A warrant for the detention of the accused in prison under S 123 Cr. P. C. can be issued only on default being made by the accused in furnishing security and on the commencement of the period for which security is required. An order for imprisonment in anticipation of default is illegal

Rat 397 Rat 432 Rat 408 Rat 511; O C 215
1 L B. 205 (F. B.) See Rat 771 8 L B 333 (F. B.).

4. **Procedure where a person already undergoing imprisonment is ordered to furnish security.**—If a person undergoing a sentence of imprisonment is ordered under S 118 Cr. P. C. to furnish security for his good behaviour, it is premature and illegal to pass against him an order under S 123 Cr. P. C. while such imprisonment lasts. If in the meantime he is convicted of another offence and sentenced to a fresh term of imprisonment the order should not be passed until the expiry of both the imprisonments [Rat 771. See Rat 472; Rat. 767, 1 L B. 205 (F. B.) 8 L B 333 (F. B.). But see 1 L B 31 (F. B.)] The accused could give security at any time he liked up to the date on which the

substantive imprisonment was to expire. *There cannot be any default therefore, before the period of the substantive sentence has expired* (8 L B 353 (F. B.)) 11 B 205 (F. B.). See also 24 W. R. 15; 4 B. R. 131 B R. Cr. II, 39 of 1895; 11 B. Cr. R. 18 of 1895; D. C. 215 1 A. 666; 4 N. P. 154; 4 B R 132)

5. Detention for longer or shorter period than the term of security is illegal.

Longer—(1) A Magistrate has no power to direct that an accused should on failure to give security be imprisoned for a longer period than the term of the security. The illegality cannot be cured by the District Magistrate making the period co-extensive.

2 Weir 57 23 A. 122; Rat 581; 4 L B 185; 4 Bar T. 270, See (192-900) U. B. 21, G M T. 308

Shorter—(2) A Magistrate can not award a shorter period of imprisonment in default than for which the security is required. Rat, 581; Rat 668.

ity and imprisonment in default must be co-extensive. M. H. Pro 47-74; 1 Weir 37 B Cr II 43 of '91 and 25 of '93].

Order for imprisonment cannot be made after the expiry of the term.—Where the petitioners were ordered on the 17th December 1907 to enter into a bond with sureties to be of good behaviour for a period of one year under S 118 Cr P. C. and having failed to do so were ordered to be imprisoned under S 121 Cr. P. C. on the 21st Feb 1909—*Held* that as one year had elapsed from the date of the first order, the order under S 121 Cr P. C. was illegal—0 M. T. 308

6. Nature of imprisonment in default of security. It may be taken as settled law that "when a person is committed to prison under S 121 Cr P. C. for failure to give security to be of good behaviour he is not undergoing a sentence of imprisonment within the meaning of S 37 Cr. P. C. Pro—37 B 178, 34 B. 326, 6 B R 1098 5 B R 26 B. Cr. R. 33 of '94, Rat 970, 31 M 515, 27 M. 525 ('03) 2 Weir 452, ('04) 2 Weir 452 (153), 1 Pat J 212, 14 P. R. 1895, 2 L. B 72(73), 1 Bar S R 364, ('00-02) L. B 14, (72-92) L B 361, 8 N 20 7 S 203, 3 S. 114, 20 Mys. 44 Cr R B of 18-8-02

Con.—30 A. 331 (F. B.). Rat 774

7. Procedure

Rule 1. If the accused sentenced under S 123 Cr. P. C. to suffer imprisonment in default of security is subsequently tried for an offence and sentenced to imprisonment, the two sentences can not run consecutively, *they must run concurrently* 37 B 178, 34 B. 225, 6 B R 1098, 5 B R. 26 (convicted under S 196) of the Arms Act—Rat 670, B Cr. R. 34 of 1901, 31 M. 515 27 M. 525, ('04) 2 Weir 452 (453) 14 P. R. 1895; 3 S. 114, 8 N 20, 1 Bar S R. 361.

Rule 2—If the accused before being committed to prison under S 123 Cr P. C. was actually under-

ments concurrent; *they must run consecutively*

16 Cr 272 (M); See Rat 774; Rat 432; Rat 765 11 B. 205 (F. B.); 8 L B 353 (F. B.); B Cr. R. 39 of 1895 B Cr II 18 of 1895—See 129 (1) Cr P. C.

Rule 3.—See 35 does not apply. S. 35 Cr. P. C. applies to sentences on conviction for offences and has no application to imprisonments under S 123 Cr. P. C.—5 B R 26; 4 B. R. 876 31 M 515 16 Cr. 622 (V)

(2) Warrant of Commitment

8. Warrant can be issued only,

(1) after giving the accused a reasonable opportunity of furnishing security for his good behaviour after the substantive sentence has expired—*Pir Twomoy J* in 8 L B 353 (F. B.).

(2) on the commencement of the period for which the security of the bond is required and on actual default being made in furnishing security—Rat 412

9. Warrant unnecessary when the person is already in jail. On the analogy of case, where security is required for a period commencing

—(19 June 1909)

10. Term of imprisonment should be definitely stated.—An order directing the accused to be "imprisoned until he gives security" is bad, a definite term of imprisonment not exceeding one year should be stated. 8 C 644 Bul. Sec. 4 M H (p) 46

11. Imprisonment pending enquiry into sufficiency of security is bad.—Accused cannot be committed to custody pending receipt of report as to the sufficiency of the security furnished by him.—18 P R 1036

12. Who cannot be imprisoned in default,

(1) Sureties.—1 M H (Ap) 68

(2) An order binding down the manager of an Indigo Factory cannot be extended to the proprietor.—15 W R 11

(3) Procedure of Magistrates under Sub-s (2).

13. S 362 Cr P. C. does not apply to Proceedings under S. 124

S 362 does not apply to a case under S. 116 Cr. P. C. in which the Presidency Magistrate has to make a reference to the High Court under S 123 (2) Cr P. C. so as to absolve him from the duty of recording evidence.—13 C N 318

detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit.

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

Kind of imprisonment

(6) Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Proposed amendments to the Section.—After sub-section (3) of Section 123 of the said Code, the following sub-sections shall be inserted namely:—

(3a) If a security has been required in the course of the same proceedings from two or more persons in respect of any one person the person imprisoned ordered to the Sessions Judge or the High Court under sub-section (3), such reference shall also include the cases in which, if such persons who have not given the security ordered to be given by him, and the provisions of sub-sections (2) and (4) shall in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3b) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (4) to an Additional Sessions Judge or Assistant Sessions Judge, and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

Notes.

(1) Nature and object of imprisonment in default.

1. **Object of the imprisonment.**—The imprisonment is provided as a protection to society against the perpetration of crime and not as a punishment for crime committed; and being made conditional in default of finding security, it is only reasonable and just that the individual should be afforded a fair chance of complying with the required condition of security.

See—2 W. R. 52; 4 M. R. (Ap.) 510; 14 C. N. 709; 1 C. L. 195; 22 W. R. 37; 19 W. R. 1; 16 B. 372; 10 B. 171; 21 A. 80; 1 P. R. 1853.

2. Kind of imprisonment to be awarded.

- (1) An order directing that imprisonment in default shall be rigorous indicates an unreasonable exercise of discretion especially when the Magistrate gives no reasons why with a view to the prisoner's good behaviour, it is desirable that the imprisonment shall be of the more severe kind.—1 C. L. 238.

- (2) **Solitary Imprisonment.**—A Magistrate has no power to order solitary imprisonment of any kind in the case of a person imprisoned in default of security for good behaviour.—39 A. 191.

3. **Order cannot be made in anticipation of default.**—A warrant for the detention of the accused in prison under S. 123 Cr. P. C. can be issued only on default being made by the accused in furnishing security and on the commencement of the period for which security is required. An order for imprisonment in anticipation of default is illegal.

Rat 305, Rat 432, Rat 108, Rat 511; 9 C. 215; 4 L. B. 205 (F. B.); See Rat 774; 8 L. B. 353 (F. B.).

4. **Procedure where a person already undergoing imprisonment is ordered to furnish security.**—If a person undergoing a sentence of imprisonment is ordered under S. 118 Cr. P. C. to furnish security for his good

term of imprisonment the order should not be issued until the expiry of both the inquiries [Rat 774; See Rat. 192; Rat. 765; 4 L. B. 205 (F. B.); 8 L. B. 353 (F. B.). Rat. Sec. 1. B. 21 (F. B.).] The accused could give security at any time he liked up to the date on which the

14. **Obligation of Magistrates to make reference.**—When the order for security specifies a term exceeding 1 year during which the accused is to be of good behaviour, the magistrate is bound under S 123 (2) to refer the case to the Sessions Court. The irregularity is not removed by the Magistrate ordering imprisonment for 1 year only after the failure of the accused to furnish security for a period exceeding one year.

6 P R 1914 2 Wen 57 See 4 L B 135 (99) A N 151 (72-73) L B 379 (03) A N 24 23 C 621 G C P 27 (07-01) U B 28; Con 1 Bar 279

15. **Magistrate cannot pass order for imprisonment for default, when period exceeds one year.**—Where a Magistrate makes an order requiring an accused to give security for over one year, he is not himself empowered to pass an order for imprisonment in default of the security. All that he is empowered to do is to issue a warrant directing that the accused be detained in prison pending the order of the Sessions Judge.—4 L B 135 (99) A N 151 2 Weir 57 (03) A N 28

[Note.—In (03) A N 28, the Magistrate directed by mistake that "in the event of security not being furnished the accused should be rigorously imprisoned for 3 years" and the order was con-

ferred to the Sessions Judge under S 123 (2) Cr P C.]

16. **Reference unnecessary if security is furnished.**—S 123 (3) has reference to a case where default is made in furnishing the security required but where the security is given, section 123 (1) does not apply. No reference would then be necessary. 23 C 621 19 Cr 2 (A) See Rat 132
17. **No reference to be made if the person is undergoing imprisonment for a substantive sentence.** A Magistrate's action in submitting proceedings to the Sessions Judge in respect of a person sentenced to 7 years' transportation for default of security under S 106 Cr. P. C. before expiry of the sentence is unwarranted by law.—4 L B 31 (F B)

(4) Procedure in the Court of reference.

18. **Notice to the accused.**—The Sessions Judge receiving a record under sub (2) should at once give notice to the person ordered to give security, of the date on which the case will be taken up.—13 C 375 27 C 656 21 C 491 25 A 375 See (94) A N 60 21 A 107.
19. **Right of audience.**—A Sessions Judge ought to give the accused an opportunity of being heard either personally or by pleader.—[5 L B 31 (F B) 31 L B 11 23 C 491 27 C 656 35 B 271 35 P R 1097] In a case referred to a Sessions Judge under S 123 (2) the Judge is bound to hear a pleader who may appear on behalf of the defendant.—[1 C N 737 21 C 491] In 1 S 39 how far it has been held that "the right

of a person ordered to furnish security under S 118 Cr. P. C. to be represented by a pleader in the subsequent proceeding relating to the fitness of sureties offered etc. is entirely within the discretion of the Court."

20. **Further evidence.**—Sec. 123 (3) contemplates further enquiry and evidence [5 L B 31 (F B)] The addition of the words "from the Magistrate" after the word "requiring" clearly gives the Sessions Judge the power to remand the case for further evidence. In this view (98) 24 C 155 which lays down that "under S. 123 a Sessions Judge is not competent to remand a case to an inferior Court to take further evidence".

21. **Sessions Judge and High Court entitled to decide on merits.**—Subs (3) of S. 123 contemplates a decision by the Sessions Judge or the High Court on the merits of the order demanding security for good behaviour. The Judge is entitled to pass such orders as the circumstances of the case in his opinion may require [35 B 271, 12 C N 453] An order made under Sub Cl. (1) is not merely an order confirming the magistrate's order; it is a decision on merits based on an independent view of the case [3 S 87 29 P R 1910 4 L B 135] It is the duty of the Sessions Judge in a reference to consider the evidence and pass an order after doing so. His duty is not merely a matter of routine [29 P R 1910 See 6 P R 1914]. He must pass his own order [4 L B 135 (00-02) L B 75; G C P 27]

22. **Power of a Sessions Judge to act otherwise than under subs (3).**—The Sessions Judge cannot on his own initiative, order any person to furnish security. He can do so only when he is set in motion by a Magistrate [18 P R 1860 See 24 W. R. 10]

23. **Sessions Judge to decide fitness of sureties himself.**—A magistrate has no jurisdiction to decide on the fitness of sureties on a bond ordered by the Sessions Court. When the order is of the latter Court the adequacy of the security should be made by that Court.—5 S 87; 2 L B 70 (80) Contra 12 C N 463

24. **Case of each prisoner must be separately considered.**

the case of each individual prisoner.—37 C. 91.

25. **Joint Sessions Judges.**—have no power to pass orders on a reference under this section Rat 830—

[Note.—In the Code of 1852 the words were "Court of Sessions".]

26. **Imprisonment in default.**—Although it is within the competence of a Sessions Judge acting under s 123(1) to direct that a person who has been ordered to give security shall, on failure to give such security be imprisoned for any term not exceeding 3 years, yet it is inadvisable that the term of imprisonment in default should always be the same as the period, for which the security is directed to be given.—23 A 422 Rat 841 1 L B 135 Rat See Cr. R. 34 of 23-1-01.

2" Contents of the order

(1) The order should distinctly specify the period of imprisonment to be suffered in default of security.—S. 124 Cr. P. C.

(2) The order should not be framed in general grounds. It should show on what special ground the security for a period over one year has been demanded. It is not sufficient to say that the order is for interest of the community at large.—S. 124 Cr. P. C. (13) A. N. 14.

(3) Appeal.

25. Appeal to Magistrate in a case under reference. A person ordered to give security for good behaviour by a Subordinate Magistrate is entitled to appeal to the District Magistrate notwithstanding that the proceedings may have been held before the Sessions Judge under S. 124 Cr. P. C. But the right of appeal is not open as the Sessions Judge is required to do so in the case under S. 124(1).—S. 124 Cr. P. C. 20 C. 307 (13) A. N. 14.

29. No appeal lies from the order of a Sessions Court made under Sub-S. (3).—21 W. R. 12 1940 C. 151 (11) A. N. 14.

30. Right of appeal lost by merger.—The right of appeal subsists as long only as no order has been passed under sub-s. (1). As soon as the order is passed, the order of the Magistrate becomes merged in the order of the Sessions Judge and the right of appeal is lost.—13 O. C. 351; 2 Q. C. 207; O. C. 678; 35 B. 371; 21 P. R. 1846; 15 P. R. 1800 (17) L. B. 381; (10) A. N. 181. See (11) A. N. 210 24 W. R. 12; 23 P. R. 1886.

(6) Miscellaneous.

31. Report by District Magistrate against order by Sessions Judge.—It would be contrary to every principle to allow a District Magistrate to report against an order of the Sessions Judge to whom he is a subordinate. If the Magistrate who is responsible for the peace of the district is dissatisfied, he should ask the Public Prosecutor to move the High Court in revision.—24 C. 291 24 A. 91.

32. Change in the law.—By omitting the words "to the officer in charge of the jail in which the person so ordered is detained," which were at the end of the first clause in the corresponding section of the Code of 1853 and adding sub-s. (1) the Legislature has deprived superintendents of jails of the power they formerly had of releasing persons under detention on the security being rendered to their satisfaction.

33. Escape from custody.—A person in custody for his inability to give security is not in custody for an offence, with which he has been charged or of which he has been convicted. He cannot therefore be convicted of escaping from such custody under 224 F. P. C.—2 Weir 67.

124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that

Power to release persons imprisoned. any person imprisoned for failing to give security under this Chapter, whether by the order of such Magistrate or that of

his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter as ordered by the Court of Session or High Court may be released without hazard to the community, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged

Notes.

Change in Law.—The word "Chief" was introduced for the first time in the Code of 1893 before the words "Presidency Magistrate." The effect has been to limit the exercise of powers under the section to Chief Presidency Magistrates only.

Action entirely discretionary.—The taking of any

action on an application under S. 124 Cr. P. C. is a matter entirely within the discretion of the Magistrate. (14) A. N. 183. See S. O. C. 245.

Proceedings of a Magistrate not empowered is void, See S. 530 Cl. (c) *infra*.

- 125.** The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

Notes

- 1. Nature of proceedings under S. 125 Cr. P. C.**—Proceedings under S. 125 Cr. P. C. are not judicial proceedings within the meaning of S. 476 Cr. P. C. [37 C 72]. A Magistrate acting under the section does not exercise either appellate or revisional jurisdiction [32 C 919, 20 Cr. 221 (Pat), 20 Cr. 489 (A)] See also 35 A 103, 27 A 623 (O J 541).

- 2. Meaning of the term "at any time"**—The words are new and are not to be found in the corresponding section 500 of the Code of 1872; they mean "however early or however late"—37 M. 125 (F.B.).

- 3. Magistrate competent to deal with the application on the merits.**—A District Magistrate acting under S. 125 Cr. P. C. is not restricted to ground which may have arisen subsequently to the execution of the bond and which may render the continuance of the bond unnecessary. He may cancel the bond on the ground that it should never have been required.

34 C 1 (F.B.), 27 M. 125 (F.B.), 11 N. 98 (G), A N. 143, 12 P. W. 1908. See 37 C 72, Con. 32 C. 948 (O), 30 A. 406, 35 A. 103, 27 A. 623, 20 Cr. 489 (A), 1 O J 541.

- N.B.**—In 20 Cr. 489 (A), the proper course is laid down to be to report the case to the High Court for cancellation of the security and not to dispose of the case as if the Magistrate was sitting as a Court of appeal. See also 1 O J 541.

- 4. Application of the section.**—The section applies only to cases, in which a bond has been taken. It has been held that it does not apply to cases in which a bond has been taken for the purpose of securing the appearance of the accused for trial. 103, 32 C. 919.

- (b) The addition of the words "or of good behaviour"—makes this section applicable to all orders made under S. 118 Cr. P. C. [11 N. 98].

5 Powers under the section

- (a) Under the section the District Magistrate has no power to remand the case to the subordinate Magistrate for further enquiry. S. 428 Cr. P. C. has no application to an order under S. 125 Cr. P. C.—20 Cr. 221 (Pat). See 33 C. 8.

- (b) A Magistrate cannot cancel the bond on account of insufficiency.—A District Magistrate acts absolutely without jurisdiction in cancelling a bond under this section on receiving a report from the police that the bond accepted by the subordinate Magistrate is insufficient and directing the imprisonment in default of the defendant for the

remainder of the term [29 C 155, 8 A J. 655]. See 125 read with Ss. 124 and 126 does not empower a District Magistrate to cancel a bond accepted by the Subordinate Magistrate on the ground that such bond is insufficient. If he is dissatisfied with the Subordinate Magistrate's enquiry into the sufficiency, he should hold such enquiry as he thinks necessary after giving notice to the parties concerned and report the matter to the High Court. He cannot deal with the matter himself [8 O. C. 245, 2 L. B. 74, See 1 C. N. 391, 31 A. 624, 16 P. R. 1907, 7 O. C. 113].

- 6. Right of audience.**—As a general practice either the applicant or his pleader should be heard before the application is rejected.—30 A. 403.

- 7. High Court will decline to interfere**—It is made

It is made
decline to
revision
or furnish
applicants

do not apply to the District Magistrate under S. 125 Cr. P. C. Where the law provides a direct remedy, the High Court will not interfere in revision till such remedy has been availed of.—(O) A. N. 143, (O) A. N. 143 (N), 3 Pat. J. 302, Con.—34 A. 406.

- 8. Exparte order by default.**—The Chief Court directed an application under S. 125 Cr. P. C. to be heard as it was dismissed for default when the Magistrate was on tour and the fact that the case would be heard in exparte not intimated to the applicant.—33 P. L. 1914.

- 9.** ...

mate Magistrate of T. held—that the District Magistrate of T. alone had jurisdiction to cancel the bond under S. 125 Cr. P. C.—20 Cr. 337 (C).

- 10. S. 125 Cr. P. C. does not limit powers under Ss. 435 and 438 Cr. P. C.**—S. 125 Cr. P. C. does not limit the revisional jurisdiction of the Sessions Judge or the District Magistrate under Ss. 435 and 438 Cr. P. C.—3 Pat. J. 302.

- 11. Effect of cancellation.**—Cancellation of the bond by the District Magistrate under the section will discharge the accused and his surety from all liability.—(O) A. N. 143. The omission to provide expressly for the setting aside of the order was perhaps due to a desire for simplicity of language.—Per Beeson J. in 37 M. 125 (F. B.).

- 12. Cancellation by Magistrate not empowered is void.**—S. 530 Cr. P. C. Cr. P. C.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

Notes.

1. **Scope of the Section.** The section deals with cases in which the surety has intimated his wish to withdraw and to have his bond cancelled and lays down the procedure to be adopted in the event of the surety being discharged owing to his withdrawal—S.O. C. 245.
2. **When a bond for a term exceeding 1 year is cancelled—**It is laid down in sub-s. (3) the Magistrate should refer the case under 123 (4) to the Sessions Judge, if the effect of the discharge of the surety is to render the principal liable to suffer imprisonment for more than a year—S.O. S. B. 57.
3. **Analysis of the section.**—The word "shall" in sub-s. (3) shows that the Magistrate is bound to cancel the bond on an application being made under sub-s. (1). The section says nothing about any reason being given by the surety for his withdrawal. He is therefore evidently at liberty to do so at any time and without assigning any reason for his action. Sub-s. (3) would render an order under this section in the case of a surety for good behaviour appealable under § 400 Cr. P. C.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

§§ 127 to 132.

Notes on the Chapter.

1. —

principles laid down in the charge of Tindal C. J. to the Grand Jury of Bristol in 1832 as to the duty of soldiers in dispersing rioters. The rules carry the law somewhat further than it has yet been carried in England, as they expressly indemnify all persons acting in good faith in compliance with the requisitions under §§ 128 and 130 and forbid prosecutions of Magistrates, soldiers and Police officers except with the sanction of the Governor General in Council—Stoke's Anglo-Indian Codes Vol. II, Introduction p. 11.

2. **Distinction between unlawful assemblies under chapter IX Cr. P. C. and as defined by the Penal Code—**

The Penal Code [See § 141 I. P. C.] does not contain a definition of an assembly "likely to cause

a disturbance of the public peace". In Reg. V, Vincent [9 C. and P. 91] Alderson B. stated the law as follows: "Any meeting assembled under such circumstances, as according to the opinion of rational and firm men, is likely to

held, the hour at which they met and the language

it would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness"—See Mayne's Criminal Law p. 518.

3. **For definition of the term "unlawful assembly" See § 141 I. P. C. and for punishment—Ss. 145 and 161 I. P. C.**

- 4 **Duty of Magistrates under the English Law**—In *R v Lumy* 3 State Trials (U S) 11 it was laid down that the general rules of law require of Magistrates that at the time of riots they should keep the peace, restrain the rioters and pursue and take them; and to enable them to do so they may call on all the king's subjects to assist them which they are bound to do upon reasonable warning, and in point of law, a Magistrate would be justified in giving fire-arms to those who thus came to assist him, but it would be imprudent in him to give them to those who might not know

their use and who might be under no control, and who not being used to act together, might be cut off from the rest of the Police and the arms for these means get into the hands of the rioters. *It is no part of the duty of a Magistrate to go out and lead the constables in to march and surround them; nor to keep a body of men as a reserve to act as occasion may require.* Nor is a Magistrate bound to ride with the military; if he gives the military officers orders to act, that is all that is required of him.—*Russell* 331-9

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful Assembly to disperse on command of Magistrate or police officer a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town of Calcutta.

Notes.

- 1 **The chapter does not apply to the City of Bombay**—The whole of this chapter, so far as it applies to the City of Bombay, is repealed by the City of Bombay Police Act 1902 (Bomb. Act IV of 1902)—See S. 2(1) and schedule.
- 2 **Obligation of Magistrates to assist the Police**—In all cases of an unlawful assembly, a riot or a disturbance of the peace having occurred or being apprehended, the Police will take the initiative, but if they find themselves not strong enough for the occasion, immediate application is to be made to the nearest Magistrate, which under the terms of Art V of 1861, means all persons within the Police District exercising all or any of the powers of a Magistrate, and therefore includes the *Tashildars* who are bound on requisition from the Police Inspector to appoint Police officers as the said Inspector may deem necessary. All revenue *Chaprans*, and messengers of all kinds, may legally be appointed special Police officers. Thus the whole resources of the Civil Government are at once on a special occasion brought to the assistance of the Police for the purpose of restoring public order.—*Punjab Pol. Cir Chap XXVIII p 318*—See *Punjab Cir. 220*
3. **Police officers who may act**—The term "officers" exclude Deputy superior station, directing the dispersal of an assembly of five or more persons likely to cause a disturbance

of the public peace is an order by a lawful authority within the meaning of S. 127 Cr P.C.—*T B 41* [See also S. 551 Cr. P. C.]

- 4 **Disobedience punishable under S 151 I. P. C.**—If an unlawful assembly refuses to disperse being lawfully commanded to do so, every member of the assembly would be liable to be convicted under S. 151 I. P. C.—*T B 42*.
- 5 **Opinion of Policemen as to the necessity of action**—Whether a disturbance of the public peace is likely to be caused, must of necessity be very much a matter of opinion and the Police officer, to whose discretion the law leaves the duties of dispersing assemblies, must of course act upon his own opinion one way or the other; if his opinion is relevant, the grounds upon which it is based are also relevant.—*T B 41*
6. **Lawful assembly may be commanded to disperse**—S 151 I. P. C. clearly contemplates lawful assemblies, as the explanation shows, and a perfectly innocent and lawful assembly may be lawfully commanded to disperse by a Magistrate, if in his opinion, it is likely to cause a disturbance of the public peace. [22 P. R. 1857] So religious processions or meetings of the Salvation Army may come under the purview of S. 127 Cr P. C. [7 B 42]
- 7 **Onus in prosecution under S 151 I P C** It is necessary, for the purposes of establishing a charge under S. 151 I. P. C., to prove to the satisfaction of the Court that the assembly was in fact likely to cause a disturbance of the public peace.—*Per Plowden J. in 22 P. R. 1857*

128. If, upon being so commanded any such assembly does not disperse, or if without being so Use of civil force to disperse commanded, it conducts itself in such a manner as to show a determination not to disperse, any magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose

of dispersing such assembly, and if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Notes

1. Procedure to be adopted in dispersing unlawful assemblies.

(1) On being requisitioned a squad of Police people armed and accoutred and carrying two rounds of buckshot ammunition per man in command of a responsible officer will proceed with all dispatch to the scene. The Magistrate or superior Police Officer or other subordinate Officer as circumstances may permit supported by a file (who will duly come to the charge on being halted) will proceed to within speaking distance of the mob and command it to disperse and distinctly warn it that the fire will be effective and that *blank cartridges will not be used*. If the mob shows itself aggressive and determined not to disperse the officer and his force will fall back, and the squad will on the command in that effect, load, after which another warning to the mob to disperse will be given and if not obeyed within a reasonable time fire will be opened on distinct word of command by the officer in charge of the squad, either by specified number of files or by ranks of subdivisions or sections or he may order a volley according to the requirements of the situation. See C P Pol Man p 16.

(2) Firing shall cease the instant it is no longer necessary. Care should be taken not to fire upon persons separated from the crowd, nor to hew over the heads of the crowds, as the by-standers may be injured. —Bomb Pol Man p 70

2 Blank cartridges—should never be served out to Police employed to suppress a riot. —See Bomb Pol Man p 70 and Pol Man

3 Degree of force to be employed must be proportioned to the circumstances of the case. The degree of force which may lawfully be used in suppression of an unlawful assembly depends on the nature of such assembly, for the force must always be moderated, and proportioned to the circumstances of the case and to the end to be attained. The taking of life can be justified only by the necessity of protecting persons or property against various forms of violence or crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed. 21 M, 249

4 Special Police Officers —See Ss 31 and 32 of the Police Act (V of 1861), S 109 of the Madras Police Act (XXIV of 1859) and Ss. 27 and 28 of Bomb Act VII of 1807.

5 Good faith only entitles the officer to without public on them, one of the reasons being—that he was not acting in good faith and his act was not protected simply because he obeyed the orders of his superior officer, 21 M 219

129 If any such assembly cannot be otherwise dispersed, and if it is necessary for the public use of military force, security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Notes.

1 Justification of the use of military force. "The summary suppression of riotous assemblies by armed force and the use for that purpose of any amount of violence, extending even to the causing of death are justifiable on grounds of state necessity and can only be justified so far as that necessity exists. It may seem anomalous that an executive officer should be authorized at his own

discretion to inflict capital punishment upon a rioter who could only after due trial and conviction be liable to three years' imprisonment. But experience shows that a riotous assembly is the first step in the contest between violence and law, and that if it is not checked at once all law is swept away and every species of crime is certain to follow. —Mayne Cr L, p. 329

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Duty of officer commanding troops required by Magistrate to disperse assembly.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Notes

- 1 **Volunteers**—S. 21 of Act XX of 1859 (Indian Volunteers Act) empowers Volunteers to prevent disturbance of the public peace, disperse unlawful assemblies, and apprehend certain suspected persons.

131. When the public security is manifestly endangered by any such assembly, and when the Power of commissioned military Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall then conform to the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and—

- (a) no Magistrate or police-officer acting under this Chapter in good faith,
 - (b) no officer acting under section 131 in good faith,
 - (c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and
 - (d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,
- shall be deemed to have thereby committed an offence.

Notes.

- 1 **Meaning of good faith**—Nothing is said to be done in good faith which is done without due care and attention—See Ss. 52 and 76 I. P. C. and 3(20) of the General Clauses Act X of 1857. The question of good faith is one of fact. It must be considered with reference to the position of the accused and the circumstances under which he acted [12 B. 377]. The want of due care and caution must in each case be considered with reference to the general circumstances and the capacity and the intelligence of the person whose conduct is in question [31 B. 293 (29)]. 12 B. 377 See also 21 M. 249. Under S. 128 Cr. P. C.
- 2 **Application of cl (d)** It should be noted that the words "under Military law" and "in good faith" in the corresponding Section of the previous Codes have been omitted. The effect is to make "obedience to any order which the person

was bound to obey" a sufficient justification irrespective of the question of good faith. Cl (d) does not apply to Police Officers. A Police Officer is not protected simply because he obeyed the order of his superior officer" [21 M. 249].

3. **Sanction.**—Want of sanction required for this Section cannot be cured by S. 307(b). 31 M. 40 See also 29 M. 149.
4. **As for definition of Officer and soldier**—See Act V, of 1860 (Indian Articles of War) and of Volunteer (The preamble to the Indian Volunteer Act XX. of 1859).
5. **Change of law.**—The words "any person" have been substituted for the words "any Magistrate, Military Officer, Police Officer, soldier and Volunteer" in the earlier Codes. Special Constables included under Ss. 31 and 32 of the Police Act V of 1861 are now protected. See cl. (c).

CHAPTER X

PUBLIC NUISANCES.

133 (1) Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by Conditional order for removal of the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a police-report or other information, and on taking such evidence (if any) as he thinks fit,

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade, or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, *as causing or possessing such animal or tree*, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to abstain from carrying on, or to remove *as a result* in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support such building, tent or structure; or

to remove or support such tree; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner pointed out in the said order; or if he objects *as to the*,

to appear before himself or some other Magistrate of the first or second class at a time and place to be fixed by the order, and more to leave the order not aside or modified in the manner hereinafter provided,

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation. A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary and recreative purposes."

184 (1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to obey or show cause or claim jury **135.** The person against whom such order is made shall—

(a) perform, within the time specified in the order, the act directed, thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Proposed amendments to the section—(1) Section 135 of the said Code shall be renumbered 171 (1), and—

(i) In clause (a) of the said section, as re-numbered, after the words "within the time" the words "and in the manner" shall be inserted.

(ii) In clause (b) of the said section, as re-numbered, for the words "same is" the words "measures directed by the Magistrate to be taken are" shall be substituted.

(2) After the said clause of the same section the following sub-sections shall be added, namely—

"(2) If, in showing cause, the person against whom the order was made denies the existence of any public right in respect of any way, river, channel or place referred to therein, the Magistrate shall inquire into the question, and his decision shall, for the purpose of proceedings under this Chapter, be final

"(3) It shall be lawful both to show cause against an order on the grounds stated in sub-section (2), and at the same time to claim a jury under such section (1) (b)."

135. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

137 (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not satisfied, the order shall be made absolute.

138 (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit, and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may for good cause shown be extended by the Magistrate.

139 (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter.

140 (1) When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall farther require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when enclosed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall be in respect of anything done in good faith under this section.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, engaged or otherwise disposed of;

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade, or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, hut, structure, substance, tank, well or excavation, *or owning or possessing such animal or live*, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to abstain from carrying on, *or to remove or render* in such instance as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support such building, tent or structure; or

to remove or support such tree, or

to alter the disposal of such substance, or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or if he objects so to do,

to appear before himself or some other Magistrate of the first or second class at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Frydman. A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary and recreation purposes."

134 (1) The order shall, if practicable, be served on the person against whom it is made, in Service or notification of order manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to show cause or claim jury **135** The person against whom such order is made shall—

(a) perform, within the time specified in the order, the act directed, thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Proposed amendments to the section—(1) Section 135 of the said Code shall be re-numbered (1), and—

(3) In clause (a) of the said section, as re-numbered, after the words "within the time" the words "and in the manner" shall be inserted.

(1) In clause (b) of the said section, as re-numbered, for the words "same is" the words "measures directed by the Magistrate to be taken are" shall be substituted.

(2) After the said clause of the same section the following sub-sections shall be added, namely:—

"(2) If, in showing cause, the person against whom the order was made denies the existence of any public right in respect of any way, river, channel or place referred to therein, the Magistrate shall inquire into the question, and his decision shall, for the purpose of proceedings under this Chapter, be final.

"(3) It shall be lawful both to show cause against an order on the grounds stated in sub-section (2), and at the same time to claim a jury under sub-section (1) (b)."

135. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 133, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

Procedure where he appears to show cause **137. (1)** If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied the order shall be made absolute.

Procedure where he claims jury **138. (1)** On receiving an application under section 135 to appoint a jury, the Magistrate shall

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

139. (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter.

140. (1) When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

(2) If such act is not performed within the time fixed, the Magistrate may remove it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Procedure on failure to appoint jury or omission to return verdict

142 (1) If a Magistrate making an order under section 133 considers that immediate measures Injunction pending inquiry. should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Arrangement of notes.

Ss. 137, 142 and 143, Cr. P. C

- I. Change in the Law.
- II. Object and application of the Section.
 - (1) Object
 - (2) Application
- III. Nature of Proceedings under the chapter.
- IV. Magistrates having jurisdiction.
- V. Jurisdiction of Magistrates.
- VI. Conditional Order.
 - (1) Contents
 - (2) Miscellaneous
- VI (A) Illegal Conditional Orders.
 - (1) Interference with private rights
 - (2) Order directing a person to take certain order with his private property
 - (3) Cremation and burial grounds
 - (4) General orders
 - (5) Religious ceremonies
- VI. (B) Orders held to be legal
- VII. (A) General Rules.
 - (1) Analysis of Chapter X
 - (2) A person cannot both show cause and ask for the appointment of a jury.
 - (3) Provisions of Ss 137 and 139 mandatory
 - (4) Procedure as to the jury
 - (5) Magistrate's powers in the matter of procedure
- VII. (B) Notice [S. 134].
- VII (C) Shewing Cause [S. 137].
- VII. (D) Jury [S. 139 Cr. P. C]
 - (1) Right to claim a Jury [S 135].
 - (2) Procedure before reference to jury
 - (3) Nomination of the jury
 - (4) Composition of the jury
 - (5) The foreman of the jury
 - (6) Functions of the jury
 - (7) Proceedings before the jury
 - (8) When some members are absent or refuse to act
 - (9) The verdict
 - (10) Proceeding on jury failing to return their verdict [S. 141].
- VII. (E) Consequences of failure to show cause [S 138]

VIII Evidence

- (1) Magistrate's obligation to take evidence
- (2) Magistrate can act only on legal evidence.
- (4) Miscellaneous

IX Injunction pending enquiry [S 142]

X. Order Absolute (Ss. 136, 137, 139, 141).

- (1) Analysis—An order absolute can be made in "four ways".
- (2) Who can make the order absolute.
- (3) Order must be based on legal evidence taken by the Magistrate.
- (4) When order may be made without evidence
- (5) When the order is illegal.
- (6) Order must follow the finding of the jury
- (7) Power to set aside *ex parte* order.
- (8) Procedure on order being made absolute (S 140)

XI Public and Private

- (1) Meaning of 'Public place'
- (2) When a private road may be considered public
- (3) When the exercise of private rights may lead to a public nuisance
- (1) Magistrate's jurisdiction depends on the right infringed being a public right.

XII Bonafide claim of right.

- (1) General Rule
- (2) Magistrate's procedure as to investigation of the bonafides of a claim of note
- (3) Procedure on deciding in favour of the claim
- (4) Miscellaneous

XIII. (A)—Public nuisance (unlawful obstruction to way river or channel)

- (1) Meaning.
- (2) Nature of the enquiry to be made
- (3) Obstruction in thoroughfares or paths.
- (4) Obstruction of drains channels and rivers
- (5) Miscellaneous

XIII. (B)—Public nuisance (Injurious trade or occupation)

- (1) Application of the Section
- (2) No length of enjoyment can legalise a public nuisance.
- (3) What is and what is not an injurious trade or occupation.
- (4) Power of the Magistrate to regulate the conduct of a trade or occupation

- XIII(C)—Public Nuisance (Prostitutes).
 XIII(D)—ditto (Dilapidated Buildings).
 XIII(F)—ditto (Dangerous tanks wells or excavation).
 XIV. Physical comfort.
 XV. Long enjoyment no defence.
 XVI. Allied Sections.
 (1) Difference between ss. 131 and 111
 (2) Difference between ss. 131 and 117
 XVII. Civil Suit to nullify the order etc.
 (1) Scope of rule (2) S. 131 Cr P C
 (2) The remedy of the party against whom the order has been made absolute

- (1) Frame of the suit
 (1) Suit for damages.
 XVIII. Appeal Revision review etc.
 (1) Appeal
 (2) Further enquiry
 (1) Revival of proceedings once dropped
 (1) R view
 (1) Revision
 XIX. Miscellaneous.
 (1) Court fee
 (2) Personal interest of the Magistrate (S 536 Cr P C.)
 (3) Person proceeded against is not an accused person
 (1) Forms
 (2) S 33 of the Bombay Act VII of 1867 compared.

I. CHANGE IN THE LAW.

Under the Code of 1861—S. 108 corresponding to S. 131 of the present Code, only the District Magistrate could act under S. 131 Cr P C [See 15 W R 36 2 Agt.] In 15 W R 41 it was held that a Joint Magistrate in charge of a Division of a District could originate proceedings but

could not pass final order. Under the present Code all District Magistrates and Sub-Divisional Magistrates are *ex officio*, competent to act under Chapter X, but just class Magistrates can act, only when specially empowered by the Local Government

II. OBJECT AND APPLICATION OF THE SECTION.

(1) Object.

1. **Urgency and imminent danger alone justify action.** The exceptional powers given by Chapter X, should be used only when there is proof of *urgency or imminent danger* to the public. It is improper for a Magistrate to make use of those powers in regard to a matter which is already the subject of a Civil Suit. 4 P R 1897 21 W R 46 12 C 138 15 C N 1066 that 81
2. **Action to be taken purely in the public interest.** It is certainly expedient that in all criminal proceedings initiated under S. 131 Cr P C the Magistrate should bear in his mind that he is supposed to be acting *purely in the interest of the public* and should be on his guard against any tendency to use the section as a *substitute for litigation in the Civil Courts*, in order to obtain settlement of private disputes. 37 A 26 26 C 699 23 C 499
3. **Nuisance must be existing and not merely anticipatory.** The nuisance must be an *existing one* and not one merely likely to occur in the future. [21 W R 10 5 P R 1890] S. 133 relates an *existing state of affairs* and not the possibility of future results. [20 Cr 462 (P)] (01) A N 126]
4. **Necessity for caution.** Criminal Courts ought to be cautious in passing orders under S. 133 Cr P C since the order bars the jurisdiction of Civil Courts to question it. 2 P R 1803 18 C N 1056
5. **How to work the provisions.** The provisions of Chapter X should not be so worked as to interfere with a *free and full enjoyment* by a person of his own property except on clear and absolute

proof that such use of it by him is injurious to the health or physical comfort of the community 17 P R 1555

(2) Application.

6. **Scope of the section.** S. 131 Cr P C applies only to physical obstruction which must be *actually in situ and capable of being removed*. There are no words in the section prohibiting future obstruction [(01) A N 126]
7. **Investigation into the rights of the parties.** The procedure prescribed by S. 133 and the following sections provide for the ascertainment of rights as well as for the actual removal of the obstruction. 9 B R 30, 28 A 98 10 C N. 815 2 Pat J 67, 2 Weir 64 7 Bar T 23
8. **Powers not general but limited by S. 133.** The Magistrate's powers are *confined to the specific instances* mentioned in the section. The section does not confer general powers upon a Magistrate to pass any order he may consider necessary for the protection of public health. 22 W R 19 24 W R 6 25 W R 4 (00) A N. 135 12 C N. 70 12 C 516 2 Weir 64
9. **Justice and equity should be the guiding principle.** The exercise of the summary powers provided by Chap. X require both *experience and discretion* in a Magistrate. *Justice and equity* should form the rule of the Magistrate's conduct. 2 B R 341
10. C

67 5 C 875 See (11) Public and private. (159)

(Note)—For exemption—See (11) Public and private (157 to 159)

11. Ss. 133 and 144 mutually exclusive.—Public nuisances specifically provided for in S. 133 Cr P C are taken out of the general provisions of S. 144 2 Weir 54 5 M H (19) 10; Rat 50; 8 W R 37 1 N P. 197 See 38 C. 870

Note—In other cases the procedure to be followed is that laid down in S. 144 or S. 141 2 Weir 61]

12. Proceedings once commenced under

Chap. X. must be concluded under that Chapter. A Magistrate having once commenced proceedings under S. 133 Cr P C, is not at liberty to proceed otherwise than in conformity with the rule laid down in Chapter X—5 W. R. 37 2 N. P. 152

13. Application for declaration of a place as a cremation ground. An application to have it declared that a certain place was one which would be need for cremation purposes would not come under any of the clauses of this section 24 W. R. 6

III. NATURE OF PROCEEDINGS UNDER THE CHAPTER.

14. (1) Judicial.—The provisions of the section which requires the Magistrate to issue a notice to the person concerned to show cause why the order should not be enforced, shows that an order made under the section is one made in a judicial proceeding.—Cm L B H 160 2 B H 484 7 B L 119 Rat 50 Cm L B H 150 (4) 2 P R 1880

15. (2) Criminal trials.—Orders passed under a Chapter X are unless passed in a criminal trial within the words of S. 15 of the Letters Patent. No appeal lies therefrom from an order passed under S. 139 Cr P C by a single Judge of the High Court in revision of proceedings under that Chapter—[(15) M N 249]

16. (3) Civil rather than criminal.—Proceedings under S. 133 are more of the nature of civil than

of criminal proceedings. There is nothing therefore to prevent a party to such a proceeding being examined on oath and being prosecuted for an offence under S. 1011 P C—9 C N. 183 [D is (15) M. N. 219]

17. (4) Proceeding before the Jury.—is not proceeding in a Criminal Court within the meaning of S. 435 Cr. P. C.—Rat. 391

18. Limited character of the enquiry.—The enquiry contemplated by S. 133 Cr P C is an enquiry into the existence or non-existence of the nuisance complained of and not an enquiry into disputed questions of title, such questions are within the jurisdiction of Civil Courts—12 C. 17 (135) 15 C. S. 1118, 4 B R 687 (285)

IV. MAGISTRATES HAVING JURISDICTION.

19. All first class Magistrates have been empowered to act under Chapter X

(1) in Bombay (except Honorary Magistrates) Bomb Gaz 1872 (p. 1325) 1873 (p. 16)

(2) in Madras—See Post St G Gaz 1873, P. 717.

(3) in the Panjab Punjab Prov Gaz 1874 Pt I (P. 361) 1873 (P. 75)

20. Presidency Magistrates—are not empowered to act under this section.

21. Municipal Boards.—The Local Government may invest Municipal Boards in the N. W. P. and Oudh with the powers of a District Magistrate as described in S. 133—See Act XV of 1883 S. 57

22. Second class Magistrates.—Although second class Magistrates have no power to institute proceedings, they have jurisdiction to make absolute a conditional order passed by a Magistrate

having jurisdiction and sent up to them under the penultimate paragraph of S. 144 Cr. P. C. 25 C. 274 B M. 201 Rat 20 Cr. 761 (M)

Note.—After the reference has once been made it rests with the second class Magistrate to pass final decision and issue thereon the consequential order under S. 140 Cr P C. 9 M 201; 2 Weir 61

23. Meaning of the word Magistrate in S. 133 cl (1). The words "the Magistrate" in S. 133 cl (1) refer to the Magistrate to whom application has to be made under S. 133 cl (b) to empanel a jury and who under S. 135 Cr. P. C. does so and not the magistrate before whom the magistrate issuing the conditional order directs the counter petitioners to show cause under cl (1) of S. 13 Cr. P. C.—Per Kumaraswami Sastri in 20 Cr 761 (31)

Cor—2 Weir 61, 9 M 201 25 C. 278

V. JURISDICTION OF MAGISTRATES.

24. Conditions precedent to exercise of jurisdiction.

(1) The road, channel etc. must be a public one.—Magistrate have jurisdiction to entertain a case for the removal of obstruction from a thoroughfare only if he finds that the road is a public one 15 W. R. 67 5 C 875 22 W R 19 25 W. R. 4 18 W. R. 41, 9 R L 417

(2) Only when there is proof of urgency or imminent danger to the public and immediate action is necessary in the interests of the public See 4 P. R. 1837, 21 W R 86 Rat. 81 37 A 26

(3) There must be an existing nuisance capable of being removed and not one merely to be anticipated, i. e. likely to occur in the future. 21 W R 10; 5 P R 1890 (71) A. N. 126, 20 Cr 462 (P).

25. Where a bonafide claim of right is established, the Magistrate has no jurisdiction to proceed further. *See* (12) *Bonafide claim of right* (161)
26. No jurisdiction to decide questions of note.—Where a bonafide question of note is raised, the Magistrate ought not to proceed under S 133 Cr. P. C. but should leave the matter to be decided by the Magistrate. 21 A 98, 35 C 283, 10 B R 563, 2 P R 1803, 1 P R 1807, 6 P R 1887, 12 C 137, 12 C 696
27. Magistrate cannot go into the question of limitation.—A Magistrate acting under chapter X is not competent to decide whether the claim of right set up by a counter petitioner is barred by limitation—12 C, N 287

28. Objection to jurisdiction must be taken before reference to jury.—An objection to the jurisdiction of the Magistrate to proceed under S 133 in the particular case must be taken before reference to jury and is to be decided at the trial—5 C N 173 but *See* 30 A 201

29. Third application after rejection of two previous ones.—Where two previous applications for the removal of an obstruction in a public thoroughfare have been rejected, and the party has been referred to the Civil Court, the Magistrate has power to entertain a third application after the Civil Court has declared the way to be a public thoroughfare—11 C 271

VI. CONDITIONAL ORDER.

(1) Contents.

- 30(a) Time within which and place where the person is to appear.—It must mention the time within which and a place where the person for whom it is meant, may appear before the Magistrate and more to have it modified or reversed, 4 C 637, 1 Bur II, 363, 5 A 7.
- 31(b) It must not be vague and indefinite
A conditional order must not be vague and indefinite. The order must be such that the person against whom it is directed can learn from its terms what it is that he is to do for the purpose of complying with it—11 C J 111
- 32 (c) A time should be fixed for complying with the order but as to what time should be allowed for the removal of the nuisance, it is a matter entirely within the discretion of the Magistrate—2 Weir 59
- 33(d) In the case of tanks used as a reservoir of water, the order must ordinarily be confined to a direction to have it fenced in, in order to prevent accidents. But where it is proved to be injurious to the health and comfort of the community, the Magistrate may cause it to

be filled up—10 W. R 51, 10 W R 27, 2 W. R 56, 31 M 280

34(c) The order must be addressed to a particular person or persons.—It cannot be addressed to community at large—16 C 9, 12 Cl 231, 8 A 99, Rat 312, 1 Bur 8 R 363

(2) Miscellaneous.

35. Order must not be vague or ambiguous.
The High Court will set aside a conditional order on the ground that it was too vague and indefinite (11 C J 114). If the order is ambiguous and open to two different interpretations, the one favorable to the accused must be adopted—(16 C 9(13))
36. A conditional order which is illegal cannot be the basis of a valid order absolute—[Rat 316]
37. Consequence of failure to comply with the conditional order.—*See* S 136 and
38. F.
I
I remove the nuisance—10 W. R 51, *See* 2 N. P. 452

VI.(A.) ILLEGAL CONDITIONAL ORDERS.

(1) Interference with private rights

39. (a) order directing a person to construct a new drain in a particular manner.—(00) A. N. 138.
40. (b) order directing a person not to use his own property so as not to cause injury to the property of another—[Rat, 516.
41. (c) order regarding the custody and guardianship of a child—2 Weir 56.
42. (d) order directing a person not to cultivate his land—*See* 1 A. J. 615, (91) A. N. 233.
43. (e) order directing a person to repair a well and also to pay a fine out of which the well was to be repaired—[Rat, 50
44. (f) order directing a certain person to refrain from drinking the water of a certain well and to restrain others from doing so—(81) A. N. 143.

(2) Order directing a person to take certain order with his private property.

45. (g) order directing a person to cut down the branches of his tree which overhang a certain house and were thus dangerous in affording facility to thieves—(63) A. N. 222.
46. (h) order directing the owner of a house standing apart from any public road in its own compound to repair such house—20 A. 601.
47. (i) order directing a person to be removed because it is only recently made in any locality—4 B. R. 582.
- (3) Cremation and burial grounds.
48. (j) order declaring a certain place should not be used for cremation purposes—21 W. R. 6.

49. (k) order prohibiting the use of a burial ground.—12 C N. 70.
 50. (l) order prohibiting burials in certain places on sanitary grounds.—2 W R 61

(4) General orders.

51. (m) A general order prohibiting the establishment of cotton ginning yards in the village.—Rat 312.
 52. (n) An order directing the inhabitants of a town to keep themselves well supplied with water upon the roof of their houses and with hooked stakes

for beating out fire in order to prevent the breaking out of fire during the dry season.—1 Bar. 5, R. 263.

53. (o) order directing the public not to frequent the *meeth* and public places in a village between certain hours.—12 C. 1, 271.

(5) Interference with religious ceremonies.

54. (p) order prohibiting certain objectionable ceremonies to even though practised by a religious sect to the discomfort and annoyance of a majority of their fellow townsmen.—(Q1) A. N. 125.

VI.(B.) ORDERS HELD TO BE LEGAL.

Cremation ground

55. (i) A Magistrate may direct the proprietor of a cremation pit to take such steps as would prevent the cremation of corpses being a nuisance to the public.—21 C 125 2 C N 115

Removal of obstruction

56. (h) Order for the removal of a bank erected across a stream over which the public had by long use acquired a prescriptive right of way.—32 C 100

Recreation of insanitary tank

57. (i) A Magistrate may in an exceptional case, direct a tank to be reexcavated. If he is compelled to do so, the actual cost only of excavation can be charged against the proprietor at whose

disposal the soil taken out must be placed.—10 W R 51.

Construction of sluices

58. (d) Order directing the parties to deposit Rs 100 each with a judge for the purpose of constructing two sluices in the embankment (the cause of the alleged nuisance)

18 Cr 395 (Pat)

Order to fill up a dirty tank.

59. (e) Where the tank used as a reservoir of water is proved to be injurious to the health and physical comfort of the community, the Magistrate may treat it as a public nuisance and have it filled up.—10 W. R. 27 2 W R 36

VII. PROCEDURE.

A. General Rules.

(1) Analysts of Chapter X.

60. When a conditional order is passed (S. 133) the person proceeded against may
 (a) Either show cause or apply for a jury (S. 134)
 (b) If he fails to do so then he is liable to be prosecuted under S. 138 I P C and the order may be made absolute (S. 136)
 (c) If he shows cause, the Magistrate is bound to proceed under S. 137 Cr P C
 (d) If he applies for a jury, the Magistrate must proceed under S. 138 Cr P. C.—See 13 C N. 367 8 W. R. 37

(2) A person cannot both show cause and ask for the appointment of a jury.

61. The party against whom a conditional order under S. 133 Cr. P. C is made cannot both show cause against the order and ask for the appointment of a jury. S. 133 Cr P C gives the person against whom the conditional order is made, the right to adopt either of the alternatives 13 C N 367.

(3) Provisions of Ss. 137 and 138 mandatory.

62. Both these Sections are imperative in their terms. The Magistrate has no discretion in the

matter. 13 C N. 367 21 C N 826 13 C N. 367 10 C J. 452 3 C J 360 8 C L 431 26 W. R. 7 11 B 375 23 Cr 217 (Pat) 1 Pat L. W. 292

When cause is shown.

63. The Magistrate is bound to take evidence under S. 137 as a basis of the order he is to make. He is bound to record evidence adduced by both the parties.—See (b) Evidence (124).

Magistrate is bound to follow the procedure laid down in Chap. X.

64. He cannot pass an summary order.—2 N. P. 452
 Magistrate cannot base his order on the result of local inspection even with the consent of the parties or on the report of a Subordinate Magistrate.

65. See (8) Evidence (128-129).

Order in which evidence is to be taken.

66. The party who has set the law in motion has to produce evidence, and the opposite party is not bound to do so until this has been done.—11 A J. 685 31 A. 431

(4) Procedure as to the jury.

67. Magistrate bound to appoint jury.—If the person affected by the conditional order applies for

the appointment of a jury the Magistrate is bound to do so—3 C L 599 19 P R 1887

63. **Procedure before appointment of jury.** Prior to the appointment of the jury under S 134 Cr P C, the Magistrate is bound under S 137 Cr P C to determine the question which is the most important question in proceedings under S 133 and which alone gives the Magistrate jurisdiction—viz—whether the pathway or the channel etc. in which the obstruction is said to have been erected is in fact a public pathway etc., *and* 3 C J 360
69. **Magistrate bound to frame his order in accordance with the decision of the jury.** 22 W. R 46 See (70) Jury (111)

B. Notice. [S. 134].

73. **S. 134 is directory.** Omission to follow the terms of S 134 Cr P C, though an irregularity does not invalidate the order. 16 C 9 2 P. R 1900, but See 14 W. R. 17 10 W. R 63 12 W. R 40.
74. **Failure to serve notices personally**
 (a) Is not fatal, when it appears that the parties did not take objection before the Magistrate and that they in fact admitted knowledge of the existence of the notice and sought to excuse their failure to obey it.—5 W. R. 1
 (b) Is not fatal, when the order is communicated before it is made absolute and it is immaterial that the method of bringing the order to actual notice is not in strict accordance with the provisions of S 134 Cr P C 2 P R 1900
75. **Mode of service**
 (a) Service may be made by fixing a copy of the order to the house of the person for whom it is meant. 12 M 175.
 (b) The notice is to be served on persons individually and cannot be addressed generally to the public at large by a proclamation.—8 A 99 12 C L 231

(5) Magistrate's powers in the matter of procedure.

70. **Magistrate may drop proceedings**—When the Magistrate after enquiry finds there is no sufficient cause for proceedings, he is competent to let the matter drop. 1 C L 456. 8 C 883
71. **Cause shown after time fixed.** See (70) Showing cause (90)
72. **Case falling under both Sections 133 and 144** In a case which falls within both the Sections 133 and 144, the Magistrate must conform to the more particular directions of S. 133 Cr P C and not the latter. 1 N P 197 See 2 W. R 54 5 M 11 (ap) 19 Rat 50. 8 W. R. 37 Third application after rejection of two previous ones. See (5) Jurisdiction of Magistrates (29)

76. **General notice by advertisement** is not sufficient. Persons ordered to remove a nuisance should be directly informed. 1 J 59
77. **Mode of publishing proclamations.** The Proclamation referred to in this Section shall be published by notification in the Local Gazette and by advertisement in local newspapers in Bombay. See Bomb. Gaz Pt 1 P. 866 Notification No 6067 dated the 14th October 1887 In Bengal the proclamation is to be notified by beat of drum at the place where the nuisance to be abated or removed is situated. See Cal. Gaz. Pt III p 245
78. **Magistrate's duty to give notice.** An he defend why tho 5 B 14
79. **Form of notice.** See Sch V Form No XVI The summons should specify the time at which and the place where the person summoned should attend [5 A 7]

C. Showing cause. [S. 137].

80. **Opportunity to show cause must be given**—A party against whom a conditional order has been issued is entitled to an opportunity to show cause against it. An omission to give this opportunity renders the whole proceedings void. 21 W. R 66 7 B L 449 5 B L 61 5 B L (ap) 82 (n) 10 W. R 27 2 W. R 36.
81. **Procedure when the party appears to show cause**—When a party ordered to show cause, appears to show cause against the order, and offers to show cause, the Magistrate is bound to take evidence as in a summons case, i.e. the complainant has to start the proceedings by adducing evidence first and the party showing cause may produce his evidence if so advised [See S 137 (1)]

20 Cr 752 (C). 42 C 702 34 C 395 8 C L 431 26 W. R 7. 11 B 375 1 B R 783 Rat 320 31 A 453 14 A. J 911 2 W. R 62 4 Pat W 50. 20 Cr 217 (Pat) 32 P. R 1917 147 P L 1901 10 J 482

82. ————

the alternatives

13 C N. 367.

If the party called on to show cause

- 83 (1) is able to establish to the satisfaction of the Magistrate—that the conditional order in question is not reasonable or proper, no further proceedings shall be taken in the case. [See S 137 (2)] See 2 B. II 354.
- 84 (2) sets up a claim of right—i.e. claims that the pathway, river or channel etc. is his private property, the magistrate has to decide whether the objection is a bona fide one or a mere subterfuge

for the purpose of vesting his jurisdiction. If he finds that the claim is *bonafide*, he should abstain from further action until the public right of way is determined by a competent Court.

15 C. 504; 14 W. R. 11; 31 C. 379.

See—(12) *Bonafide claim of right* (160—161)

85. (3) is unable to satisfy the Magistrate—that the order is otherwise than reasonable and proper the order shall be *in absolute* [S. 137 (3)]

86. Objection regarding the applicability of the section. The question whether the matter with regard to which proceedings have been instituted was or was not one falling within the scope of S. 133 (1) P. C. is a matter for enquiry at the trial.

1 C. 173

87. Magistrate's obligation to follow procedure laid down in Chapter X. When a Magistrate has once commenced proceedings under S. 133 (1) P. C. he is not at liberty to proceed otherwise than in conformity with the rules laid down in Chap. X.

8 W. R. 47; 21 W. R. 1; 1 N. P. 197; 2 N. P. 152; 80; 2 M. J. A. (1905)

88. The provisions of S. 137 Cr. P. C. are mandatory. S. 137 is imperative and mandatory. A Magistrate is bound to proceed in accordance with the provisions of S. 137 Cr. P. C. when the petitioners show cause. He cannot assume the role of an arbitrator, because both

the parties agree to his being an arbitrator. Consent of the parties or waiver cannot vest him with jurisdiction. 21 C. N. 235; 11 C. N. 207; 13 C. N. 207; 11 C. N. 207; 8 C. N. 131; 20 W. R. 7; 11 B. 375; 20 Cr. 217 (Pat.) 1 Pat. W. 292.

89. Procedure in cases of encroachment.—Where the complaint was that the opposite party had built a house encroaching on a public way (Plot no. 1275 of the Cadastral Survey Map) and the person affected (by the conditional order alleged that it had been rebuilt *in situ* on their own plot no. 1275). Held—that the extent of encroachment if any should have been ascertained by requiring the map on the ground and otherwise—and in the absence of a definite finding the order should not be upheld—21 C. J. 110.

90. Cause shown after the time fixed. Objections should be heard even if they are filed after the time fixed for their presentation, but before the case is taken up. 10 W. R. 27; 2 W. R. 50.

91. Procedure on non-appearance on the date of hearing. Where objections have been filed the Magistrate is bound to take evidence before making the order absolute whether the objector appears or not on the date fixed for leaving (600) A. N. 204. When the person against whom notice is issued appears and shows cause, any subsequent failure of his to produce evidence does not justify an order absolute unless the Magistrate is satisfied that there is a nuisance as contemplated by S. 137 Cr. P. C. [2 B. R. 814]

D. Jury. [S. 138 Cr. P. C.].

(1) Right to claim a jury

92. In a proceeding under S. 131 Cr. P. C., the person called upon to show cause has a right to claim a jury. The Magistrate on being asked to appoint a jury is bound to do so. If he refuses, he acts without jurisdiction. [2 Weir 63; 19 P. R. 1847; 2 C. L. 509; 9 R. R. 30]. But if he shows cause, he loses his right. He cannot both show cause and claim a jury. [8 C. S. 115; 13 C. N. 307]

(2) Procedure before reference to Jury.

93. Prior to appointing a Jury, the Magistrate should himself determine the question whether the pathway in which the obstruction is caused is in fact a public pathway or not. [3 C. J. 360]. The question whether the way etc. in question is public or private must be decided by the Magistrate himself. It is not open to him to leave the decision of the question to the Jury appointed under S. 138 Cr. P. C. [5 C. 875; 3 C. N. 345; 5 C. N. 173; 10 C. N. 845; 14 C. N. 544; 18 C. N. 1149; 31 C. 979; 9 B. R. 30; 2 Weir 64; 2 Pat. J. 67; 7 Bur. T. 23; 30 A. 364; 18 A. 168]

(3) Nomination of the Jury.

94. Duty cannot be delegated.—A Magistrate to whom an application to appoint a Jury is made cannot delegate that duty to another Magistrate. [Rt. 400]

95. Magistrate should use his independent discretion.—A Magistrate should use his own independent discretion in the nomination of the foreman and one half of the remaining members of the jury. [20 C. 409; 21 C. 109; 21 W. R. 43; 16 W. R. 23]. If the foreman of the jury alone is appointed the jury is not properly constituted. [7 D. L. (sup.) 57 (5); 14 W. R. 69].

96. Appointment to be made in the presence of the parties.—The appointment or cancellation of the appointment of a juror should be made in the presence of the parties and not be *habeas corpus*.—5 C. 875

97. Magistrate's vote.—A Magistrate cannot vote the appointment as a juror of a person nominated by the applicant. [4 P. R. 1807]

(4) Composition of the Jury.

98. Friends and supporters of the applicant.—It is highly improper on the part of a Magistrate to appoint to serve on a jury the friends and supporters of the person at whose instance the proceedings under Chapter X are being taken. 37 A. 26; 4 P. R. 1897. See 20 C. 199; 21 W. R. 43; 16 W. R. 23

[Note.—But where no objection was taken by the opposite party and there has been no failure of justice, the irregularity will be condoned.—37 A. 26.]

99. **Nominees of the applicant.** Although it is not illegal on the part of a Magistrate to enquire from the applicant the names of respectable persons living in the neighbourhood, who would be willing to serve on the jury, it is highly improper to accept the nominees of the applicant [26 C 869, 23 C 493, 21 W R 13]. A jury consisting of the complainant and his wife is not a proper tribunal and an order on the finding of their decision is not valid [22 W R 47 (18), 1 P R 1867].

(5) *The foreman of the jury.*

100. **Cannot appoint a substitute.** The foreman of a jury cannot appoint a substitute for a juror who falls ill during the hearing without the permission of the Magistrate. An order based on the report of such a jury is illegal [10 C 1, 103].
101. **Delay of Foreman in making the report.** Where the jury had given their opinion to the foreman to report to the Magistrate in time but the foreman made delay in making the report, the Magistrate could not appoint a second jury. He ought to act upon the report of the first jury [21 W R 51].

(6) *Functions of the Jury.*

102. **Each juror must exercise his own judgment.**—The finding of the jury should be arrived at after each juror expresses his own opinion in the matter. A verdict given by jurors some of whom humbly follow the opinion of others is not a proper one [25 W R 4].
103. **The question whether there is a public right of way or not cannot be referred to the jury.**—3 C 811, 31 C 479, 10 C N 845. See 26 C 609, Con—20 A 364. Also see above No 93.
104. **The question of the bonafides of a claim of right when the way etc is claimed to be a private one cannot be determined by the jury.** It must be decided by the Magistrate himself. 14 C N 543, 10 C N 845, 31 C 479, 4 C N 596, 26 C 609, 3 C J 360, 14 C N 1115, 2 Weir 64. Con—30 A 361, 18 A 158.
105. **Subject of enquiry.**—The jury are simply to decide in an informal way whether the steps passed by the Magistrate for the removal of an obstruction is or is not a reasonable order. They cannot decide whether a pathway is public or private [10 C N 815].

(7) *Proceedings before the Jury.*

106. **No special procedure for Jury.**—There is no special procedure laid down by the Code to be adopted by the jury in coming to a finding on the questions submitted to them [30 A 361]. The proceedings before the jury are informal [10 C N, 845 (16) Rat 336].
107. **Magistrate's duty.** Magistrate should give instructions to the jury as to what they should do [2 B, II 364]. If the jury require evidence, it should be produced before them [18 A 158].
108. **Verdict based on a mere inspection is illegal.**—A verdict given on mere local inspection and without taking evidence is illegal

The jury are bound to hear the parties and such witnesses as they may desire to bring forward [26 C 878, 6 C N 886].

109. **Award delivered after time.**—When the jury deliver their award long after the time appointed for filing the same, it is illegal and can not be acted on—7 B L (np) 57, 14 W R 60, 13 C N, 367. Con 2 B II, 381.

[Note. The time can, on good cause being shown, be extended under the present Code—See S 138 (2), but the power to extend can not be delegated by the Magistrate to the foreman of the Jury—21 A 159].

(8) *When some members are absent or refuse to act.*

110. **Where one out of five jurors declines to act as such the Magistrate can not act on the verdict of the remaining members.** He should order a fresh jury to be summoned [11 C 81, 13 C 275]. Where one out of 5 jurors fell ill and the remaining four dealt with the case—held that their verdict was illegal and could not be acted on. A fresh jury must be appointed [11 Cr 402(0), 21 Cr 418(C)]. The jury should hear and try the matter together. A decision by 3 out of 5, in the absence of the other two, is invalid [23 A 159 (162)].

(9) *The verdict.*

111. **Magistrate bound to base his order on the finding of the jury.**—(1 Shome 11, 25 W R 31, 22 W R 86, 12 W R 29). A Magistrate can not decline to act on the findings of the jury or a majority of them under S 131 Cr P C on the ground that it involved an inconsistency. If the finding is that the order of the Magistrate is reasonable and proper, the Magistrate is bound to make the order absolute [10 Cr 116(C), 18 A 158].
112. **Reference by agreement of the question, whether pathway is public or private, to jury.** Where on the application of the party concerned, whether a pathway is a thoroughfare or not has been referred to the jury, the Magistrate is bound to frame his order in accordance with their finding [22 W R 86, 18 A 158, 30 A 361. But See 25 W R 72].
113. **Verdict binding on the applicant.** The person at whose instance the jury was appointed is bound by their verdict and can not turn round and set up a bonafide claim of right [22 A 267, 30 A 361].
114. **Objection to the verdict.** When a party objects to a verdict, he must satisfy the Magistrate that there are *prima facie* grounds for the opinion that either the jury did not in fact apply a judicial discretion to the case or that the verdict was such as the jury could not have arrived at by a proper exercise of their discretion upon the materials before them [23 W R 15].

(10) *Procedure on Jury failing to return their verdict.*

115. **Fresh Jury to be appointed.**—Where a jury appointed under S 138 Cr P C, fails to return

their verdict and the petitioner prays for a fresh jury, the Magistrate could to appoint a fresh jury instead of following the strict provisions of S. 141 [12 C.N. 1047, 13 C.N. 307]. When the defect in the proceedings of the Jury has not been caused by the petitioner or his counsel, the Magistrate might not to make the order absolute when the petitioner shows sufficient reasons why it should not be made [2 H.H. 384].

116. When fresh Jury need not be appointed. A Magistrate is justified in making the

order absolute under S. 141 Cr. P. C. without taking evidence under S. 137 Cr. P. C. if the petitioner takes no action, after the jury had failed to perform their duty, to move the Magistrate to take evidence—14 C.N. 307.

(11) Miscellaneous.

117. Revision by High Court. The decision of a jury under S. 138 Cr. P. C. is not a judicial proceeding and so can not be the subject of revision under Ss. 135 and 149 Cr. P. C. Rat 334.

E. Consequences of failure to obey or show cause. S. 136 Cr. P. C.

118. No need to wait till the order is made absolute. Where the person against whom an order under S. 131 Cr. P. C. is passed, neglects to comply with the order to take any steps whatever to protest against it, he may be prosecuted at once under S. 185 I. P. C. without the necessity of a further notice provided for in S. 119 Cr. P. C. 31 M. 250, 12 M. 475, 13 A. 577. Con—20 A. 591.
119. Object of S. 130 Cr. P. C. The provisions of S. 130 Cr. P. C. are stringent, because it is intended to create facilities for conditional orders and to avoid needless delay in carrying them into effect—12 M. 475.
120. Only the person called upon to show cause can be punished. Where the order of a Magistrate has been forbidden to hold the trial on a particular day, *trial* can not be prosecuted for exposing goods for sale at the trial on the particular day. 16 C.B.

121. Disobedience of verbal orders. A verbal order directing a party to remove an object is not the effect of an order under S. 137 Cr. P. C. It is not an order duly made and lawfully promulgated. A person disobeying it can not be convicted under S. 184 I. P. C. 16 C. 21 (C) 2 A. 1.

122. Disobedience of illegal orders. When the conditional order is illegal a person can not be punished under S. 184 I. P. C. for disobeying it [Rat 342, 12 C.B. 231; 1 Bar. & R. 363, see Rat 50. Compare—14 B. 165]. When the order is passed by a Magistrate not empowered to act under Chap. XI it is no offence to disobey it [S. C. L. 231-S. (N) A. N. 231, 1 A. J. 615]. A Magistrate can not convict a person for disobeying his order when the legality of the order itself is under the consideration of an appellate Court [2 H.H. 46 (11)].

VIII. EVIDENCE.

(1) Magistrate's obligation to take evidence.

123. Magistrate is bound to take evidence as in a summons case.—A Magistrate is bound under S. 137 Cr. P. C. to take evidence in the case, in the manner provided for summons cases. He cannot pass a final order without taking any evidence.—42 C. 702, 20 C. 732 (C), 21 C. 395, 21 C. N. 925, 10 C. J. 482, 31 A. 431, 11 A. J. 931, 2 Weir 62, 17 M. T. 112; 18 C. 848 (M), 11 B. 375, 20 Cr. 417 (Pat.), 1 Pat. W. 50; 1 Pat. W. 292, 32 P. R. 1917, 14 P. L. 1901, 32 P. R. 1947.

Consent of parties or waiver no excuse.

124. S. 137 is imperative and mandatory. A Magistrate is bound to record evidence when the petitioner shows cause. He cannot assume the role of an arbitrator, because both the parties agree to his being so. Consent of parties or waiver cannot vest him with jurisdiction.—21 O. N. 925, 13 C. N. 367, 13 O. N. 460, 8 C. L. 431, 2 C. L. 509, 10 C. J. 482, 3 C. J. 360, 26 W. R. 7, 17 M. T. 142, 2 Weir 62, 11 B. 375; 1 Pat. W. 292, 20 Cr. 217 (Pat.)—19 P. R. 1887.

Meaning of the words "shall take evidence" in S. 137 Cr. P. C.

125. The words "shall take evidence" in S. 137 Cr. P. C. mean "shall take evidence upon the matter

of the complainant and not merely the evidence which the opposite party might offer"—21 C. 395, 32 P. R. 1917; 537 P. L. 1901.

The order in which evidence is to be recorded.

126. See 7 C.—Showing cause (No. 61)

127. In *ex parte* cases

- (1) Non-appearance of the objector, on the date of hearing, provided he has filed objection, does not absolve a Magistrate from the duty of recording evidence before making the order absolute [100 A. N. 201, 2 B. R. 819]. But where no cause has been shown and the party has taken no action to vacate the order, the *ex parte* information on which the conditional order is based becomes conclusive evidence.—[12 M. 475, S. & S. 136]

(2) Magistrate can act only on legal evidence.

128. Result of local enquiry.—A Magistrate acts without jurisdiction in basing his order absolute on the information collected at a local enquiry (even if the parties agree to such a course) 21 C. N. 926, 10 C. J. 452; 3 C. J. 360, 2 C. L. 509; 20 Cr. 217 (Pat.), 1 Pat. W. 292, 17 M. T. 142, 2 Weir 62; 19 P. R. 1887.

Note.—A Magistrate acts without jurisdiction in deciding the case not on the evidence adduced by the

parties but entirely upon the result of his own local enquiry and on the basis of the plan he has himself made.—20 Cr 222(C), 32 W R 1017

129. Report of a Subordinate Magistrate.—A Magistrate acting under S 133 Cr P C is bound to take evidence. He cannot rest upon the report of a subordinate Magistrate and his personal inspection.—2 Weir 62, 15 B R 57, 10 C J 482, 20 Cr 217 (Pat). See 17 M T 142

130. Previous conviction on same facts. A Magistrate passing an order under S 139 Cr P C cannot rely merely upon a previous conviction of the person under S 243 Cr P C in respect of the same matter. He is bound to take evidence and to follow the procedure laid down in Chapter X—3 C J 260

(3) Miscellaneous.

131. What must be proved by the complain-

IX. INJUNCTION PENDING ENQUIRY (S. 142).

135. Application of S. 142 Cr. P. C.—When immediate measures are necessary to prevent imminent danger or injury to the public, an order of injunction may be passed pending enquiry by a jury.—21 W R 46
136. Jurisdiction ceases on danger passing away.—There is no jurisdiction to pass an order under S 142, when no jury has been appointed and the danger has passed away [1 W R 5]

X. ORDER ABSOLUTE.

(Ss 136, 137, 139, 141)

(1) Analysis.—An order absolute can be made in four ways.

138. (1) *Ex parte*—when the person called upon to show cause does not perform the act he is directed to perform in the conditional order, and does not appear and show cause or apply for the appointment of a jury as required by S 135 Cr P C [See S 136 Cr P C]
139. (2) If the party appears and shows cause but is unable to satisfy the Magistrate that the order is not reasonable and proper [S 137 (3)]
140. (3) If the jury appointed under S 138 Cr P C find that the order of the Magistrate is reasonable and proper.—[S 139 (1) Cr P C]
141. (4) If the applicant by neglect or otherwise prevents the appointment of the jury or if from any cause, the jury appointed do not return their verdict within the time fixed.—[S 141]

(2) Who is to make the order absolute.

- 142 The words "the Magistrate" in S 139 cl (1) refer to the Magistrate to whom application has to be made under S 135 cl (1) to empanel a jury and who under S 134 Cr P C does so, and not to the Magistrate before whom the Magistrate passing the order directs the defendant to

ant.—in a proceeding under S 133 Cr P C, it is necessary to establish first that the act complained of is a nuisance or an obstruction, and secondly that it was committed in a public place which may lawfully be used by the public—20 Cr 554 (Pat), 23 W R 72

- 132 Evidence of motive.—The motive with which a public highway is obstructed is absolutely irrelevant.—23 A 159.
133. Magistrate cannot arbitrarily disregard evidence.—It is not open to the Magistrate to select for his decision certain evidence and to disregard other evidence because he is of opinion "that even if taken by him he would not believe it"—13 B R 57
134. Magistrate cannot pass orders on the basis of his own opinion.—See (10) Order absolute (115).

Where therefore a magistrate after making an emergent order under the section, subsequently directs further enquiry to be made, it was held that it must be taken that the Magistrate had abandoned his proceedings under this section and in the circumstances was bound to proceed under S 137 Cr P C [21 W R 86]

137. For Form of Injunction.—See Sch V No 10 post

show cause under cl (1) of S 133 Cr P C—Per Kumaraswami Sastris 20 Cr 761 (M), Con 9 M 201 and 23 C 274

(Note).—A second class Magistrate may make absolute a conditional order, passed by subordinate Magistrate, who sends the case up to him—23 C 278]

(3) Order must be based on legal evidence taken by the Magistrate.

143. See (4) Evidence (125)
- 144 Magistrate cannot decide the case on local inspection.—The procedure of a magistrate, who referred the objection to a subordinate magistrate for report and who on receiving the report and after making a personal inspection of the spot, made the order absolute without taking any evidence whatever, was illegal [2 Weir 62, 10 C J 482, 20 Cr 217 (Pat), 17 M T 142]. The consent of the parties to have the case decided upon the local inspection does not dispense with the necessity of holding a regular trial under S 137 Cr P C and deciding the case on legal evidence.—[10 C J 482, 20 Cr 217 (Pat)]
- 145 Magistrate cannot base the order solely on his own opinion.—An order passed by a Magistrate for the removal of a nuisance without taking any evidence and acting solely on his own opinion that the structure was a nuisance was

illegal and ultra vires—11 B 375; 31 A 173, 17 M T 112

(4) When the order may be made without evidence.

146. A Magistrate is justified in making the order absolute without taking evidence under S 137 Cr P C, the petitioners not having taken any action, on the failure of a Jury to return their verdict, to move the Magistrate to take evidence on their behalf [13 C N 307, 12 W B 24] Where no cause has been shown and the defendant has taken no steps to vacate the order, the ex parte information on which the conditional order was passed becomes conclusive evidence—12 M 375, S 136 Cr P C]

(5) When the order is illegal.

147. (1) If it is made without following the procedure laid down in S 134 Cr P C and the subsequent sections of Chap V R O 1, 300
148. (2) If it is made without taking any evidence as required by S 137 Cr P C See Evidence
149. (3) If it is made without giving the defendant an opportunity of showing cause—21 W B 46 See Showing cause
150. (4) If it is a verbal order. A verbal order directing a party to remove an obstruction has not the effect of an order under S 137 Cr P C It is not an order duly made and lawfully promulgated. A person disobedient to it is not guilty under S 185 I P C—16 Cr 21(5) 2 Agr 1

151. (7) If the order absolute is issued on a condition which is illegal—Rat 516, Rat 50

152. (8) If the order is issued upon the report of an irregularly constituted jury—10 C 4, 193 (107)

(6) Order must follow the finding of the Jury.

153. A Magistrate cannot decline to act on the findings of the jury or on a majority of them on the ground that it involves an inconsistency. If the finding is that the order of the Magistrate must be reasonable and proper, the Magistrate must make the order absolute—10 Cr, 210(C)

(7) Power to set aside ex parte order.

154. Power to set aside ex parte order made under S. 136 Cr P C. A Magistrate may set aside an order passed by him under S. 136 Cr P C ex parte, on application being made by the opposite party and remove the case to the pending file. If he does so, he must proceed to record evidence, and comply with the provisions of S 137 Cr P C before he passes his final order in the case—4 Pat W 34

(8) Procedure on order being made absolute (S. 140).

155. Notice as directed by S 140 issued after the order is made absolute under S 136, should be personally served (12 M 375). For form—See V. Form No 18. A general notice by advertisement is not sufficient—[1 J 39, 2 B 384]

XI. PUBLIC AND PRIVATE.

(1) Meaning of public place.

156. A public place is one where the public go no matter whether they have a right or not (Welland R 14 Q B, D 64) A public road includes a fair way which is used for various purposes in connection with that road [7 C L 272] It is not necessary in order to give jurisdiction to the Magistrate under S 131 Cr P C that the way should be one which is generally used by the public. All that the section requires is that the way should be one which is in any way lawfully used by the public [10 Cr 210(C) See Harris R L R J O C, 284]

(2) When a private road may be considered public.

157. Where the road although a private one is open to the public, the sec-
3 L 282
while had
way ne-
and the
right of the person proceeded against of obstructing the stream by erecting a bank has been lost by long disuse, a Magistrate is competent to pass an order for the removal of the bank, on the ground that it was public nuisance [32 C 330] But the mere fact that the residents of a village had a right to take their cattle across a private

field, was not sufficient to constitute a public right of way [790] A N 190]

(3) When the exercise of private rights may lead to a public nuisance.

158. Although as a general principle, S. 131 Cr P C does not apply to an alleged use by a person of his own private property, so as to cause injury to the property of another (See Rat 516, Rat 50, 26 A 213), such use may give rise to a public nuisance within the meaning of the section—e.g.—when a proprietor of a private examination ground allows cremation of corpses to be carried on in a manner, causing nuisance or danger to the life and property of the people in the vicinity [25 C 423] Where a private party is allowed to remain in such a condition as to be a nuisance to persons, proceedings to cause the nuisance to be abated can be instituted under the section [4 B B 684] A previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it had become a nuisance to the neighbourhood [16 W. B 4 See 7 B L 516]

(4) Magistrate's jurisdiction depends on the right infringed being a public right.

159. Before a Magistrate proceeds further with the case of obstruction of a thoroughfare he must

enquire first who the road is public or private. He has jurisdiction only if he finds that the way, etc. is a public road [5 C 875; 15 W. II 67; 18 W. R. 41; 2 C. N. 551; 22 B 1884; 36 A 217; 12 A J

1221 2 P. R 1903] A Magistrate has no jurisdiction to order the removal of an obstruction to a private drain [5 W. R 58; 1 W. R. 324 (Gr)] or obstruction caused to a private path [2 W. R. 30]

XII. BONA FIDE CLAIM OF RIGHT.

- 160 (1). General Rule.—When a person against whom a conditional order is made, raises the question of title, the Magistrate has to find in the first place whether the obstruction complained of is situated in a public way etc or not and if he finds in the affirmative, whether the dispute as to title is a bonafide dispute or not 2 C N 551 15 C 561

(2) Magistrate's procedure as to investigation of the bonafides of a claim of title.

161. A Magistrate proceeding under Chapter X, ought not, when a bonafide claim of title is set up, to proceed to make an order, but should allow the party setting up such claim, an opportunity of substantiating it, if he can do so by civil proceedings. The claim of title must however, in order that it may be allowed to prevail, be bona fide and not a mere pretence to avoid jurisdiction and it is for the Magistrate to say whether the claim is bona fide or a mere subterfuge. If he decides against its bonafides, he must state his reasons for such decision. If he decides in its favour, he should abstain from further action until the public right of way is determined by a competent Court. The plea however, must be raised at or before the hearing and cannot be allowed to be raised afterwards

- 15 C 564 18 W. II 41 11 C 8 12 C 137 17 C 502 (503) 23 C 490 (501) 25 C 278 (281) 26 C 460 31 C 979 35 C 243 42 C 158 2 C N 554 3 C N 345 (347) 4 C N 626 7 C N 117 8 C N 143 (144) 10 C N 845 12 C N 267 18 C N 1148 21 C N 920 1 C J 434 3 C J 360 21 C J 116 22 B 988 2 B R 818, 1 B R 687 4 B R 436 10 B R 563 15 B R 67 Rat 478 22 A 267 28 A 98 3 M 163 (465) 2 Wm G1 2 Pat J 67 2 P R 1903 7 Bur T, 23 1 Bur R 593 (72 92) L B 530

[Note.—If the party within a reasonable time does not have recourse to the Civil Court, the Magistrate may then proceed to make the order also late—42 C 158]

- 162

party who has made the encroachment—6 C N 856 28 C J 211

163. The question of bonafides must be decided by the Magistrate himself: it cannot be referred to the Jury. The question as to the bonafides of a claim of right must be decided by the Magistrate himself. It is not open to him to leave the decision of the question to the jury appointed under S 138 Cr P C 5 C 875 26 C 469, 31 C 169, 3 C N 345, 4 C N 566, 5 C N 174, 10 C N 845, 14 C N 544; 18 C N.

1148 3 C J 360 9 B II 30 2 Pat J 67 T Bur, T 21 2 Weir 64 Con—30 A 264, 18 A 168; 22 W II 66

164. Plea must be taken at the first opportunity. The objection based on a bonafide claim of right, in order to prevail, must be raised at or before the first hearing. It cannot be allowed to be raised afterwards—15 C 361 23 C 499 7 C N 117 1 C J 434 22 A 267 7 Bur, T 21

- 165 The Magistrate cannot refer the parties to the Civil Court without coming to any finding as to the bonafides—2 C N 551 (556)

166. Mode of Investigation.—A Magistrate is entitled to hear the case sufficiently to enable him to make up his mind whether the claim of right set up is a bogus or bonafide one [28 A 98 25 C 264 15 B R 57] s 143 provides for the ascertainment of rights as also for the removal of nuisances [9 B R 40]. The question of bonafides of a claim is a question of fact which has to be enquired into like any other question of fact [1 C J 434 20 Cr 356 (Pat)] A Magistrate acts without jurisdiction, if he decides the question of bonafides without taking any evidence [20 Cr 752 (C)] When the Magistrate decides against the plea he must state his reasons for doing so [15 C 561]

(3) The procedure on deciding in favour of the claim.

- 167 The parties can be referred to Civil Court only up to 15 C 561

If it merely to obtain from taking any further action until the claim has been determined by a competent Court and should allow the parties sufficient opportunity of substantiating it [12 C 158 15 C 564 17 C 562 21 Cr 87(C) 2 C N. 551] A conditional order that "unless the party seek to establish his right in the Civil Court within 6 months his bonafides will again be questioned by this Court" is bad in form [20 Cr, 752 (C)] Where the Magistrate found that the claim "could not be dismissed summarily as unfounded" and taking the judgment as a whole, the conclusion was irresistible that the Magistrate had really found that the claim was based on substantial grounds—the High Court set aside his order directing the counter-claimants to go to the Civil Court within 3 months [21 Cr 87(C) See—15 C 264 8 C N. 143]. If the party within a reasonable time does not have recourse to Civil Court, the Magistrate may then proceed to make the order absolute [42 C 158].

(4) Miscellaneous.

166. **Test of a bonafide claim.**—The mere fact that the land over which a right of way is claimed belongs to a particular person does not necessarily make the latter's contention a *bonafide* one. (1 C. J. 131) Neither does the fact that the residents of a particular village had a right to take their cattle across the field of the objector, was sufficient to constitute a public right of way [(40) A. N. 190] The claim must be enquired into like any other question of fact [1 C. J. 131-9 R. 30]
169. **Bonafide dispute between private**

individual and Government.—As to the right to the ground on which an encroachment is alleged to have been made by a private individual by building a wall, a Magistrate should not proceed under this section, until the dispute is settled by the Civil Court—Rat. 378; See 2 B. R. 519

170. **Revision by High Court.**—The High Court will not make an order when the record shows ample materials for coming to an express finding on the question of *bonafide*, but the Magistrate has failed to do so—3 C. N. 215.

XIII. PUBLIC NUISANCE.

A.—Unlawful obstruction to way, river or channel.

(1) Meaning.

- 171.—**Meaning of obstruction.**—The word implies not only that the way, river or channel must be one of public use but that the obstruction must be of that public use. 22 B. 988
- 172.—**Obstruction is nuisance, irrespective of inconveniences and motive.**—An obstruction on a public road is a nuisance, whether in point of fact, it causes practical inconvenience or not [21 A. 159 (1) A. N. 25] The motive with which a public highway is obstructed is absolutely irrelevant [23 A. 150]

It must be a physical obstacle capable of removal.

173. An obstruction to come within the purview of S. 133 Cr. P. C., must be a physical obstacle, capable of being removed [(1901) A. N. 129] A Magistrate can deal under S. 133 Cr. P. C. only with existing obstructions. He cannot direct what is to be done in the case of any future obstruction [21 W. R. 10]

The question of questions.

174. The first question to be considered is "Is the thoroughfare etc. public or private?" If the Magistrate finds in the affirmative, he can proceed; otherwise he cannot. 5 C. 875 2 C. N. 531. 15 W. R. 67 18 W. R. 41 5 W. R. 59; 2 W. R. 36; 1 W. R. 324 (Civil) 22 B. 989 36 A. 213-12 A. J. 1224 2 F. R. 1903. See also 22 W. R. 19-25 W. R. 4 9 B. L. 417. 10 Cr. 210 (C)

(2) Nature of the enquiry to be made.

175. (1) The enquiry should be limited to the existence or non-existence of the obstruction complained of—12 C. 137
176. (2) **Limitation.**—The Magistrate can only decide as to the question whether the claim that the way etc. is private is a *bonafide* one. He cannot go into the question as to whether the claim is barred by limitation or not—35 C. 288
177. (3) **Bonafide claim of title.**—See (12) Bonafide claim of right (160 170)

(3) Obstruction in thoroughfares or paths.

178. **Private road may come within S. 133 Cr. P. C.**—Where the road although a private

one is open to the use of a certain class of persons the section may apply—10 W. R. 371 10 Cr. 210 (C); 1 C. J. 131

179. **Permissive user cannot give a right of way.**—The fact that the residents of a particular village had a right to take their cattle across a field was not sufficient to constitute a public right of way—(40) A. N. 192.

180. **Encroachments.**—When there is a *bonafide* dispute as to the right to the ground on which the alleged encroachment has taken place, the Magistrate should not proceed merely because the Government happens to be the complainant—Rat. 378; 2 B. R. 519

181. **Public processions.**—The right to conduct a religious procession in the public streets is a right inherent in every person, provided he does not thereby invade the rights of property enjoyed by others or cause a public nuisance or interfere with the ordinary use of the streets by the public [36 M. 372 (182) 6 M. 201 (F. B.) 26 M. 551 2 Weir 81]

Note.—Such obstructions generally fall within the purview of S. 144 Cr. P. C. *post*.

182. **Right of way across a fordable stream.**—Where the public had been continuously exercising such right for over 20 years and the right of the person proceeded against, if any, of obstructing the stream by erecting a bund had been lost by long desuetude, the Magistrate is competent to pass an order for the removal of such obstruction on the ground that it was a public nuisance—32 C. 930

183. **As to procedure in the case of encroachments.**—See 21 C. J. 116

(4) Obstruction of drains, channels and rivers.

184. — — — — — into which remedies fell, 308 Cr. P. C. R. 324 (Cr.)]

A Magistrate acting under S. 133 is not authorized to order the construction of new drains in a particular manner [(40) A. N. 138]

185. **Channels.**—An obstruction set up to prevent a flow of water across its natural channel, causing

- injury to a large area of cultivated land and a considerable body of persons is a public nuisance which cannot be excused because it is a source of some convenience or advantage to one party [31 A 341.]
186. **Disputes as to digging up and clearing a water-course.**—A dispute between two villages in respect of the rights of one to dig and clear a water-course for irrigation purposes denied by the other is a dispute to which S. 133 Cr P C is applicable to avoid a breach of the peace. 25 P W, 1912. See 2 P R 1903.
187. **Where the obstruction is merely a tortious act.**—Where the owner of a low level field erected a bank on the north of his field and raised its level with a view to prevent surplus water of the neighbouring fields flowing across it to a neighbouring tank and thereby caused injury to those fields—*held* that the obstruction not being of a channel which is or may be lawfully used by the public, S. 133 Cr P C could not apply—36 A 213.
188. **Rivers.—Dams constructed by riparian owners.**—An order directing the removal of a dam newly constructed across a public river and causing unlawful obstruction of the river and damage to the lower riparian owners is justified under S. 133 Cr P C. [21 Cr 55(9)]. But

under this section [2 P R 1903. See also 22 H. 958].

(5) Miscellaneous.

189. **Removal of obstructions to be made under this section.**—Order for removal of obstructions should be made under S. 133 Cr P C and not S. 144 or 147 Cr P C—See (16) Allied Sections (221 to 225).
190. **Magistrate's order under Chap X is prima facie proof that the locus in quo is a thoroughfare or public place.**—S. C. L. 391.

B—Injurious trade or occupation.

(1) Application of the Section.

191. S. 133 Cr P C deals only with occupations and trades which are in themselves injurious to the health and physical comfort of the community

17 P R 1888

Injury must be considerable.

192. It is necessary to take all the circumstances into account and to see that the interference with public comfort by the trade in question is considerable and a considerable section of the public is injuriously affected before any action is taken under Chap X.—117 P L 1911. See 17 P R 1888. 47 P R 1888. 106 P R 1888.

(2) No length of enjoyment can legalise a public nuisance.

193. A previous sanction to the establishment of a trade does not enable the proprietors to carry on their business after it has become a public nuisance. No length of enjoyment can legalise a public nuisance involving danger to the health of the community. None has a right to corrupt the air of a particular locality, by the exercise of a noxious trade, simply because at the commencement, no person was in a position to be injured by it. 16 W R 6. 2 Weir 50. See (15) Long enjoyment *post*.

(3) What is and what is not an Injurious trade or occupation

A. What is not

194. (a) **Cultivation.**—The cultivation of maize, *jour* or *bayree* within short distance from a town in a manner which may be in some respects objectionable is not an injurious occupation within S. 133 Cr P C.—39 P R 1889.

195. (b) **Manufacture of bricks.**—The manufacture of bricks is not an injurious trade or occupation within S. 133 Cr P C.

simply because people in one market are sometimes dragged from it to the rival institution giving rise to mutual recriminations and abuse.—14 N J 207. 2 Weir 62.

196. (c) **Inoculation against small pox.**—A person who inoculates children upon an outbreak of small pox cannot be said to be carrying on a trade or to be engaged in an occupation which is injurious to the health of the community within the meaning of S. 133 Cr P C.—(13) U R I 205.
197. (d) **Slaughtering of cattle.**—The act complained of may be shocking to the sentiments of

[Note.—But where the Magistrate has ordered the suppression of a slaughter house, the High Court will not interfere unless there is no evidence on record to warrant the Magistrate's findings. 7 L L 516].

198. (e) **Selling fish on the Roadside.**—The sale of fish on the roadside is not a public nuisance, unless it is shown that a public nuisance has been caused to the public. 1 P R 1911.
199. (f) **Manufacture of bricks.**—Where there is no evidence that the manufacture of bricks is itself injurious to the health of the community, no action can be maintained. If the proprietors were so working at the time the nuisance was being injured, no order under S. 133 Cr P C could be made.—29 Cr 422 (1).
200. (g) **Tanning.**—A lawful trade is not a public nuisance, unless it is proved that it is so, or physical comfort of the community is injured. 1888.

of S 133 Cr. P. C. should be sparingly used because any order passed under the section cannot be questioned in any Court" do not carry as much further. *Twomey J.*, in 7 Bar T 23 (following G C 291) lays down that "the applicant will not apparently be estopped from bringing a Civil suit to establish any right he may claim to the exclusive enjoyment in the land", but only by way of an *obiter dictum*.

(2) *The remedy of the party against whom the order has been made absolute.*

220. The following rules may perhaps be constructed out of the rather confused mass of precedents.

(1) No Civil suit lies to *set aside* an order under this chapter—1 B L (sup) 43, 3 B L 202, 2 B 157, 11 C 69, 1 B L 21 (F B), 12 M, 155.

(2) The question whether the order made by the Magistrate was reasonable and proper cannot be raised in Civil Courts—[12 W R 100, 6 B L 643 (46), 14 Cr 395 (Pit), 2 P R 1903, 21 P L 1000, 18 C N 1086]. No suit lies to restrain the Magistrate from exercising into effect an order passed under S 110 [1 B L 21 (sup), 12 M 175].

(3) The decision of the question of title for an incidental purpose cannot have the effect of an estoppel in a suit brought in the proper form for obtaining an adjudication of a disputed right—*Per. Fuld J.* in G C 291. See 7 C L 443, 8 B L 94 (16).

(4) The remedy of the party is to obtain a declaration by the Civil Court under S 12 of the Specific Relief Act 1877 that the particular *homo in quo* is his private property subject only to his exclusive rights [11 C 691 (F B), overruling 11 C 60, 6 C 291, 10 W R 426 (21), 8 W R 239, 7 W R 93, 7 W R 48, 2 W R 287, 1 W R 277, 17 R 293, 6 B 670, 6 B 672, 8 B L 94, 7 Bar T 23. See *Con* 6 B L 641].

[Note.—The indirect result of the declaration would be to vacate the order 7 W R 95. In 6 R L 643—

it is laid down that no suit will be for a naked declaration of right without a prayer for any consequential relief.]

(5) The Civil Court has no jurisdiction to issue an order by way of a *mandamus*—e.g.—it cannot order a road, declared by a Magistrate under S 137 to be a public thoroughfare, to be closed—[See 4 B L 21 (F B), 12 M, 175, 3 B L (sup) 43, 12 W R 100, 7 W R 111, *Con*—7 W R 95]. But where the order has been made without determining whether the applicant is a thoroughfare or not, the party can sue to have the pathway closed [10 W R 125 (Cr)], 7 W R 95, 1 W R 277; See 2 W R 287].

(6) No suit to question the verdict of the jury lies in a Civil Court.—10 W R 345.

(3) *Frame of the suit.*

231. The suit should as a rule, be instituted against the party who set the Court in motion. The Secretary of State is not a necessary party.—17 C 499 (F, D). In any case the Magistrate cannot be made a party. The Secretary of State in Council should if necessary be joined as a *party defendant*.—[17 B 291, 6 B 670, 6 B 672 (574)].

(4) *Suit for damages.*

232. S. 240 (3) Cr. P. C. refers only to a suit for damages. A Magistrate is not liable to be sued for damages in respect of any act done by him under S. 140 Cr. P. C., in good faith believing he had jurisdiction and acting in his judicial capacity, even if he had in fact no jurisdiction to pass an order under Chap. X and however careless and irregular his proceedings might be—5 M, 11, 344, 16 W R 63. *Con*—1 B L 150, 1 B L (A, C) 37 (19). See 2 B L 341.

233. Suit against complainant for damages. No suit lies against the party instituting the proceedings unless it can be shown that he was actuated by malicious motives or with intent to injure the opposite party.—[2 B L (9, N) 11, 10 C 60].

XVIII. APPEAL, REVISION, REVIEW ETC.

(1) *Appeal.*

234. No appeal lies from an order passed under Chap. X.—See S 404 Cr. P. C.

235. Letters Patent appeal—No appeal lies from an order under S 439 Cr. P. C. by a single Judge of the High Court in revision of proceedings under Chap. X.—[10 M N 240].

(2) *Further enquiry.*

236. S 437 does not authorise a District Magistrate or a Sessions Judge to direct a further enquiry in a proceeding under S 133 Cr. P. C. 21 C 593, 17 C P. 127 (128).

[Note.—The proper course is to refer the matter to the High Court—25 C 425. See 21 W R 86, 14 C N, 11.]

(3) *Revel of proceedings once dropped.*

237. There is no bar in law to a revival of proceedings under S 133 Cr. P. C. which had previously been dropped provided there are materials for a *prima facie* case—5 C N 173, 14 C N, excise.

(4) *Review.*

238. After an order under S 133 has once been made absolute, the question of its validity cannot be re-opened at any subsequent stage.—21 P. L. 1900.

(5) *Revision.*

239. General Rule.—The High Court cannot interfere in revision except where the Magistrate has committed an error in law or has clearly acted in excess of jurisdiction.—9 B L 417.

spot had been in use for burning corpses by the people of the village from time immemorial—*Held*—that the act of the accused in obtaining an order of the District Magistrate prohibiting the use by the villagers of the spot as a burning ground was not a public nuisance, but would fall under the limited class of cases designated as nuisances "legalised". *Held* also that the notification promulgated by the Magistrate was invalid and no offence had therefore been committed under S. 155 I. P. O. 1911 161. S. 273 M. 115 (130).

6. Magistrate bound to record evidence.
A Magistrate acts without jurisdiction in ordering

a person not to continue a public nuisance without taking any evidence as to its existence. 115 P. L. 161.

7. Distinctions between Ss. 143 and 144.—S. 143 enables the Magistrate to prevent a continuance of a public nuisance; while S. 144 enables him to prevent it for the first time.—29 M. 161.
8. Revision. Order passed under S. 143 Cr. P. C. cannot be revised by the High Court.—(19) A. N. 102.
9. Proceedings of a Magistrate not empowered to act under the Section are void.—S. 8 S. 520 cl. (p) 1, 2.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

Power to issue such orders absolute at once in urgent cases of nuisance or apprehended danger.

such Magistrate may by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

Proposed amendments to the section—(1) of section 144 of the said Cal., after the words "or of any other Magistrate" the words and signs "(not being a Magistrate of the third class)" shall be inserted.

Arrangement of Notes.

S. 144=S. 518 (1872)=S. 62 (1861-6)

I. Object and application of the Section.

II. Jurisdiction of Magistrates.

- (1) Magistrates specially empowered to act
- (2) Conditions precedent to jurisdiction
- (3) *Ad interim* orders pending rule issued by the High Court

(4) A Magistrate has no jurisdiction to

(5) Miscellaneous

III. The order.

- (1) Conditions of a valid order.
- (2) Illegal orders
- (3) Prohibition of public meetings
- (4) As to enquiry, evidence and procedure.

IV. Orders affecting the public.

- (1) Scope of S. 144 (1)
- (2) Object of the words "frequenting or visiting a particular place"
- (3) General orders beyond the scope of S. 144(3)
- (4) Meaning of the term "public generally"

V. Ex parte orders.**VI. Public Processions.****VII. Rival Huts.****VIII. Temples, Mosques and Religious ceremonies.****IX. Exercise of Civil rights.**

- (1) Collection of rents etc.
- (2) Exercise of rights under Civil Court decrees
- (3) Crops
- (4) Orders of indefinite character.

X. Nuisances.

- (1) Slender of cattle
- (2) Orders in the interest of public health.
- (3) Removal of obstructions.
- (4) Straying of cattle.
- (5) Annoyance to the public.
- (6) Private Nuisances

XI. Mandatory Injunctions.**XII. Miscellaneous Orders.****XIII. Enquiry, Evidence and Procedure.**

- (1) Nature of proceedings under Chapter X.

- (2) Full and sufficient enquiry must be made before passing the order

- (3) Obligation to take evidence

- (4) Nature of evidence to be taken

- (5) Scope of the enquiry

- (6) Procedure

XIV. Renewal, Revival, Rescission and Alteration of orders.**XV. Effect and duration of order.****XVI. Punishment for Disobedience.****XVII. Allied Sections.**

- (1) Ss. 133 and 144

- (2) Ss. 107 and 144

- (3) Ss. 144 and 145

- (4) Ss. 144 and 147

- (5) Distinction between Chapter XI and Chapter XII

XVIII. Irregularities.

- (1) Which vitiate

- (2) Which do not vitiate

XIX. Revision and Reference.

- (1) General Rule of Practice

- (2) Historical Review

- (3) S. 435 (3) as a bar to revision

- (4) Revision of time expired orders

- (5) Miscellaneous

- (6) Reference.

XX. Miscellaneous.**I. OBJECT AND APPLICATION OF THE SECTION.**

1. **Provisional orders to tide over temporary emergencies.**—S. 144 Cr. P. C. relates to the passing of provisional orders to tide over temporary emergencies and in cases where "immediate prevention or speedy remedy is desirable." The order made under the Section is a temporary one to meet urgent cases of nuisance or apprehended danger. Before a Magistrate can take action under the section, he must be of opinion that immediate prevention or speedy remedy is necessary and when he has made up his mind to do so in the o
M. J. 1
C. N. 32
10 B. 1
3 U. B.

X B.—Where there is no suggestion that the opposite party is creating a disturbance, no order can be made.—[22 C. N. 559] Action should be taken only if the Magistrate has no sufficient police force etc. to prevent an immediate breach of the peace.—6 M. 203 25 M. J. 370 22 M. T. 323

2. **The act likely to cause injury or nuisance must be a definite act.**—The application of S. 144 Cr. P. C. is confined to a particular definite act from which danger is apprehended. The Section does not authorise an order prohibiting a course of conduct or an occupation involving a series of acts done at certain intervals and spread over a period of time.—2 Weir 67 19 C. 127 16 C. 80, 12 W. B. 39 19 Cr. 933 (M).

[Note—The Section is intended to provide for cases when a speedy remedy is desirable and when the procedure in S. 133 Cr. P. C. would be ineffective.—2 Weir 67]

3. The peace, and authority to do so is co-extensive with such emergency, and when it ceases, he should secure to every person the enjoyment of his legal right and by means of proper precaution, deter those who seek to invade the right of others 2 Weir 14; 2 Weir 89 11 M. J. 122 2 Weir 91 6 M. 203 (F. B.) 2 M. 140 5 M. 304; M. H. C. 170 13-5-85 27 C. 918 6 C. N. 466 5 C. N. 329 10 B. L. 443 1 S. 61 1 S. 120 6 N. P. 109 See 19 C. N. 248 16 Cr. 767 (M) 25 M. J. 370

4. Power conferred is an extraordinary power

The authority of the Magistrate should be exerted in defence of rights rather than in their suspension.—6 M. 203 (F. B.) 2 Weir 60; 2 Weir 67 25 M. J. 370 22 M. T. 323 19 C. N. 248 39 C. 876, 14 B. 180.

5. Magistrate should not interfere with legal rights.—An injunction cannot be issued under S 144 Cr P C to a person restraining him from doing a lawful act on his own property. Therefore an order threatening a man not to use his property in lawful manner—e.g.—not to establish a hat on his own land does not come within the purview of the section.

19 C N 248 21 W R 26; 23 W R 57; 8 C L 231; 4 C L 410 4 C N 226 18 G L; See 13 Cr 511 (C); 180 C 70 2 Pat W 67; 22 M. T. 323; 6 N. P. 101

6. Order with a view to prevent pecuniary loss is outside the scope.—S 141 Cr P.C. cannot apply to a case where the object of the order is merely to prevent pecuniary loss to the opposite party. The proper remedy for the aggrieved party lies in the Civil Court. [13 C N 158 6 C N 373 9 C 103 5 B L 131; 11 C N. 100] An order cannot be made merely to protect private rights where no case of urgency or nuisance is made out [See 19 W. R. 6. 21 W. R 26]

7. Magistrate acting under S. 144 cannot usurp the functions of the Civil Court.—A Magistrate has no power to issue an irreparable order under the section [32 C 151 27 C 918; 5 B L (4p) 131 13 W R 72] A District Magistrate has no power to prohibit altogether a display, exhibition or assemblage but only to issue orders to regulate the conduct of the persons concerned in it [18 S 120]. An order having the effect of depriving the person against whom the order is made, of the lands to which he is entitled under a decree of a Civil Court is illegal [6 C N 406].

8. Question of possession or title beyond the purview of the section.—It is not the business

of the magistrate to adjudicate upon *rights* (e.g. any jurisdiction under S 141 Cr. P. C. to adjudicate upon any question of title or possession [11 M J 122 11 C N. 271; 8 C N. 376 6 C N 406; 3 U. B (1917) 17. 10 Cr. 1062 (Pat). 10 Cr. 712 (Pat) 1 Pat T. 14. 21 Cr. 241 (Pat)] Where the case is not one of forcible claim to possession and the party creating the disturbance has in fact no pretensions to any right or title, S 141 Cr P. C. may be applied instead of S. 145 or S. 147 [3 Pat J. 213. 3 Pat J. 353. 25 A. 537; 25 A. 160; 17 C N. 205]

9. Magistrate can not only when he himself is of opinion that action is necessary.—A sub-magistrate, while he ought to give due and very great respect to the advice of a District Magistrate, ought to use his own judicial mind and on the sub-inspector of Police's report to come to his own conclusion. The general "instructions" of the District Magistrate are not legally binding on the sub-magistrate in particular cases—[35 M. 149]. A District Magistrate has no authority to direct a subordinate magistrate who had rejected an application under S 144 as frivolous or vexatious to take action under the section [1 Pat W. 255. See 21 C 391]

10. Imminent danger within the meaning of the Section.—An imminent danger within the section is a danger affecting the public peace or public health etc. A danger of the houses of a few Railway menials being flooded if there is a rainfall of one inch in an hour, owing to the obstruction to a culvert through which the drainage of the menial quarters flows into the petitioner's tank is not an "apprehended danger" within chap. XI.—23 C. N. 145

II. JURISDICTION OF MAGISTRATES.

(1) Magistrates specially empowered to act.

- 11 (a) In the Punjab.—All first class and second class Magistrates have been empowered to act under the section—Punjab Gaz 1883 Pt I 52
- 12 (b) In Upper Burma.—All first and second class Magistrates
- 13 (c) In Bombay.—Assistant Superintendents of Police have been empowered to act under S 144—See Bomb Gaz 1883 Pt I H 396
- 14 (d) The term 'Magistrate' includes an Assistant Magistrate—1 Ag. 23
- 15 (e) As to the meaning of "District Magistrate" so far as S 14 Madras, See 5 ment Act (M)

(2) Conditions precedent to Jurisdiction

- 16 (a) Property in dispute must be within jurisdiction.—No order can be made under S 144 Cr. P. C. by a Magistrate when the property in dispute is situate outside the local limits of his jurisdiction—2 C N 572
- 17 (b) Existence of emergency.—A Magistrate's jurisdiction under S 144 Cr P. C. is confined to cases where there has been annoyance

or injury to any person lawfully employed, or danger to human life, health or safety or where there is a probability of a riot or affray. An order under the section can be passed only under special and emergent circumstances calling for immediate action. The act complained of must be likely to cause a riot or affray and its prohibition would pre-

13 W. R. 19 12 W R 66 8 W R. 61 20 W R. 13 J. G. 11; 1 B L. (A.C.) 20 10 B L. 434 (F. B.). 2 C N 747 2 C N. 572; 13 C N. 104 14 C N 234 19 C 127; 1 Ag. 23; 6 N. P. 104 (97) A N. 59. 2 Weir 74. See also 15 Cr 20 (M). 38 C 876]

- 18 (c) Property in dispute must be immovable property.—Chapter XI Cr. P. C. in which S 144 appears relates to interference or dealing of some kind with the Land itself or with something created or standing upon it—[19 C 127 12 W. R. 38]

(3) Ad interim orders pending rule issued by the High Court.

19. A Magistrate cannot pass *ad interim* orders after the High Court has issued a rule. By issuing a

rule the High Court retains full control of the proceedings and it is for that Court to pass all interim orders if it thinks fit to do so. The Magistrate has no jurisdiction to do so after the rule has been issued.—11 C N 79

(4) A Magistrate has no jurisdiction.

- 20 (4) To adjudicate on questions of title or possession in proceedings under S. 144.—2 Weir 83 S C N 376

- 21 (1) To take the property in dispute into custody after directing a list to be prepared and to direct that the same should remain in Court custody for 2 months or until decision of a Civil suit regarding the same.—12 C N 1011

(5) Miscellaneous.

- 22 Order without jurisdiction cannot be cured by subsequent events.—No subseq.

quent correspondence or explanation would make an order by a Magistrate, passed without jurisdiction, valid.—5 C 132; 6 W R 40; 13 C N 188

23. Order passed by a Magistrate not empowered is void.—See S. 530 (i) Cr P C

- 24 Nature of jurisdiction exercised under the Section.—A Magistrate making an enquiry before issue of an order under S. 144 is acting in a stage of judicial proceeding and has therefore jurisdiction to take action under S. 476 Cr. P. C. if he is of opinion that false evidence has been given.—10 M 18 See O B H 160 7 B L 119 Order passed by a Magistrate under S. 144 Cr. P. C. is a judicial order.—21 M T 306

Note—Proceedings under Chapter XI were held not to be judicial under the old Codes.—See 2 C, 201 (F. B.), 6 B L 71 (F. B.), 20 W R 53; 18 M R 22 3 M 331 6 N P 16 8 O 580; 2 P R 1540 17 P R 1875 These rulings are now obsolete

III. THE ORDER.

(1) Conditions of a valid order.

- 25 (1) It should be in writing.—36 P R 190; 17 W R 37 Rat 30

- 26 (2) It should contain a clear statement of material facts.—Where an order itself does not set forth the material facts of the case as required by law and no urgency is indicated, the order is without jurisdiction.—[12 C 135] (13) M N 1093, 25 M J 370 10 W B 53] A mere statement by the Magistrate that he considers the case to be urgent is not sufficient to give him jurisdiction, if the facts set out by him show that in reality there is no urgent necessity for action.—[23 C N 115]

- 27 (3) Section Cr P. C. should be indicated.—A Magistrate acts most irregularly in not indicating under what section of the Cr P C he passed his order. It should not be left for speculation as to whether the order was passed under S. 144 or Chap XII [18 Cr 295 (M)]

- 28 (4) It should be addressed to the person complained against.—Under the old Codes, the direction contained in the preliminary order had to be addressed to a particular person or particular persons and could not be addressed to the public generally [8 M 11 (sp) 9 12 W R 36 Rat 30] It can now if necessary be directed to the public generally when frequenting or visiting a particular place [See subcl (3) 8 A 49, 14 B 105 10 C 127 Cf 14 B 160] But the latter portion of Cl (3) applies when unascertained members of the public are concerned and not where a particular section of the community are to be addressed and their names are known. See 8 A 194.]

- 29 (5) It should be served in the manner provided by S. 134 Cr. P. C.—16 C. 9. 8 A 99

- 30 (6) The period (not exceeding 2 months) during which it shall be in force should be definitely stated.—11 C N, 223 11 C N 79.

(2) Illegal orders.

- 31 (1) Order which is by its very nature irrevocable.—See (1) Object etc (1)

- 32 (2) Orders in the nature of a perpetual injunction.—See (15) Effect and Duration of the Order (117)

- 33 (3) General prohibitory orders.—6 W R 10 14 B 165 Rat 30 10 B R 651

- 34 (4) Vague and indefinite orders.—An order under S. 144 directing the petitioners not to commit any act that may likely induce a breach of the peace and not to take forcible possession of the village not in their possession is indefinite and not in accordance with the terms of the section [11 C N 121 See 11 C N 79 11 C N 223 2 C N 122]

- 35 (5) Order made merely for the protection of property.—10 C 107 21 W R 26 See 19 W R 6

- 36 (6) Orders made solely with the object of preventing pecuniary loss to the opposite party.—13 C N 188 5 B L 131 11 C N even See (1) Object etc (6)

- 37 (7) Successive orders with a view to extend the period of the operation of an order made under the section

See (15) Effect and duration of Order (116)

- 38 (8) Order prohibiting not a definite act but a course of conduct or an occupation involving a series of acts done at certain intervals and spread over a period of time.—2 Weir 67

[See also chapters 6 to 12]

(3) Prohibition of public meetings.

39. If owing to the prevalence of ill-feeling between certain persons likely to attend a public meeting or for any other cause, a breach of the peace is to be expected, a magistrate has power under S. 144 Cr P C to prohibit such meeting or to otherwise secure that peace is not broken.—2 U B. (1916) 157

(4) As to Enquiry Evidence and Procedure.

40. See chapter 13 infra

IV. ORDERS AFFECTING THE PUBLIC.

(1) Scope of S. 141 (3).

41. There is no warrant for reading the word "public" into the provisions of S. 141 (3) so as to make the provision run "or to the public generally when frequenting or visiting a particular public place." The proper interpretation of S. 141 (3) is that the order may be directed to a particular individual and that where because of the number of particular individuals it is impracticable that the magistrate could issue notice to each one of them individually he can issue a general order to the whole number of such particular individuals here designated as the public generally. [16 D C 70]

(2) Object of the words "frequenting or visiting a particular place."

42. The intention of the Legislature in using the words "frequenting or visiting a particular place" is not to confine the section to casual or frequent visitors only, but to extend rather than limit the scope of the order so as to include therein even casual or frequent visitors from outside the limits of the particular locality within which the order is to have application [18 D C 70]

(3) General orders beyond the scope of S. 144 (3).

43. (a) Order addressed to the inhabitants of a city and within five miles of the City. An order directing all persons (in Surat City and within 5 miles of the City) to abstain from removing or causing to be removed, or pro-

moting anding or abetting directly or indirectly in any way the removal of any dog (other in case of adherence and from preventing or trying to prevent or obstruct directly or indirectly the poisoning of such dogs in any way or from taking possession of or confining such dogs was held to be in contravention of order (3) and therefore illegal 35 B L 184.

44. (b) Notification prohibiting caste-dinners. The District Magistrate of Branch cantonment to the prevalence of caste-dinners, issued a notification in the form of a proclamation under S. 144 Cr P C forbidding the public in general to give caste-dinners in that city—held that the order was illegal as it went beyond the powers conferred by S. 144—14 B L 185, S. 14 B L 180.
45. (c) Order directing the public generally not to let their cattle loose within certain limits laid down in it—39 B L (11) 26

(4) Meaning of the term "public generally."

46. The term "public generally" means "the people in general" and not people combined to any particular section or class of the general community [8 A 99]. A Magistrate acting under S. 141 passed the following order: "I direct the following persons—shroddharis, pujaris and the public generally to abstain from interfering with the Police in the performance of the duty imposed on the God Vithoba at Pandharpur—held that the Magistrate had jurisdiction to pass the order—[4 B. L. 542]

V. EXPARTE ORDERS.

47. When an *ex parte* order may be passed.—An *ex parte* order under S. 141 Cr P C can only be passed in cases of emergency or when there is no time to serve notice

8 M T 160 25 M J 370 2 C N 747 27 C 783
8 A 99 See 6 M 203 (224) [F. B.] 2 B L (11) 4

48. Magistrate bound to set out in *ex parte* orders circumstances showing emergency.—In the case of *ex parte* orders under S. 141 Cr P C, the record of the Magistrate should disclose the existence of emergency which called for such *ex parte* order or that there was not sufficient time to serve notice on the party affected thereby—Per Subbaraya Aiyar J (Phillips J diss).—22 M. T 323 See also 2 C N 747 (718)

49. Party affected should ordinarily have a hearing.—Although the law permits the issue of an order *ex parte*, it intends that ordinarily this

course should not be pursued so that each party may have a hearing—6 M 243 19 M 14.

50. Power to act otherwise than on legal evidence.—A Magistrate in cases of special urgency can act on information received or on his own knowledge, i.e. upon what is not legal evidence—19 M 18

51. Applications for setting aside *ex parte* orders.—Applications for rescinding or modifying *ex parte* orders under S. 141 sub (2) should

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the circumstances the Magistrate should have heard the applicant [2 C N. 572]. Duration.—An *ex parte* order will be only of temporary operation. It remains in force only for two months—27 C 745

VI. PUBLIC PROCESSIONS.

52. Right to conduct processions.—The right to conduct a religious procession in the public streets is a right inherent in every person provided he does not thereby invade the rights of pro-

perty enjoyed by others or cause a public nuisance or interfere with the ordinary use of the streets by the public and subject to such directions or prohibitions as may be issued by the Magistrate

to prevent obstructions to the thoroughfare or breach of the public peace—3 M 314 23 M 376 (S. 4) 6 M 231 (F. B.) 2 M 141: 29 M 551 (F. B.) 38 M 183 23 M J 370. 2 Weir 74: 18 R. G. G. (Civ)

53. Religious intolerance should not be encouraged.—No person has a right to obstruct others making lawful use of a public street and instructions to the contrary founded on religious intolerance cannot be recognised.—2 Weir 81
54. Processions passing before places of congregational worship.—If persons passing in procession, attended by music, pass a place in which others are assembled and engaged in public worship, which the music would tend to disturb, it is the duty of the persons composing the procession to refrain from such disturbance, but assemblies for purposes of worship are not held in any place at all hours of the day, and a Magistrate is not competent to direct that persons should not at any time pass along a high road, in the neighbourhood of a recognised place of worship attended by music.—2 M 149
55. [Notes.—(1) The law recognising the right to undisturbed performance of public worship has not extended it to mere private worship (2) It may fairly be required of such congregations that they should inform the authorities of the hours at which they customarily assemble in order that

the rights of other persons may not be curtailed—6 M 231 (F. B.)].

56. Sufficient ground for prohibiting a procession.—It is not a sufficient ground for an order that the procession is in the nature of a luxury and not a necessity [15 Cr. 30 (31)]. But the fact that the procession cannot be allowed without grave danger of a breach of the peace, with the force at the Magistrate's disposal, is a good ground for passing an order under S. 141 Cr. P. C. [15 Cr. 30 (4) Rat 708 (703)] As a rule however when rights, such as rights of procession, are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of [6 M 201 (F. B.)]
57. Duration of prohibitory order.—An order directing certain persons to take the procession of their idol at a particular hour in a particular direction has only a temporary effect (10 A. 115). Anything to the nature of a perpetual injunction, extending the period of operation beyond the statutory period of 2 months is absolutely illegal. (See 5 C 7 (F. B.) 7 C N 145, 11 C. N 79 (52))
58. Civil Suit against an order prohibiting procession.—See (20) Miscellaneous (149)
59. High Court cannot revise an executive order laying down the route to be taken See—(10) Revision (112)

VII. RIVAL HATS.

60. General Rule.—Although a Magistrate acting under S. 141 Cr. P. C. is empowered to make an order prohibiting a person from holding a hat on certain specified days of the week [See 31 C 90: 23 C 114 (C) 10 C 9 10 B. L. 416 (F. B.) 22 W. R. 21 23 W. R. 51 18 W. R. 23: 5 B. L. (np) 82 1 Shone 23 Con 5 C 7 (F. B.) 8 C 543], he fails to exercise a reasonable discretion, if he does not satisfy himself before issuing the order that it is absolutely required for any of the purposes mentioned in S. 141—e. g. that there is grave danger of annoyance or injury being caused to any person lawfully employed or danger to human life, health or safety or that there is a probability of a riot or affray.—[6 N. P. 104 (97) A. N. 59 31 C 990 32 C 793 (793) 23 C 31 21 W. R. 26 21 W. R. 22 19 C 127]

[Note.—In 18 W. R. 22, the markets were half a mile and in 20 W. R. 53, a mile apart]

61. What a Magistrate should ordinarily do.—An order directing a man not to use his property in a lawful manner for instance, not to establish a hat on his own land, does not come within the purview of S. 141 Cr. P. C. What the Magistrate ought to have ordered the parties to

do was not to obstruct, or allow their servants to obstruct, any person from attending the other market if he wished to do so.—31 C N 219. 1 W. R. 12 6 N. P. 104.—See also 23 A. 710 (717).

62. S. 107 Cr. P. C. the more appropriate Section.—The most appropriate Section of the Code to deal with cases of rival hats which may cause a breach of the peace is 107 Cr. P. C.—11 C N 70 11 C N 223
63. Order for removal of hats is ultra viros.—An order for the removal of one of the two rival hats to such a distance elsewhere as to render it of no use to the owner is an order in excess of jurisdiction.—4 C L. 110 See 5 C 7 (F. B.)
64. Order must be definite.—Where an order does not mention any limit of time and there is nothing in the order to indicate whether the petitioner would be entitled to hold any market at any time See (17) that the party dyes that held (11 C 990), it is bad as being vague and indefinite

VIII. TEMPLES, MOSQUES AND RELIGIOUS CEREMONIES.

65. Possession of templo. A Magistrate cannot make an order under S. 141 Cr. P. C. in respect of a dispute between persons appointed as

trustees of a temple in the place of the dismissed trustees and the latter, regarding the possession of the temple, being of opinion that a breach of the

peace was imminent [S M 102; See however 32 C 466, 1 S 50].

66. **Interference with management of temples.** An order under S 144 Cr P C so far as it directed a person not to interfere with the management of a certain 'Kood' (temple) was held to be *ultra vires* [24 M 17]. So also an order directing a person not to interfere with the management of a certain *moat* and the property appertaining thereto [3 M 371].
67. **Order of entry into a mosque.** An order in a dispute between the members of the *Hajari* and the *Shi'as* as to the use of a certain mosque addressed to the members of both the sects and prescribing the order which was to be observed in regard to the entry of the mosque by the members of the rival sects was held to be *ultra vires*. [24 M 262]

Interference with religious ceremonies.

68. A Magistrate acting under S 144 Cr P C issued

the following order: "I direct the *Magistrate* to direct the public generally to abstain from interfering with the *Hajari* in the performance of the daily Puja of the *Gudi* at *Planjaga* and direct the *Hajari* alone to perform the Puja." [1 B R 522]. A Magistrate has power to direct the founder of a *Vaishnavite* temple to abstain from in any way interfering with the conduct of the *Hajari* in its service [19 C 507 (V)].

Mode of worship.

69. A Criminal Court has no power under S 144 to direct the opposite party to take some idols which were in their possession, to the residence of the petitioner for worship during a certain festival, in accordance with an alleged custom and usage of long standing [4 C N, 376]. The Magistrate cannot lay down the mode of worship or direct the removal of an image [M C R 287 of 1910] See also 24 B 527.

XI. EXERCISE OF CIVIL RIGHTS.

(1) Collections of rents etc.

70. **Jurisdiction of Magistrates.**—The words "a certain act" in sub-section 1. Therefore an order directing a person not to collect rents from the ryots generally without mentioning any particular ryots does not come within the terms of a *certiorari* act in S 144 and should therefore be set aside—[16 C 80]. An order made by a Magistrate under S 144 Cr P C forbidding a person, who claims an interest in certain property, from collecting any rent from the ryots in the property does not fall within S 144 Cr P C [16 C 127, 9 C N 392, 8 C L 231, 14 W R 3]. A Magistrate cannot pass an order under S 144 Cr P C calling on a person to enter into a recognisance not to collect certain cesses [11 W R 3, 8 C 2 C N 872]. An order relating to the collection of market dues is outside the scope of the section [24 W R 57 (58)]. A notice intimating that tenants will be liable to pay a *potwari cess* is illegal [10 S 85].

(2) Exercise of rights under Civil Court decrees.

71. Where a person purchased certain property in execution of a mortgage decree and was put in possession of it, a magistrate is not competent to order the purchaser or any of his subordinates to refrain from entering upon the lands and the properties [2 C N 572]. A magistrate has no jurisdiction under S 144 to interfere with the execution of the decree of a Civil Court [14 A 785].

(T. B.); 6 C N 109]. A magistrate has no power under the section to intervene in a dispute as to what power under the sale certificate and the purchase under having the effect of voiding the sale, a purchaser from exercising the right alleged to have passed to him under the purchase [17 W R 37].

(3) Crops.

72. An order for a division of crops between the tenants and a rival Zemindar does not come within the purview of S 144 [32 C 174]. An order cannot be passed preventing cultivators from reaping the crops they have sown, with a view to ensure speedy payment of rent due to Government or other landlord [8 C N, 371, 8 C N, 188, 11 W R 70]. It has been held that an order directing the disputing parties to refrain from interfering with crops stored in the *khali* in any way was *ultra vires* [2 Pat W 67].

(4) Orders of indefinite character.

73. An order purporting to have been made under S 144 forbidding a minor to go to a certain village or to allow his servants, relations or friends to do so is an order of the most indefinite character and is *ultra vires* [2 C N, 122]. Similarly an order by a Magistrate prohibiting one of the two disputing parties from interfering with the crops of the other, when the order is not confined to a specified boundary and for a specified time, is beyond the scope of the section [27 C 918].

X. NUISANCES.

(1) Slaughter of cattle.

74. The prohibition of the slaughter of even *rotte* animals except in the slaughter house with a view to prevent breaches of the peace between *Hindus* and *Mahomedans* is not illegal [(78) A. N. 258]. An order to the effect that no person shall

sacrifice or cause to be sacrificed any cow or bullock within a specified boundary and for a specified time is not illegal [180 C 70].

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(2) *Orders in the interest of public health.*

75. (a) **Cemetries**—A Magistrate cannot pass orders on sanitary grounds prohibiting burial in certain places—2 Weir 64
76. (1) **Hide godowns**—An order by a competent Magistrate (acting on the advice of the station Staff Surgeon) directing a person to abstain from storing his in the station and to remove the hides to a place distant from the town.—21 W R 52
77. (c) **Bad grains.** An order may be made under the section forbidding bad grain being unloaded and sold as human food—(70) Hoonah 11
78. (d) **Prevention of over crowding.** An order directing the priests of a temple to widen and raise the height of the doorway to prevent the danger arising from over-crowding was upheld [6 B R 36] But an order regulating the foot traffic at a certain landing place in the ground that the over-crowding of boats was dangerous to the health of the residents of the town is not one that is authorised by S. 141 Cr P C [25 C 852]
79. (c) **Prostitutes.** An order cannot be passed directing a regular to remove his house out to prostitutes to the other side of the Railway line on the ground that the persons visiting these prostitutes would have to cross the railway line and endanger their lives thereby—2 C N 70

(3) *Removal of Obstructions.*

80. **Embankments.** An order directing the removal of an embankment whereby the adjacent lands of the complainant are in danger of being flooded, cannot be made under the section [5 M R (sp) 19 See 2 Weir 65 11 C N 100] An order which directs the owner of a tank to destroy the banks because they caused obstruction to people using the adjacent river and interfered with the drainage of the country cannot be passed under S. 144 [1 B L (S N) xxvii 10 W R 36]

An order directing a person to stop erecting embankment merely to prevent pecuniary loss to a party is outside the scope of the section [13 C N. 188]

(4) *Straying of cattle.*

81. An order warning owners of cattle to take proper care of them and not to allow them to stray into the high road is not an order contemplated by S. 141 [2 B L 47 D B L (sp) 38]

(5) *Annoyance to the public.*

82. An order may be made prohibiting the shouting of objectionable words in public places in a city. [10 B R 1017].

(6) *Private annoyances.*

83. An order directing a person to cut down a large number of trees because they are injurious to a neighbour's health is beyond the scope of the section [5 B L 131]. A Magistrate cannot forbid two parties to use any mutual instrument in the neighbourhood of each other's house (though he may forbid their doing so for the purpose of mutual annoyance)—[6 W R 40 See, 19 B 567] An order forbidding the unloading of bad grains to be used for manure or food for cattle was set aside [(70) Hoonah 13] A Magistrate has no jurisdiction to prevent a person from excavating a tank in his own land, on the apprehension that the house of the opposite party would go down into the bed of the tank (when there was no likelihood of a breach of the peace)

W R 6] An order directing the removal of an embankment whereby the adjacent lands of the complainant are in danger of being flooded cannot be made under S. 144 [5 M R (sp) 19]

XI. MANDATORY INJUNCTIONS.

- A Magistrate cannot pass an order
84. (a) directing a person to remove his roof-drains and to construct them in such a manner as not to cause inconvenience to the complainant—2 W. R. 32
85. (b) directing the removal of a mango tree cut and thrown across a nullah—23 W R 31
86. (c) directing a person to remove a wall erected on land alleged to belong to another person—13 W R 19
87. (d) directing the removal of a shed from a private path—19 W R 6

88. (a) directing a party to open a channel through his land—15 Cr 291 (M) See 4 M. 121
89. (f) directing the owner to rebuild a house which has fallen down in his private grounds—17 A 485 (F. B.).
90. (z) directing a party to reopen a well—Rat 50
91. (h) directing that certain hedges abutting on a highway should be pruned.—Rat 81
92. (i) directing a party to remove stacked timber to a place where the complainant had alleged that it was originally stored—15 W R 26

XII. MISCELLANEOUS ORDERS.

- (1) *A Magistrate cannot*
93. (a) direct that a certain person should continue to live in the haveli and that a police guard should guard the outer door and allow only

certain specified persons to enter the haveli—1 P R 1878

94. (f) make an order attaching in her property—13 C N. 188.

95. (c) make orders in the nature of bylaws or regulations.—12 W. R. 361 3 B. L. (sp) 15; 9 B. L. (sp) 36.
96. (d) make orders as to custody of property.—An order directing the removal of certain safes, keys etc. to the custody of the Court, even with the consent of the disputing parties is illegal (12 C. N. 1044). An order for the custody of money is *ultra vires* (12 W. R. 38). A Magistrate cannot direct the village Munsiff to remain in

possession of the property in dispute until it is obtained from the Civil Court [(10) 3]

97. (e) make any order regarding guardianship or the custody of child Weir 64

(2) A magistrate can.

98. (a) pass an order restraining a certain persons from exercising the rights of such in respect of certain specified lands [(1) 160]

XIII. ENQUIRY, EVIDENCE AND PROCEDURE.

(1) Nature of proceedings under ch. XI.

99. See (2) Jurisdiction of Magistrates (21)

(2) Full and sufficient enquiry must be made before passing the order.

100. A magistrate should, before passing an order under S. 144 Cr. P. C. always hold an enquiry and determine which party has the legal right, contended for by both the parties and then protect the party he finds entitled to the exercise of that right. 5 C. 132 17 W. R. 37 13 W. R. 19, 5 B. L. (1 C) 4 3 B. L. (sp) 13. *Ret.* 1975 4 M. H. (sp) 67. See 34 C. 570 19 M. 18, 3 B. L. (sp) 20. 3 B. L. 131 14 W. R. 17

(3) Obligation to take evidence.

101. A magistrate cannot pass an order under S. 144 Cr. P. C. without first calling upon the defendant to show cause why the order should not be passed and taking any evidence which the defendant may adduce.—[5 B. L. (sp) 81 5 M. H. (sp) 82 N. 10 W. R. 23 21 W. R. 26]. There is nothing in the section to justify making an order on the mere report of a police constable, and before making such order he ought to take evidence for the defendants and if necessary on both sides. [3 B. L. (1 C) 4 3 B. L. (sp) 13]. A magistrate cannot act on the basis only of a petition by the complainant. He is bound to take evidence and make a record of the material facts of the case. [20 C. N. 991]

(4) Nature of evidence to be taken.

102. Evidence to prove a likelihood of a breach of the peace and urgency and necessity for immediate action must be recorded [34 C. 576]. A summary order under S. 144 Cr. P. C. cannot be made in the absence of evidence showing that a ^{first} ^{best} ^{would} ^{from} ^{affray} ^{is} ^{be} ^{from}

taking place [See (2) Jurisdiction of Mag. An order passed simply upon the founder police report without giving the parties opportunity of being heard is illegal [21 W. R. 13, 10 W. R. 16]

(5) Scope of the Enquiry.

103. A magistrate under S. 144 Cr. P. C. is to act with the object of preventing a breach of peace, if he considered a breach of peace imminent. It is not his business to adjudge upon nor has he any jurisdiction to adjudicate upon any question of title or possession. 122 2 Weir 91 8 C. N. 370

(6) Procedure.

104. Form of order.—S. 84 V No 21. A Re. 1 is obligatory for a written order legal. (See *Civil Gas* 1879, 20) and in *Asses* *Ass. Gaz.* 1879, 200)
105. Service of notice.—Notice is to be served in the manner provided for by S. 134 Cr. P. C. terms of that section are directory and to be followed [16 C. 9]
106. Proceedings under S. 144 on dismissal of a complaint under S. 133 Cr. P. C.—A Magistrate dismissed a complaint under S. 133 Cr. P. C. it was held that he was empowered to pass an order under S. 144 Cr. P. C. in the same case, provided he called on the defendant to show cause why an order under the latter should not be made.—5 B. L. (sp) 82 N. R. 40; 14 W. R. 17.
107. Procedure in ex parte cases.—See Ex parte orders (47.51)
108. Ad-interim orders.—Ad-interim orders contemplated by Subs. (1) cannot be passed if the original order is in legal operation.—11 79; 26 M. J. 370.

XIV. RENEWAL, REVIVAL, RESCISSION AND ALTERATION ORDERS

109. Renewal.—See (15) Effect and Duration of Order (116).
110. Revival.—After having quashed an order under S. 518 (= 144), and struck the case off the file, a Magistrate cannot revive it, without a fresh proceeding.—3 C. 580.

111. Rescission and alteration.—A Magistrate has jurisdiction to recall his order, when on taking evidence, he finds that his first order which he made without taking any evidence, was *ultra vires* passed without jurisdiction. 13 W. R. 72 J. 249 19 M. 18.

112. **Rescission after reversion of the Magistrate**—"The order under S 144 Cr P C was passed by Mr. J. as District Magistrate. A petition for its rescission under Cl. (4) of the same section was presented to his successor, after Mr. J. had handed over charge of the office of District Magistrate and reverted as Joint Magistrate. In such circumstances, the power of rescinding or altering lay only with Mr. J.'s successor and the latter was wrong in transferring the petition to Mr. J. for disposal"—*tying J.* 16 Cr 71 (M)
113. **Substitution.**—A District Magistrate has no power under Cl. (4) to set aside an order by a Magistrate against one party and to substitute therefor a similar order against the other party—3 Pat J. 247; 11 C N 271.
114. **Ad interim orders.**—Ad interim orders not contemplated by Subs. (1) cannot be passed while the original order is in legal operation—11 C N 79 25 M J 370 See also 12 C N 899
115. **Petition to District Magistrate by order Subs. (1) against an order made by a Subordinate Magistrate**—*Rat* 510
- 116.—**Successive orders to extend period of operation is illegal.**—A Magistrate cannot by passing successive orders under S 144 Cr P C extend the operation of an order indirectly beyond the limit of time fixed by Subs. (5) of the section. The aim of the law is long enough to prevent an evasion of the Code by arbitrary and successive renewals of orders under S 144 and the powers given to the High Court under Cl. 15 of the Charter Act are sufficient to prevent such evasion—5 C 7 (F. B.) 25 C 852 20 C N 754 13 C N 185 11 C N 79 7 C N 110 35 M 459 25 M J 370 16 Cr 592 (M) 3 Pat J. 130. 8 N 107
117. **An order under the Section must be limited in time.**—It cannot be in the nature of a perpetual injunction—5 C 7 (F. B.) 8 C
- 550 11 C N 223; 7 C N 140 10 A 115 (17) A N 59 24 M 15 25 M J. 370 (14) M N. 169 3 Pat J. 130; 8 N 107.
118. **Change in the Law.**—In the Code of 1872 (S. 518 Cr P C) no limit was laid to the period of operation of the order. "The Magistrate was not empowered to pass an order under S. 518 of the Code of 1872, which would have more than a temporary operation and the grant of what would, in effect, be an order for perpetual injunction was beyond such Magistrate's jurisdiction. The Code of 1882 has recognised the principle and the omission to limit the duration of an order under S. 518 of 1872 has been supplied by S. 144 of the Code of 1882 which limits it to two months"—10 A 115
119. **Computation of the period.**—Time begins to run from the date of the preliminary order and not from the date of confirmation on a subsequent day on which cause being shown, the Magistrate refused to withdraw the order.—13 C N 195
120. **Effect to omission of mention period of duration in the order.**—Where no time is specified in the order as to its duration, the reasonable presumption is that the Court intended to pass an order which it was competent to pass and which would operate only for 2 months—34 C 407 (401) [F. B.] 20 Cr 753 (M).—11 C N 223
121. **Proper procedure on order proving insufficient**
- (a) When an order under S 144 Cr. P C proves insufficient, the obviously right course to adopt is to proceed under S 107 Cr P C—20 C, N. 754 19 Cr 367 (C) 3 Pat J. 130
- (b) or in the alternative an application may be made to the Local Government to exercise its powers under Subs. (5)—See Subs. (5), (13) M N, 1009

XVI. PUNISHMENT FOR DISOBEDIENCE.

122. **Magistrate who made the order cannot**
487 Cr
There-
ler cannot
try a person for disobedience of the same. He is bound to take action under S 195 or S 476 Cr P C—24 M. 262 20 C N 978 10 B H 424 See 4 C N 226 31 C 990 Rat 50
123. **Procedure as to sanction.**—A sanction is necessary under S 195(1) (a) Cr P C for prosecution under S 188 I P C. The two sections should be read together [1 Ag. 27]. The sanction may be given on a police report [41 C 14]. But a Magistrate should not sanction a prosecution unless he thinks that all the elements necessary for a conviction are present [14 C N 234]
124. **Magistrate granting sanction acts as a Court**
him
the
M. T
396—See 2 Weir 155 Con 20 Cr 113 (C)] A
- Sessions Judge cannot set aside a sanction granted by a Magistrate for prosecution for disobedience of an order under S 144 Cr P C on the ground that the order is *ultra vires* and inoperative [See 20 Cr 113 (C)]
125. **What must be proved before a conviction under S. 188 I P C can be made.**
- (1) The order disobeyed must be in writing [36 P. R 1005 17 W R 57 Rat 26]
- (2) **Actual knowledge** of the order of the accused must be established. Before a conviction can be made it must be proved that the accused knowing that an order has been promulgated by an authority having jurisdiction to do so, has disobeyed it—1 B R 524 16 C H See 13 C 175
- (3) **The order must be duly promulgated**—It must be proved that due publication was made of the order [36 P R 1005 17 W R 57-14 B 165] Where the order was directed against a particular person or persons it must be proved that it was personally served in the manner provided by S. 134 Cr P C. [14 B 165 Rat 50, Fee.

- 13 A. 577 12 M. 475 16 C. 9.] If the person issuing the order is not lawfully empowered to do so, the conviction cannot stand [3 A. 201; (61) A. N. 273; Rat 50].
- (i) It must be shown that the order clearly and unequivocally prohibits the thing which the accused is said to have done [16 C. 11]. But it is enough to show that there has been a disobedience of the order in the substance though the exact terms of it might not have been violated [16 B. R. 1047].
- (ii) That the order was directed against that accused—The terms cannot be stretched so as to include a person to whom it was not addressed—see 16 C. 9.
- (iii) That the order disobeyed falls, within the scope of S. 144 Cr. P. C. If the order is illegal or ultra vires, no conviction can be had [9 C. N. 402 22 C. N. 599 8 C. L. 231 See (61) A. N. 221 1 A. 615 Rat 51 Rat 50].
- (iv) That the order was in force on the date it was alleged to have been disobeyed—

An order disobeyed after it had expired by efflux of time, cannot be the basis of a valid conviction—10 A. 115 40 A. 28.

- (v) That the accused had an opportunity of obeying the order—A prosecution initiated only 2 days after the issue of an order at the instance of the complainant should not succeed—22 C. N. 481.
- (vi) It must be shown that (1) either the disobedience was likely to cause a breach of the [31 C. 100; 32 C. 703 (705) 1 C. N. 226 296, 11 C. N. 231] or that it has resulted in actual disturbance or injury—[11 C. N. 2 B. L. (q) 134 (81) A. N. 273; Rat 53, 10 424 1 M. 11, (sp) 5. 1 M. 11 (sp) 6].
126. Validity of order, may be questioned: appeal.—Although an order under S. 144 Cr. P. C. is not appealable, the validity of the proceedings may be required into an appeal for conviction for disobedience of the order—37 B. C. 88 2 W. R. 32 Rat 51 Rat 50.

XVII. ALLIED SECTION.

(1) Ss. 133 and 144.

127. S. 144 Allied sections (224–226) under S. 133 Cr. P. C. supra.

(2) Ss. 107 and 144.

128. Ss. 107 Cr. P. C. (17) Allied sections (214).

(3) Ss. 144 and 145.

129. See S. 116 Cr. P. C. (21) Allied sections (102–105).

(4) Ss. 144 and 147.

130. A right to a flow of water or a right to use a pathway across the land of another are rights of use of land and water within the meaning of S. 147 Cr. P. C. and cannot be adjudicated upon under

S. 141 by a Magistrate with subordinate powers—2 W. R. 151, See 5 M. 11, (q) 23.

(5) Distinction between Chapter XI and Chapter XII.

131. Chapter XI of the Criminal Procedure Code which S. 141 appears, relates to interference with or disturbance of some kind with the land itself or something erected or standing upon it; an action is directed to the prevention of such by prompt order of some definite act on the part of an individual so that injury or annoyance may be caused. Ss. 115 and 116, which are next chapter deal with the possession of property and are sections which may be appropriate for cases where it is desired to prevent interference by one party with the collection of by another and matters of similar kind S. 127.

XVIII. IRREGULARITIES.

(1) Which vitiate.

132. (a) Order on petition alone without taking any evidence and without the necessary record of material facts—20 C. N. 981 20 C. N. 978. (13) M. N. 1003.
133. (b) Order by a Magistrate not empowered.—See S. 530 (b) Cr. P. C.
134. (c) Successive orders to extend period of operation—See (15) Effect and Duration of order.

(2) Which do not vitiate.

135. (a) An omission to serve the order in ac-

cordance with the terms of S. 134 Cr. P. C. a fatal irregularity, if the order is duly made.

136. (b) An omission to state the material facts in the order is not fatal, where on the report by the police and accepted by the Magistrate he was fully justified in passing the original order.—18 Cr. 492 (C); See also 30 M. 5.
137. (c) Omission to state the period of operation of the order.—See (15) Effect and Duration of order (120).

XIX. REVISION ETC.

(1) General Rule of Practice.

138. The High Court will not interfere where no question of jurisdiction is involved and there has not

been any gross miscarriage of justice—26 : 208. 20 C. N. 755 (M) 30 M. 275 (256).

(2) *Historical Review.*

- 139 The High Courts had no power of revision under the old Codes—See 2 C 234 (T. B.); 6 B L 71 (F. B.); 21 W. R. 37, 18 W. R. 22, 3 M. 341, 6 N. 104, 2 P. R. 1883, 31 P. R. 1878, 15 P. R. 1876. But the power to revise under the charter was first recognised in S. C. 583. [See also 15 W. R. 37.] It has since been held in a long current of decisions that the High Court can interfere under the charter when the order passed is without jurisdiction—i.e. illegal or *ultra vires*—See 16 C. 80, 19 C. 127, 25 C. 852, 25 C. 188, 5 C. N. 343, 11 C. N. 73. See also 5 C. 7 (F. B.), 1 C. L. 58, 1 C. L. 110, 22 W. R. 24, 22 W. R. 78, 21 W. R. 34, 24 W. R. 31, 24 B. 527 (32), A. N. 173, 25 M. 3, 350. See (52) A. N. 113, 26 C. N. 758, 25 C. N. 981, 21 C. N. 115, 13 C. N. 195, 12 C. N. 1013. *Can*—2 W. R. 91, 25 A. 111.

(3) *S. 435 (3) as a bar to revision.*

- 140 When the order merely purports to be one under S. 113 Cr. P. C. but is not in fact or substance so and is upon the face of the record, illegal—the High Court can interfere under S. 119 Cr. P. C. [19 C. 127, 16 C. 80, 25 C. 852, 25 C. 188, 2 C. N. 372 (83), A. N. 25, 50 C. 1.] But where the order passed is within the scope of the section the High Court cannot interfere on merits [8 C. N. 373, 4 B. R. 582, 5 M. T. 217, 18 M. 402, 30 M. 518, Cr. R. 73 of 1907, 1 L. B. 75].

(4) *Revision of time-expired orders.*

141. As a general rule of practice, High Court will not set aside an order which has expired by the efflux of time, however illegal it might be—[1 C. L. 58, 2 C. 201 (T. B.), 19 C. 127, 25 C. 852, 26 C. 188 (192), Bat. 607, 16 C. 472 (M.)].

XX. MISCELLANEOUS.

147. *Court fees.*—A Court fee of Rupee one is chargeable for a written order issued under S. 144.
(a) in Bengal—See *Cyl. Gaz.* 1879, 30(a).
(b) in Assam—See *Ass. Gaz.* 1879, 503.
148. *Civil Suit to vacate the order.*—There is nothing to prevent a party from bringing a Civil Suit for special damage caused by an obstruction in a public thoroughfare, notwithstanding an order under S. 144 Cr. P. C.—See 3 C. 20 (F. B.).

But where a prosecution for disobedience of the order under S. 188 Cr. P. C. has been instituted the High Court will interfere—See 20 C. N. 758, 20 C. N. 981, 21 C. N. 117, 13 C. N. 195].

(5) *Miscellaneous.*

- 142 *High Court cannot revise pure executive orders.*—The High Court has no jurisdiction to interfere with an instruction issued by a District Magistrate to his subordinate respecting the route of a procession—[(191) A. N. 178].
- 143 *Power of the High Court to restore property.*—The High Court has power to restore things to their original condition when they have been illegally interfered with by the Magistrate—12 C. N. 1011.
144. Where an order has been passed without jurisdiction no subsequent explanation can make it valid—5 C. 132, 6 W. R. 40, 13 C. N. 188.
- 145 *High Court refused to revise the order in the following cases:*
(a) Order prohibiting the opening of a *hat* at a certain place—[21 W. R. 22].
(b) Order for removal of a prostitute [26 P. R. 1880].
(c) Order directing a quantity of hail grain to be burned [2 P. R. 1880].

(6) *Reference.*

- 146 It has been held in (77) Bat. 129 that a District Magistrate is not at liberty to refer an order passed by a Subordinate Magistrate to the High Court. He can deal with it in his executive capacity—[see Subs. (4)].

CHAPTER XII.

DISPUTES AS TO IMMOVABLE PROPERTY.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he has been in possession at such date:

Provided also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

(7) Proceedings under this section shall not abate by reason only of the death of any of the parties thereto.

Proposed amendments to the section—In section 145 of the said Code—

(1) In sub-section (1), after the words "District Magistrate" the words "Presidency Magistrate" shall be inserted.

(4) In sub-section (6), after the word "was" the words "or should be treated as being" shall be inserted, and the following shall be added after the words "such eviction," namely—

"and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed."

(11) For sub-section (7), the following sub-section shall be substituted, namely—

"(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto."

ARRANGEMENT OF NOTES.

S 145—S 530 (1872) —S 318 (1961)

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 - (2) Terms explained
 - (3) Nature of Proceedings under S 145
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 - (3) Disputes not within the purview of the section
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 - (7) Object and Scope of the Preliminary order
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- (1) Nature of order made under cl. (6).
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- (3) Order cannot be made when.
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- (10) Final order will not bind whom.
- (11) Contents of Final order.
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- (4) General Principles by which Revision Court ought to be guided.
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- (8) High Courts will not interfere when.
- (9) Powers of the High Court in revision.
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- (1) S 8 107 and 115 Cr. P. C.
- (2) " 114 " 115 "
- (3) " 117 " 115 "
- (4) " 115 " 522 "

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- (1) Meaning of the word "jurisdiction".
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- (3) Exceptions to the rule.
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XXIV. Transfer.**XXV. Miscellaneous.**

- (1) Order of Revenue Courts.
- (2) Miscellaneous.
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I. CHANGE IN THE LAW.

- 1. Effect of introduction of "land and water"—26 C 189 S. 145 corresponds to Sec. 318 of the Cr. P. C. of 1861 and S 530 of Cr. P. Code of 1872.

The word "tangible" used in Code of 1882 excluded incorporeal rights—Cl. 2 was enacted on the basis of the following rulings—11 C 413 15 C 527 16 C, 513 12 M 84

Subs (2) having defined what is meant by "land or water"—has given effect to the interpretation of "tangible immovable property" of the old Code (1882) in 2 Weir, 108; 15 A 394 11 C 413. 15 C. 527 16 C. 513; 12 M. 88; 2 Weir 100 and Overrode 5 A N 291 Subs (1) has rendered obsolete the following rulings—6 W. R 61; 8 W. R 81; 21 W. R 16.

II. OBJECT AND SCOPE.**(I) Scope and object.**

- 1. The purpose of the order is to prevent a breach of the peace. It is based on actual possession of the land by the party found to be in actual possession until he is evicted in due course of law and forbidding all disturbance until such eviction.—30 C 112 21 C 29 6 C. N 101 18 Cr 23 (M) 30 A 41; 1 A 23 1 A 33; 40 P R 1917. 23 P. R 1902
- 2. The purpose the legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under S. 145 it must be taken to have been without jurisdiction.—29 C. 446.

- 3. An order under S. 145 is merely a police order made to prevent a breach of the peace. It decides no question of title and the person maintained in possession by such an order can only be evicted by a suit by a person who can prove a better right to the possession himself.—29 C 147 (P. C.)—30 C 157 (F. B.)—7 C. N 538, 6 B R 216; 3 U R 33
- 4. Magistrates ought to be careful in acting under the section as the suggested apprehension of a breach of the peace is often little more than colourable, the real object of the parties being to obtain possession and thereby to secure no small advantage ground for subsequent litigation.—6 C. 837; 10 C. 78 11 C. 371.

5. An order under the section is meant to be only a temporary or tentative order and is to be operative so long only as the rights of the parties are not decided by Civil Court. The Magistrate is not at liberty to go into the merits of the claim of the rival parties. *He can decide only the fact of actual possession*—21 C 204 25 B 179, 24 P. H. 1902; 7 C N 555.
6. The Section provides a speedy remedy for the prevention of a breach of the peace by summary procedure as opposed to elaborate and protracted investigations by Civil Courts. 32 C 1093 11 W. R. 38; 21 N. 361; O. S. 127.
7. The Section is strictly limited to prevent violent self-help even by the true owner—2 Pat. W. 94.
8. Permanent settlement of the differences of the parties not within the purview of the Section.—This section does not empower a Magistrate to make an order permanently settling the differences of the parties. [Mad H. C. Pro. 23-1-'83] See 17 W. R. 3-35 C. 795; 4 M. H. (Ap) 49.
9. The Section is preventive and not punitive.—25 B 179 See 30 C 155 (F. B.) at p. 190 12 A J 390.

(2) Terms Explained.

10. "Parties concerned in the dispute" mean all persons claiming to be in possession at the time of the initial order under Cl I 30 C 153 (F. B.) See (11) Parties to Proceeding (E4).
11. Eviction in due course of law.—The word "due course of law" do not necessarily mean a decree of the Civil Court; but an order evicting the successful party in a proceeding under S. 145 Cr. P. C. must either be an order of a Civil Court or of a Court acting under statutory authority.

In the latter case there must be a clear indication expressed or implied in the terms of the statute itself to show that the order has the effect of a decree—4 Pat. W. 612 [7 C J 51 R.]

So an order by a settlement officer substituting an entry in favour of the unsuccessful party has not the effect of evicting in due course of law a successful party in a proceeding under S. 145 Cr. P. C. [ibid]

(3) Nature of proceedings under S. 145 Cr. P. C.

12. In reality a Civil one. (1) The proceeding under S. 145 is in reality a Civil one—31 C 65 (F. B.)
13. Quasi-executive.—(2) Though judicial enquiry and judicial discretion are no doubt required as essential to the exercise of the powers conferred by S. 145 proceedings under that section constitute quasi-executive action having for its object and justification the prevention of a breach of the public peace—25 B 179.
14. Quasi-civil. (3) A proceeding under S. 145 is not a criminal proceeding in the proper sense of the word. It is quasi-civil.—23 P. R. 1902. 68 P. L. 1914.
15. An enquiry as defined in S. 4(k).—A proceeding under Chapter XII is an enquiry within the meaning of S. 4(k) Cr. P. C. Both Sections 528 and 192 Cr. P. C. apply to such proceedings. 22 C 898, See 28 C 709 (Per Ghose J) 2 C J. 614 10 C N. 1995 13 C N. 420.
16. Proceedings are "criminal cases" within the meaning of S. 528 Cr. P. C.—34 A 533, 28 M. 189, 11 O. C. 61 38 C 709 (Per Ghose J) contra 25 B 179 18 C N. 303 8 S. 215.
17. But not "criminal trials" within the meaning of S. 1 of the Letters Patent. See 17 M. J. 154 (F. B.) [See also 29 C 256 (F. B.) S. 101] 27 M. 510 [S. 107] 12 M. J. 109 [S. 195]
18. A Possessory proceeding under S. 145 is not a sufficient notice to quit for the purpose of an ejectment suit. 43 C 39.
19. Police Proceedings and not a trial.—Proceedings under S. 145 Cr. P. C. do not constitute a trial and are not in the nature of a trial. They are in the nature of Police proceedings in order to prevent the commission of offence S. 403 Cr. P. C. therefore does not apply. 3 U. B. 33 See 29 C 187 (P. C.)

III. POLICE REPORT.

20. Police report should contain not merely an expression of opinion but a statement of facts actually ascertained by the police. It is not the law that the parties are actually assembling men or doing other specific overt acts. 33 C 33 [Diss. 25 W. R. 2 22 W. R. 79] See 20 C 513.
21. In a case under S. 145 it is not necessary that the police report should definitely state that there was likelihood of a breach of the peace.—It is sufficient if the report taken as a whole shows that there was a likelihood of a breach of the peace—33 C 63 (F. B.)
22. If the report does not show that there is a likelihood of a breach of the peace it cannot be acted on.—11 C N. 199 11 C. N. 837 See also 20 C 513.
23. Police Report showing possibility of a breach of the peace is sufficient to justify the issue of a warrant.
24. Admission before the Police.—Order cannot be based upon the mere fact that the Police report showed that the 2nd party had admitted possession of the 1st party. 6 M. T. 91.

26. **Report by Police officer of another district** may be acted on in respect of the portion of the disputed land lying within the district—29 C 855, 1 C 1, 329.
27. **Reference to police report** which contains sufficient grounds upon which the Magistrate is satisfied that a dispute likely to cause a breach of the peace exists is a sufficient compliance with law—*Per*, 31 C 352 (F B), 7 C 66, 13 C 175, 20 C 513, 31 C 33 (15), A N 299, 18 Cr 21 (M), 19 Cr 6 C 815, 27 C 981, 28 C 116, 32 C 771, 25 A 517, 27 A 236.
28. **The order in writing if it refers to the police report should state** that he (the Magistrate) is satisfied on the grounds stated in that report. When however he says merely that the report will show that the dispute is not likely to subsist until order is made, he has not to show order complying with Section 115 (1)—15 A 1, 270.
29. **Defective police report cannot be acted on by amalgamating it with a previous defective report**—Where a proceeding was dropped because the police report did not contain the boundaries of the disputed land and fresh proceedings were started on another police report which did not state that there was any breach of the peace—*See*—that this fundamental defect in the latter report which was the basis of the fresh proceedings, could not be remedied by a reference to the previous report.—6 C N, 310.
30. **Magistrate's inquiry must be limited to the particular dispute mentioned in the police report**—Where the police report mentions the dispute to be one regarding actual possession and it forms the basis of the proceedings, a summarizing Magistrate cannot alter the character of the dispute by changing the dispute into one relating to collection of rent—27 C, 892.
31. **A Magistrate's discretion**—A Magistrate ought not to take action upon a mere expression of opinion by the police. He must form his own independent judgment as to the sufficiency of materials disclosed by the police report. If he is not bound to act on all that is stated in the report—33 C 33. *See* 27 C 981.

IV. OTHER INFORMATION.

32. **Magistrate is not in any way limited as to the materials on which he may take action**—No limit and first rule in the law down affirming the sufficiency of the materials upon which he takes action—19 W R 10, 31 C 33.
33. **What is not information within the meaning of the section.**
- (1) A mere statement—22 H 910 (F B)
 - (2) A mere statement by an officer in the employ of one of the interested parties—23 M 561.
 - (3) The statement of a witness in the course of a dispute.
- (1) Materials on which a previous proceeding was drawn up but subsequently dropped [New materials necessary if proceedings are to be renewed]—23 C 867, 6 C N 923.
- (2) More statement on oath of one of the parties—10 C 78.
- (3) A petition complaining about dispossession and of the commission of various offences none of which necessarily involved a breach of the peace—4 C N 57.
34. **Rectification of defect**—When the information on which the proceeding was initiated was insufficient, but evidence taken during the trial proved that a breach of the peace was likely at the date of the initial order, the order of the Magistrate would be a valid one—31 C 39. *See* 23 C 557.
35. **Omission to record source of—not fatal**—7 C N 591. *See* (10) Irregularities which do not vitiate (4th) and (5) Proceeding (No 14).
36. **Information collected during a local enquiry held by the Magistrate prior to drawing up a proceeding**—*See*—(5) Proceeding (17).
37. **Sufficiency of information**—It is now well settled that the sufficiency of the information on which the Magistrate acts is entirely a matter for the Magistrate. The law does not require it to be furnished to him in any particular form—1 Pat. J 336 (F B).

V. DISPUTE.

(1) Defined.

38. The term 'dispute' means a reasonable dispute, a lawful dispute between parties who have each some semblance of right or 'supposed' right—5 C 835, 3 Pat J 287.
39. **Magistrate should not see a distinct finding that there is no dispute and that the dispute in question is likely to cause a breach of the peace**—2 Wen 117, 114 Cr 34. *See* 28 C 436, 21 B 327 (77) A N, 6 C P 21, 4 M H 402, 42 P L 1915.

(2) Procedure on receipt of a single report concerning several disputes.

40. **General Rule**—When disputes are independent and relate to distinct parcels of land, they ought to be dealt with in separate proceedings. When on the other hand, the dispute is one, the fact that it embraces several parcels of land, is not in my opinion sufficient to necessitate an independent proceeding in respect of each.—*Per* H J J 30 C 155 (F B), 20 M 561. *See* 18 27.

41. Joint proceeding when desirable.—A Magistrate exercises sound discretion in inclining in one proceeding disputes concerning several plots when they are connected by the same set of circumstances—10 C L 523 [D1—15 C 31]

42. Joint proceeding when undesirable.—A joint proceeding in respect of several disputes in which a very large number of persons are involved is undesirable as it would involve unnecessary delay as defendants in the Civil Suit a multitude of persons—15 C 31 16 C 513 23 M 561

43. Strict rules of Civil Procedure inapplicable to S 145 proceeding. Although it is desirable to deal with each separate dispute in a separate proceeding it is impossible to do so in S 145 cases, the strict rules of procedure of civil actions—6 C N 206

44. Joint trial not necessarily illogical. A joint trial of several disputes, where a separate proceeding in respect of each was desirable, would not vitiate proceedings in the absence of prejudice—5 C N 541 5 C N 710 11 C N 600 16 C 25

Joint enquiry into several disputes in some of which only a portion of the entire disputed land is claimed is illegal—30 C 155 (F.B.): Cf. a 18 25

45. Joint trial of separate cases even with the consent of the parties is illogical. Where parties in the several cases are not the same, the Magistrate is not competent to try all the cases together even with the consent of the parties—4 C N 748 See 5 W R 61 (Canton) 14 C N 600

(3) Disputes not within the purview of the section.

46. When one party's possession is admitted by the other.—If one of the parties by bringing a suit for the recovery of possession admits that the other party is in possession there is no question to decide in a proceeding under S 145 Cr P C—7 C N 558

47. Dispute regarding lands not covered by the proceeding.—Cannot be enquired into and determined by the Magistrate 7 C N 558

48. Dispute with regard to movables.—A Magistrate has no jurisdiction to institute proceedings under S 145 in respect of movables—4 L B 73 21 Cr 73 (M) 23 P R 1902 See below

49. Cases. See [at 59] [at 59] [at 59] 25 A

39 C 357 [offering to an idol in a temple] sandal wood paste removed from an idol (4 B R 434) goods and business of a shop (23 P R 1902) Trees severed from the land (22 P W 1917) Livestock—e.g.—elephant [(12) M N 540] Mineral products excavated and removed (2 Pat J 37)

50. Dispute with regard to live-stock.—Live-stock by themselves, do not come within the purview of S 145 But when they form part of the immovable property in dispute e.g.—elephant

not removed from forest [(12) M N 540:] or cattle belonging to and found within the math in dispute (1 Pat J 376) they come under S 145 Cr P C

51. Dispute about public property.—Where the dispute is among members of the public regarding the possession of a public property, a Magistrate cannot make an order under S 145, as the possession to be declared must necessarily be joint possession which is outside the scope of the section—17 C N 207

52. Disputes not within the purview of S. 145. C. L. P. C.

(1) (i) Dispute in respect of burial ground—27 W R 24

(b) Dispute between co-partners, one of them claiming exclusive possession of partnership property as manager 32 C 219

(c) Dispute simply as to the collections made by one of parties and as to what he is entitled to under a share does not come under S 145 Cr P C. (25 W R 2)

(d) Dispute relating to the right to use a public highway 2 W R 117

(e) Dispute regarding voluntary payments by dealers in a market (such as bazaar) dues 36 A 147

(f) Dispute regarding the goods and business of a shop—23 P R 1902

(4) Dispute within the purview of the section.

53. Dispute regarding the right to collect.—There is a long *casus* enunc, bearing on the questions (1) Is a dispute regarding collection of rents within the purview of S 145? (2) Assuming that it is has the section application, when the dispute is as to the collection of a share of rent between persons having joint rights over the disputed property? The first question was for the first time distinctly raised and decided in 11 C 413, which had shown that a proceeding under S 145 Cr P C is not limited to disputes about immediate possession but is applicable also to intermediate possession by receipt of rents from tenants in actual possession. This view which was also adopted in 15 C 527 16 C 513 and 12 M 84 was accepted by the Legislature and embodied as sub (2) by act V of 1904. [See also 9 L B 229 18 Cr 156 (M) 16 Cr 284 (M) 5 A N 513 12 C N 3 17 M T 227 5 M J 95 2 Pat W 67 (Canton) 10 C 89. It has been held that a dispute with regard to the right to make collections or to appropriate the crops or produce of a village or shares of a village comes within the purview of S 145 [2 Pat W 67 Pg—11 C 413 16 C 513]. The section applies even when the fractional shares of the disputing co-owners are not definitely ascertained [17 M T 227 27 C 239 27 C 361 (Note) 1 C N 120 4 C N 421 (Note) 23 C 80 7 C N 462]. The second question is however more or less *res integra*, as the conflict of opinion in the point has not yet been set at rest by a Full Bench decision of any of the High Courts. The leading case for the affirmative is 27 C 259, which has found support

in a number of recent cases—17 M. T. 225, 16 Cr. 284 (31), 16 Cr. 219 (M), 31 M. 318, 10 C. 959, S. I. C. 153 (L. R.). See also 19 C. 982 (in which a distinction is drawn between *constructive* and *actual* joint possession.) The leading case for the **negative** is 23 C. 80, the view in which has been adopted in a long series of decisions in the Calcutta High Court—32 C. 247, 11 C. N. 512, 10 C. N. 1088, 6 C. N. 392, 4 C. N. 885, 7 C. N. 412, 6 C. N. 883, 1 C. N. 123, 11 C. J. 112. See also 34 C. 986 and 19 Cr. 377 (M), 17 Cr. 76 (M); 13 Cr. 195 (A), 23 P. R. 1902. So it has been held that where the dispute is between parties claiming to hold joint possession and neither contests such right or when one of the parties claims joint possession while the other claims exclusive possession, founded on a joint right and title, S. 145 does not apply [S. (15) possession and disposition (219)]. A dispute regarding the right to collect rent between a co-sharer of an undivided property and the lessee of another co-sharer falls outside the scope of S. 145 [5 A. 607].

54 Dispute regarding fisheries.—By enacting sub-s. (2), the Legislature has now definitely included fisheries within the purview of the section and *overruled* 11 C. 413, 12 C. 359, 13 C. 179, 23 W. R. 45, 5 A. N. 209 [See 35 C. 117]. But where the dispute is with regard to the possession of a share in a fishery and the two parties are found to have joint right in the same. See 115 has no application [11 C. J. 112, 11 C. N. 512 but see above]. When however the dispute relates to a *definite share* in the profits of the fishery, it may be dealt with under S. 145 [11 C. J. 412, 11 Cr. 26 C. 986].

55 Disputes regarding possession.

(1) It may be taken as settled that where the dispute is between parties each of whom claims the right to hold joint possession and neither contests such right, the section does not apply. The section contemplates a dispute between parties each of whom asserts the right to hold *actual* possession to the exclusion of the other 7 C. N. 118, 1 C. N. 428, 11 C. N. 512, 17 C. N. 205, 36 C. 986, 10 C. N. 1068, 16 Cr. 52 (M), 2 Weir 108, 11 A. J. 698, 23 P. R. 1902, so, where, the joint possession is not merely *constructive* but *actual*, S. 145 does not apply. But if it is found that one co-sharer is in *actual* possession and the other is not, the Magistrate may make an order under S. 145 [40 C. 982].

Dispute regarding crops.—An attempt has been made to draw a line of distinction between (1) *standing* crops (2) crops *severed* from the disputed land but still lying within it (3) *crops cut and stored*.

(1) As to *standing crops*.—Sub-s. (2) is a sufficient guide. See also 15 A. 394.

(2) *Crops severed from the disputed land but not with crops removed from and wholly dissevered from it* [S. & C. J. 212]. This view is in direct conflict with that expressed in 2 Weir 108.

(3) *Crops cut and stored.*—It has been held in 30 C. 110 that the word "crops" in sub-s. (2) means crops attached to the land and not crops which have been severed [See also 25 A. 204; 7 C. J. 394, C. R. 31 of 18.4.01].

(3) *Right to reap crops.*—A dispute about the right to reap crops is not within the terms of S. 115 Cr. P. C.—13 P. R. 1917 [7 C. J. 399 P.].

57. Dispute regarding temples and other places of worship and the proceeds thereof.

That debatable property being by nature impartible and indivisible, the possession of such places is necessarily joint and as such is outside the scope of S. 145 Cr. P. C.

Right to perform puja.—Dispute regarding the right to perform puja in a temple is covered by S. 145 Cr. P. C. [Pro 2 Weir 112, 24 B. 527, Con—37 C. 578, 17 Cr. 235 (M)]. Where however the dispute is in effect, for the possession of the temple and the right to perform puja therein is only a portion of the larger right a Magistrate can deal with it under S. 145 [17 Cr. 235 (M)] See 2 Pat W. 94.]

Note.—In 11 M. 223, 29 M. 217, 27 M. J. 587, 3 B. R. 416 it has been held down that S. 147 Cr. P. C. and not S. 145 applies to such cases.

User of a mosque.—A dispute as to the right to user of a mosque by persons claiming to be entitled to officiate as *Imams* thereon is a dispute coming within S. 147 Cr. P. C. and not S. 145 Cr. P. C.—Pro, 11 M. 223, 29 M. 237, 27 M. J. 587, Con. 17 Cr. 235 (M).

Right to take sandalwood paste.—After removal from an idol is not within S. 145, as it did not in any way emanate from the temple buildings or come within the description of "profits of immovable property".—4 B. R. 434.

Muth.—Dispute arising out of a right of succession to a muth is not within the purview of S. 143 11 W. R. 23.

58. Disputes within the purview of Section 145 Cr. P. C.

(a) Dispute between a rival claimant and the tenants of another rival claimant. 18 Cr. 156 (M).

(b) Dispute regarding *management* where the word "management" is used merely to describe acts of possession. 2 Pat W. 91.

(c) Dispute regarding a *ferry*. 26 C. 188. But See 3 C. N. 148.

(d) Dispute regarding *forest* land where the possession was exercised by cutting timber from time to time on a certain price being paid. 16 C. 291.

[**Note.**—But not when the rival disputant is a mere trespasser who without any right has cut a few trees from a portion only of a large area of forest land. 32 C. 287. See (15) possession and dispossession.]

(c) Dispute regarding the exclusive right to collect the entire toll from one partitioned half of a market. 30 C 503

(f) Dispute about mining rights 20 Cr. 109 (Pat.) [11 C. 413 12 C 539 H]

(g) Dispute as to the right to tap a tree. 3 Pat. J. 316

VI. LIKELIHOOD.

(1) Legal foundation of jurisdiction.

59. The legal foundation of a Magistrate's jurisdiction under the section is a police report or other information containing clear and rational grounds for believing that a dispute likely to cause a breach of the peace concerning certain lands etc. exists [19 W R 10]

60. Magistrate's jurisdiction depends solely on likelihood—A finding to the effect that there exists a dispute likely to cause a breach of the peace, is a condition precedent to the Magistrate's taking action under S. 145 Cr P C and until he does so find, he has no jurisdiction to act under the section—24 C 55 (F. B.), 23 C 517 20 C 523 6 C 437 4 C 650 15 C N 271 6 C N 340 7 C N 400 1 C N 37 24 B 527 14 Cr 495 (A) 11 A J 305 2 A J 272 6 M J 193 2 Weir 117 3 Pat W 356 2 Pat W 21 22 P. W 1917 6 P L 1885 See 5 W R 11 9 W. H 61

61. The Magistrate must satisfy himself by the exercise of his own independent judgment and come to a finding that the grounds on which it was stated that there was a likelihood of a breach of the peace were reasonable & p he cannot act merely because the judge has directed him to proceed under the Section [4 C N 799] 24 C 55 (F. B.) 20 C 513 20 C 520 15 A J 270 36 A. 19 13 Cr 296 (A) 10 Cr 444 (N) 4 M. H. (41) 49 6 M J 194 6 P L 1885 6 P L 1913 62 P L 1915 7 W R 11

(2)—The meaning of the term "likelihood."

62. The exact meaning of the word likelihood has been the subject of several conflicting decisions. Does the word 'likely' mean 'imminent,' 'immediate,' 'probable' or 'possible' or merely 'possible'? The leading case on the point is 43 C 37 [F. B.] in 18 50 (F. B.) in which it has been held that the High Court ought not to adopt a construction which would have the effect of substituting for the word 'likelihood', the term 'probability' or 'imminence' or any similar expression. Their Lordships held that there must be a present danger of breach of peace (not, be it noticed, a danger of an immediate or imminent breach of peace) [F. 7 C L 352]. In the opinion of *Moffa J.* in 7 C 863, for the Magistrate to take action, it is sufficient if there is a reasonable apprehension that disturbance of the peace is likely to occur. But it is not enough if it is merely probable that a breach may occur if proceedings be not taken. This view is opposed to that taken in 23 C 557. 20 C 513 20 C 867 15 C N 271 4 C L 343 2 Pat W 21 (where the meaning is held to be imminent). In 8 C N 500 the term is said to signify immediate [See also 4 C 650]

63. Note.—In 11 O N 831 and 194 their Lordships lay down that a mere possibility of a breach of the peace will not justify action under S. 145 [See also 2 Pat W 21]

64. The commission of overt acts of violence not necessary to constitute likelihood.—The section does not primarily contemplate cases in which there have already been overt acts of violence. All the dispirants may be persons of peaceable disposition but if the dispute is, in its nature, of such a kind that it is likely, having

65. Findings of likelihood must be based on logical evidence.—A Subordinate Magistrate while on tour was informed by the village lum. bard and certain other persons that a number of persons had erected platforms in front of their houses and that in consequence there was a danger of a breach of the peace.—Held that the information together with the oral testimony of a single witness who objected to the platforms did not constitute any evidence of a likelihood of a breach of the peace within the meaning of S. 145—6 P L 1913

66. —

(3) Miscellaneous.

67. —

enquiry and without taking any evidence hold that there was no likelihood of a breach of the peace 16 Cr 789 (M) [39 M 561 18 C N 91 18 C. N 700 R]

68. Where it is found that there is a likelihood of a breach of the peace, the Magistrate may not continue proceedings. 867 30 C 11.

69. Complaint passed by offences not necessarily involving breach of peace.—The mere fact that a person complains of being dispossessed of his land is no reason for the institution of proceedings, if the petition refers only to the commission of various offences, none of which necessarily involves a breach of the peace.—4 C N 57

70. Magistrate may stay proceedings at any stage if the likelihood has ceased to exist before the proceedings has terminated. 30 C 112 28 C 416 21 C 29 20 C 867 6 C 825 4 C 650 17 Cr. 138 (M) (14) M N. 37; See also 20 C N 954 21 C 547 21 Cr 131 (C); Contra 20 Cr 464 (Pat)

71. [Note—But he can do so only after enquiry and after taking evidence.—16 Cr. 799 (M) [39 M. 561. 18 C. N. 91. 18 C. N. 700 R.]
72. Once the proceeding has been dropped it cannot be revived without new materials. Where a proceeding under S. 143 has once been cancelled a fresh proceeding can be instituted only when the Magistrate on further materials, either on the report of the police, or any other information is satisfied that there is a likelihood of

a breach of the peace.—2 Pat. W. 27. 29 C. 57. 18 C. N. 423.

73. A subsequent order reviving the proceedings on the ground that the police report showed that there was still an apprehension of a breach of the peace is illegal.—2 Pat. W. 27.
74. Magistrate called on to take proceedings is the sole judge of the necessity of taking action.—See (N) Proceedings (85 B).

VII. LAND AND WATER.

(1) Meaning.

75. Change in the Law.—The term "tangible property" in the former Code has been replaced by the words "land or water or the boundaries thereof" and by adding an explanation of these words in Rule (4) the Legislature has considerably extended the application of the Section.—See 26 C. 155.
76. Properties corporeal and incorporeal included within the expression or falling outside its scope.—See (1) Disputes (C) (M. 79) D (33 N).
77. Inclusion in the proceeding of only a portion of the disputed land.—The purpose of a proceeding under S. 143 is merely to prevent a breach of the peace and if the Magistrate finds it sufficient for the purpose of preventing a breach of the peace to include in his proceeding only a portion of the land which is the subject of the police report, there is nothing to prevent him from doing so.—18 Cr. 692 (Pat.).
78. As to possession of land subject to dilution.—See 20 C. 1014 (and (13) Possession etc (239)).
79. Jurisdiction does not depend on the area of the disputed plot.—The operation of the section cannot be limited by any rule which would depend upon the area of the property in dispute.—18 C. 513.

(2) Boundaries.

80. Subject-matter to dispute must be capable of being accurately defined.—To bring a case under S. 143 Cr. P. C. the property which is the subject-matter of dispute must be capable of being accurately defined. The whole scope and object of the section points to the same conclusion.—23 C. 80. 7 C. N. 462. See 4 C. N. 126. 11 C. N. 198. 7 C. N. 119.
81. Boundaries must be specified in the preliminary order.—Where a proceeding purporting to be passed under S. 143 gave no information

as to the subject of the dispute and it left the persons to whom the notice was issued, guessing the dark as to the property in regard to which they were called upon to set forth their respective claims. Held—that the order was wholly incomplete and failed to comply with the requirements of the law. 27 A. 294.

[But where both sides are fully cognizant of the matter in dispute the High Court will not interfere.—32 A. 132.]

82. Before a proceeding is drawn up under S. 143 the subject-matter of the dispute must be clearly ascertained and determined.—11 C. N. 198. 7 C. N. 599. 5 C. N. 553. A failure to do so renders the whole proceedings void.—Myn. 8 Cr. 1.
83. Where boundaries are found to be uncertain, Magistrate should proceed under S. 146.—Where the dispute is as to a certain allodial land and the question is whether it belonged to Monza G. which was in joint possession or to Monza A. to which one of them had exclusive possession and the Magistrate is unable to come to a clear finding, he ought to attach the lands under S. 146 Cr. P. C.—5 C. N. 103. See 7 C. N. 462.
84. Property must be specified by notes and bounds in the final order.—A final order under S. 143 must specify by notes and bounds the exact portion of the disputed property of which the successful party is entitled to possession.—2 Weir. 107.
85. "The boundaries given in that decree should be followed."—A Magistrate is not at liberty to attempt an explanation of boundaries given in the decree.—6 C. N. 161.

High Court can interfere, after the institution of the proceedings, if the Magistrate refuses to exercise jurisdiction without sufficient cause.—See (23) Jurisdiction.—473. 38 C. 24. 4 C. N. 799.

87. Private Person.—No private person has any right whatever to cause proceedings under S. 143 to be taken. If a Magistrate cancels an order under S. 143 or refuses to make an order at all, no

VIII. PROCEEDING.

(1) Who may set the law in motion.

86. The section enables the Magistrate in his sole and absolute discretion to take proceedings under it, when he thinks that such proceedings are necessary to enable him to discharge the duty which the law places on his shoulders of preserving the peace in the District under his care. (But the

private person has any status in contest the propriety of his refusal to make an enquiry into the question of possession.

38 C. 21, 30 C. 112. See 33 A. II.

37. **District Magistrate**—Although a District Magistrate can himself take action on a police report where a subordinate magistrate has already refused to do so [20 C. 212] He has no authority to direct a subordinate Magistrate to take proceedings under the section [21 C. 391] Pat W 276. Nor can he remand a case for "proper enquiry" after the subordinate Magistrate has struck off the proceedings as unnecessary [20 C. 729]. But where a District Magistrate on being satisfied that there exists a dispute likely to cause a breach of the peace, refers the case to magistrate for enquiry he is bound to enquire into it [3 B R 416].

38. **Sessions Judge**—A Sessions Judge is not competent to order a magistrate to take action under S. 145, 20 C. 320. 15 W R 1, 4 C N 794.

39. **High Court**—The High Court cannot direct a Subordinate Magistrate to take action under S. 145 [3 C N 297, 21 W R 354] or order further enquiry to be made [30 C. 112]. See also 35 C. 117, 2 S. 18. In cannot direct initiation or revival of a proceeding [21 W R 51]. But where the magistrate after making an emergent order under S. 145 (1) refused to proceed further, the High Court ordered the magistrate to make an enquiry into the fact of possession as required by sub. (1) (1) A. N. 154. See also (23) Jurisdiction (173).

(2) The preliminary order.

91. **Magistrate bound to record a proceeding**—To enable a magistrate to make an order relating to disputes about immovable property, he must in accordance with S. 145 (1), first make an order in writing, stating the grounds of his being satisfied that a dispute exists which is likely to cause a breach of the peace.

Calcutta—8 C. 835, 20 C. 320, 27 C. 892, 27 C. 891, 28 C. 416, 30 C. 443, 32 C. 352, 6 C N 101, 6 C. N. 923.

Madras—4 M T 213, (14) M N 798, 10 M J 18, 2 Weir 674, 2 Weir 117.

Bombay—24 B 527, 2 B R 84, Rat 39, Rat 51.

Allahabad—21 A. 537, 36 A. 19, (07) A. N. 49, (04) A. N. 214, (85) A. N. 392, 15 A. J. 270, 11 A. J. 636, 2 A. J. 272, 15 Cr. 424 (A), 14 Cr. 495 (A), 13 Cr. 296 (A).

Punjab—2 P. R. 1899 (F. B.), 22 P. R. 1916, 169 P. L. 1915, 92 P. L. 1915, 92 P. L. 1913, 7 P. R. 1907.

Central Provinces—5 C. P. 21, 19 Cr. 444 (N).

[For rulings under the former Codes See 4 W R 26, 6 W R 61, 8 W R 83, 24 W R 16, 25 W R 73, 2 Wym 1.]

92. **Note**—A Magistrate cannot take proceedings under S. 145 Cr. P. C. on the basis of a notice issued under S. 107 Cr. P. C. [30 C. 413, 32 C. 512, 7 C. N. 174, 36 A. 19, 25 A. 537, 15 Cr. 121 (A)] nor on a notice issued under S. 141 [19 M. J. 15]. He cannot, after issuing notice under S. 141 act under S. 145 (1) (14) M. N. 798, 32 C. 552.]

(3) Contents of the Preliminary order.

93. (1) The grounds on which the Magistrate is satisfied that there is a dispute likely to cause a breach of the peace must be set forth in the order. See No. 91 above. See also (5) Dispute (19).

94. **Note**—There is now a fair consensus of opinion among the High Courts etc., that in the absence of prejudice (amounting to a denial of justice) the omission to set forth such grounds in the preliminary order is not a fatal defect vitiating the Magistrate of his jurisdiction.

Pro.:

Calcutta—31 C. 352 (F. B.), 33 C. 48 (F. B.), 31 C. 31, 12 C. 1031, 7 C. N. 399.

Madras—4 M T 275, 30 M. 118, 17 M. J. 449, 16 M. J. 145, 14 Cr. 156 (M), 2 Weir 194.

Allahabad—31 A. 132, (07) A. N. 50, (05) A. N. 260, 16 Cr. 224 (A).

Punjab—26 P. W. 1917, 22 P. W. 1917, 68 P. L. 1914, 15 P. W. 1914, 39 C. 301 (P).

Madras—19 U. C. 131, 12 U. C. 100, 7 U. C. 331.

Cons.:

Calcutta—34 C. 840, 32 C. 771, 31 C. 532, 30 C. 111, 28 C. 410, 27 C. 891, 27 C. 892, 20 C. 520, 6 C. N. 924, 6 C. N. 101, 45 W. R. 74, 4 W. R. 20.

Madras—3 M T 214, (14) M. N. 798.

Bombay—24 B. 527, 2 B. R. 84, Rat 39, Rat 51.

Allahabad—36 A. 19, 25 A. 537, (07) A. N. 49, (55) A. N. 302, (84) A. N. 317, 11 A. J. 608, 2 A. J. 272, 15 Cr. 124 (A), 14 Cr. 495 (A), 13 Cr. 296 (A).

Punjab—2 P. R. 1899 (F. B.), 22 P. R. 1916, 169 P. L. 1915, 92 P. L. 1915, 92 P. L. 1913, 7 P. R. 1907.

Central Provinces—6 C. P. 21, 20 Cr. 124 (N).

Madras—10 J. 212.

Calcutta—34 C. 840, 32 C. 771, 31 C. 532, 30 C. 111, 28 C. 410, 27 C. 891, 27 C. 892, 20 C. 520, 6 C. N. 924, 6 C. N. 101, 45 W. R. 74, 4 W. R. 20.

Madras—3 M T 214, (14) M. N. 798.

Bombay—24 B. 527, 2 B. R. 84, Rat 39, Rat 51.

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Punjab—2 P. R. 1899 (F. B.), 22 P. R. 1916, 169 P. L. 1915, 92 P. L. 1915, 92 P. L. 1913, 7 P. R. 1907.

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Calcutta—34 C. 840, 32 C. 771, 31 C. 532, 30 C. 111, 28 C. 410, 27 C. 891, 27 C. 892, 20 C. 520, 6 C. N. 924, 6 C. N. 101, 45 W. R. 74, 4 W. R. 20.

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Punjab—2 P. R. 1899 (F. B.), 22 P. R. 1916, 169 P. L. 1915, 92 P. L. 1915, 92 P. L. 1913, 7 P. R. 1907.

Central Provinces—6 C. P. 21, 20 Cr. 124 (N).

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Calcutta—34 C. 840, 32 C. 771, 31 C. 532, 30 C. 111, 28 C. 410, 27 C. 891, 27 C. 892, 20 C. 520, 6 C. N. 924, 6 C. N. 101, 45 W. R. 74, 4 W. R. 20.

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Central Provinces—6 C. P. 21, 20 Cr. 124 (N).

Madras—10 J. 212.

Calcutta—34 C. 840, 32 C. 771, 31 C. 532, 30 C. 111, 28 C. 410, 27 C. 891, 27 C. 892, 20 C. 520, 6 C. N. 924, 6 C. N. 101, 45 W. R. 74, 4 W. R. 20.

Madras—3 M T 214, (14) M. N. 798.

Bombay—24 B. 527, 2 B. R. 84, Rat 39, Rat 51.

97. (4) Reference to *locus in quo* held by the Magistrate prior to the proceeding in the presence of the parties in order to satisfy himself as to the likelihood of a breach of the peace is sufficient [Pro. 7 C N 599 (670) 30 A 11, 32 A 132, 16 C 224 (A) 26 P W, 1917 (Con 35 C, 771) Provided that the results of the enquiry has been set down in writing and placed on the record—32 C, 771]
98. (2) The order must specify the property in dispute.—27 A 29 B See 27 C 981
- [Note.—But where both sides are fully cognizant of the subject-matter of dispute, an omission to do so will not be fatal—32 A 172]
99. (3) The order should be correct and complete in its terms 27 C 981.
100. (1) The order should specify the place of enquiry.—A Magistrate cannot hold the enquiry while on tour without timely notice to the parties 7 C N 703
101. (a) The Magistrate should call for written statements of the claims of the parties to the proceeding 25 A 337 31 C 775
102. Printed forms should not be used.—The use of printed forms containing the statement that the Magistrate is satisfied as to the likelihood of a breach of the peace is likely to prevent the Magistrate from applying his mind to a consideration of the sufficiency of the materials and is therefore to be condemned 9 C N 11
- (5) *How far the Magistrate's discretion is fettered by the contents of the police report.*
- 103 (1) He may include only a portion of of the disputed property in his proceeding.—The purpose of a proceeding under S. 115 Cr. P. C. is merely to prevent a breach of the peace and if the Magistrate thinks that it is sufficient to prevent a breach of the peace to include in his proceeding only a portion of the land which is the subject of the police report there is nothing to prevent him from doing so 18 Cr 612 (Pat)
- 104 (2) He cannot alter the character of the dispute.—Where a Magistrate took action under the section on the basis of a police report in which it was stated that the dispute was concerning the actual possession of the land, a succeeding Magistrate cannot revise the proceeding and alter the dispute into one relating to collection of rent 27 C 822
- (3) Magistrate not bound to take action on a mere expression of opinion by the police.—He must form his own opinion on a statement of facts and is not bound to proceed unless he is himself satisfied as to the necessity or otherwise for the institution of proceedings under the Section 31 C 33 See 27 C 802
- (6) *Section contemplates one proceeding against all the parties concerned in the dispute.*
105. The section contemplates one proceeding against all the parties known to be concerned

in the dispute so as to conclude the matter definitively and finally so far as the Criminal Courts are concerned 24 C 55 (F. B.) 27 C 802 111 B 377 See 21 C 23; 28 C 440; 1 C N 753, 51 N. 900, 6 C N, 101, 24 B 547, 18 M, 51, 18 C 11 (M), 7 P. B, 1107. But See 30 C, 151 (F. B.)

(7) *Object and scope of the preliminary order.*

106. (1) The object of drawing up a proceeding can only be to inform the parties of the grounds of the information which has satisfied the Magistrate that a dispute likely to cause a breach of the peace exists 32 C, 771 7 C N, 599.
- 106A. (4) Scope of the proceeding.—It is the proceeding and not the written statements of the parties which settles the issues between the parties. (10) Written Statement (No 127)

(8) *General or revival of proceedings.*

107.
- his order under S. 115 Cr. P. C. should not be aside, it is highly improper for a succeeding Magistrate to institute fresh proceedings in reference to the matter in dispute—1 C J 415.
108. Previous order under Cl. (5)—Made on the basis of a compromise petition to the effect that the lands do remain in possession of both sides stated in the petition is no bar to fresh proceedings in respect of the same lands—15 C N, 505
- 108A. Once the proceedings have been dropped it cannot be revived without fresh materials.—29 C, 847 See (6) likelihood (72)

(9) *Power to cancel proceeding.*

109. (1) A Magistrate has jurisdiction to cancel the proceeding taken by him at any stage Pro. C 116 (18) M. N 37, 17 Cr 134 (M) (but 20 C 461 (Pat) See (6) likelihood (70).
110. (2) He can do so even when the proceedings are taken by his predecessor—2 Weir 108.
111. (1) A District Magistrate may withdraw the case to his own file and quash the proceedings when it is satisfied on taking evidence that no dispute exists or has ever existed—13 C. N, 127
112. (1) The power to cancel proceedings is limited merely to the information given to the parties or persons interested under sub. (1)—C 112
113. (3) Absence or neglect of parties need not justify cancellation of proceedings See Enquiry and Procedure (200)

[Note.—For powers of magistrate to deal with the disputed property after cancelling proceeding—See (17) Final Order (389 to 393)]

- 114 The doctrine of *autrefois acquit* does not apply to proceedings under S. 14 Cr. P. C.—The fact that one of the parties was previously prosecuted under S. 147, I. P. C.

trespass on the disputed property and was acquitted, is no bar to a subsequent institution of

proceedings under S 145 in respect of the very same property.—3 U R 33.

IX. SERVICE OF PROCEEDING.

(1) The object and scope of sub cl. (3).

115. (a) Cl. (3) was intended—to be supplementary to cl. (1). The intention of the Legislature was probably to guard against collusive proceedings as well as to give any one interested in the disputed property who may, through oversight or otherwise, not have received a summons or an opportunity of coming in with his claim—30 C 175 (F B) 33 C 68 (F. B.)

116. (b) Not intended to be a general invitation.—The section indicates that the notice shall be to known individuals and not in the form of a general invitation or public proclamation [4 C 650]. The object is not to enlarge the scope of the enquiry but merely to notify generally to all persons in the locality that a proceeding under S 115 has been set on foot. But the general invitation was not intended any more than the power given to the magistrate of summoning additional parties to have the effect of altering the character of the enquiry.—30 C 155 (F. B.)

117. Provisions of cl. 3 are merely directory.—The provisions as to the publication of the order mentioned in cl. (3) is directory and a matter of procedure only. An omission to comply with it does not deprive the magistrate of his jurisdiction. The High Court will interfere only if a party intended has been materially prejudiced thereby. 33 C 68 (F. B.) 30 C 155 (F. B.) 33 C 31 33 C 1093 30 A 41 30 M 548 64 P L 1914 70 C 334 120 C 100. *Centre*—8 C N 76 6 C N 590 9 C N 609 [Or] 20 C 520 28 C 416 33 C 774 24 B 525 7 P R 1907 16 P L 1915 5 Pat W 294 4 Pat W 183

(2) Procedure.

118. The notice is to be accompanied by a copy of the preliminary order (proceeding) drawn up in accordance with cl. (1)—115 Cr P C

As to what the proceeding should contain See (8) Proceeding Nos 93—101

119. Mode of service.—A copy of the order must be served personally on the parties and a copy affixed to some conspicuous place at or near the subject of dispute. The law for the service of notice in such cases is on the same lines as the rules for the service of a summons in a Civil Case—20 Cr 816 (N) [2 N 3 Fd] 7 P R 1907.

120. On whom to be served.—The notice need be served on the parties concerned in the dispute only [6 W B 34]. Service on a mofassil and munsif of the Zemindar is insufficient. [17 W R 9]

121. Proof of service.—Where the parties were aware of the nature and scope of the proceeding and had had their cases fully heard, failure to serve notice is not fatal [33 C 68 (F. B.) 14 C N xviii 20 A 41 32 A 132 16 Cr 221 (A) 4 Pat W 234 40 M 748 26 P W 1917 16 P L 1915 68 P L 1914 120 C 400]. But where a party to the proceeding had no opportunity of appearing and putting in his written statement owing to non-service the proceedings are without jurisdiction. [20 Cr 173 (N) 20 Cr 816 (N)]

123. The notice served must be a notice under the section.—See (8) Proceeding (92)

124. Order under S. 145 Cr. P. C. on notice under S. 147 Cr. P. C.—A Magistrate gave notice under S 147. On objection being taken, without issuing a fresh notice under S 145, made a final order under the latter section.—Held that the Magistrate acted without jurisdiction. 10 M J, 14. See (4) Proceeding No (46 A.)

(3) Miscellaneous.

125. Order against a party on whom no notice has been served, is illegal.—A final order under S 145 (6) Cr. P. C. made against a person without serving any notice upon him at all is entirely without jurisdiction. 5 Pat, W 254 (17) Pat 200

126. Proceeding under S 144 Cr. P. C. converted into one under S 145 Cr. P. C. without fresh notice when legal.—Where in a proceeding purporting to be under S 144, notices were issued to the parties stating that there was a dispute between them regarding land, and the boundaries of the land were given, and the parties were given an opportunity of making a statement on a date fixed and in response to the notices the parties appeared and filed written statements and documentary evidence precisely in the manner indicated by S. 145 (1)—Held that the Magistrate had issued an order which was really effective under S 145 (1) and the Magistrate was directed to proceed to complete the proceedings under S 145—4 Pat 231

X. WRITTEN STATEMENT.

127. The proceeding and not the written statements determines the issues.—The written statements of the parties are merely materials to assist the Magistrate in ascertaining the grounds on which they claim possession, the fact that the written statement of one party is not required to be served on the other, conclusively

shows that its contents neither found nor limit the Magistrate's jurisdiction. The proceedings under S 145 are initiated by the Magistrate in the interests of public order and tranquillity and it is his preliminary order which defines the issues to be determined and fixes the jurisdiction to be exercised at and by the parties concerned.—14 Cr 522 (3)

128. Magistrate is bound to call for written statement 25 A 547 25 C 771
129. He cannot refuse to proceed because the parties have failed to file written statements on the date fixed—11 W. R. 9
130. Order passed by a Magistrate *inquiry on a complaint of the written statements of the parties and without taking evidence is illegal* 31 C. 830; 30 C 918 12 C N 771 8 C N 612 5 C N. 71; 30 17 M J 536 17 B. R. 352

Note. But where the possession of the opposite party is expressly admitted, there is no obligation on the Magistrate to take evidence 7 C. N. 351 9 M T 31 (14) M N 797

131. Magistrate's discretion to refuse time to file written statement. When the parties did not file written statements although more

than 2 months had elapsed from the date on which the proceeding was drawn up, but applied for time to file written statement,

Held—that the Magistrate was justified in refusing to grant time. 14 C. N. 80; See also 8 C. N. 612 11 Cr. 302 (C).

132. But where sufficient opportunity to file written statement has not been given, a Magistrate fails to exercise jurisdiction properly, in refusing to grant an adjournment. 10 Cr. 753 (C). 12 C. N. 804; 30 C. 918; 1 Pat. W. 551
133. When neither party files written statement or adduces evidence though they are given time and opportunity for the latter purpose, Magistrate will be justified in making an order for attachment under S. 146 Cr. P. C. 11 C N 80; [Dist. in 20 Cr. 117 (N)]

XI. PARTIES TO PROCEEDING.

(1) Parties concerned and Magistrate's duty to ascertain them.

134. Meaning of the expression "parties concerned in such dispute."

(a) The words "parties concerned in such dispute" in S. 145 are intended to include all persons claiming to be in actual possession at the time of the initial order under cl (1) and all persons interested in or claiming a right to the property in dispute 30 C. 155 (F. B.) [O—21 C. 29, 25 C. 416 10 C N 751 6 C N 101 27 C 802] *Pro*—21 C. 404 123 P. L. 1911 10 C N. 1095 (1094). 18 W. R. 54 *Contra*—24 B. 527 18 M. 51 18 Cr. 44 (M) 34 C. 850 21 C. 915 5 C N. 900

135. Note (b) In order to entitle persons to become parties to the proceeding it is not necessary that there should be any likelihood of their being involved in any breach of the peace. Persons who claim to be in actual possession may be assumed to be concerned in the dispute (even though they may be away from the scene of likely disturbance) 20 C N 978

136. All persons who may be concerned in the dispute should be dealt with in one proceeding.—See (8) Proceeding (90).

137. The Magistrate's duty to ascertain who are the parties concerned in the dispute. A Magistrate ought before entering on an enquiry under cl (1) of the section to satisfy himself to the best of his ability in the materials before him, as to who are the persons claiming to be in present possession of the subject of the dispute [but he is not bound to ascertain what persons have or claim to have a mere right to possession. Nor is he to make an elaborate enquiry] 30 C. 155 (F. B.) [D. 24 C. 55 (F. B.)] 24 B. 527 See 10 C. N. 753 (755). 6 C N. 101 7 P. R. 1907.

138. Why parties concerned should be ascertained.—An order declaring the possession of one of the parties to the proceedings would either operate mischievously to an absent party or from the fact that such order has been passed behind the back of such party, it would be

inoperative and therefore would tend inevitably to a renewal of the dispute. 1 C. N. 753 (755)

(2) Distinction between the status of parties concerned and parties 'interested'.

139. The person 'interested' who is empowered under cl (5) to show that no dispute exists or has existed, does not of course come in for the purpose of joining in the proceeding [unlike persons concerned] but for the purpose of bringing it to an end—*Held* J. 30 C. 155 (F. B.) S. 3 C. N. 329 5 C N. 600.

[Note the change of law—since 1 C. 620 and 21 C. 401]

140. Scope of cl. (5).—Any person claiming to be interested, if he makes an application in order to show a breach of the peace, is a party to the proceeding. 1 Pat. W. 374 (4) See also 5 C N. 900. *Contra*—20 C. 520

[(*) In the Patna ruling the contention was that neither of the original parties to the proceeding had ever been in possession of the disputed land]

141. If persons not actually involved in a dispute under S. 145 Cr. P. C. are made parties to a proceeding, they have a right to adduce evidence in support of their claim and to have such evidence considered by the Court 20 C. 520.

But a final order under Subs (6) cannot be made in their favour—19 Cr. 633 (C).

(3) Addition of parties.

142. The stage at which parties may be added to the proceedings.—There is a conflict of views on the point—'at what stage, if at all, can parties be added to the proceeding?' The opinions expressed in the various decisions may be grouped under two main classes—

(1) A Magistrate has not the power after recording the proceeding to add in the course of the same any new parties concerned in the dispute.

If a party is so added, there must be a fresh proceeding. The leading case is 24 C 51 (F. B.), which is followed in 27 C 892, 5 C. N. 900, 6 C. N. 101, 4 C. N. 748 and approved in 21 B 327].

(2) Parties may be added up to the time of the beginning of the enquiry without the necessity for drawing up a fresh proceeding. Even if they are added after the enquiry has begun, it would not be necessary to initiate a fresh proceeding to validate the proceedings. The new parties, if they so require, may have the witnesses already discharged, re-called and examined afresh. [30 C 155 (F. B.)—is the leading case. See also 20 C N 918.] In 10 C N 1095—the Magistrate issued fresh copies of original proceedings.

[Note—3 C N. 329, 4 C N. 748, 4 C N. 83 (Note), 5 C N. 67, 5 C N. 900, 24 C 51 (F. B.), 27 C 892, 6 C. N. 161, 24 B 327, 4 C 650 must, in view of the Full Bench decision in 30 C 135 (F. B.), be regarded as *obsolete*—so far as this point is concerned.]

143. Magistrate may add parties of his own motion.—The Magistrate may alter or add to the array of parties *either of his own motion* or on the application of any one claiming to be concerned in the dispute in the sense that he claims to be in actual possession.—Per *Hall J.* 30 C 155 (F. B.)

(4) Failure to add a necessary party does not affect jurisdiction.

144. The failure to add a necessary party as a party to the proceeding does not involve an absence of jurisdiction in the Magistrate to hear the parties and arrive at a determination as to which of the parties are entitled to possession of the land in dispute.—30 C 155 (F. B.), 1 Pat W. 214, 18 Cr 692 (694) [Pat J.] 21 Cr 25 (C) (Per *Newbould J.*)

145. Misjoinder and non-joinder.—Questions of misjoinder and non-joinder of parties in proceedings under S. 145 do not ordinarily go to the jurisdiction of the Magistrate.

procedure by which in my opinion the jurisdiction of the Magistrate is not affected.—Per *Hall J.* 30 C 155 (F. B.) (Ov.) 28 C 446

146. Right of audience.—Cl (i) throws upon the Magistrate the obligation to hear the parties. No Magistrate has any right to debar a subject from exercising his right of audience given to him by statute.—1 Pat W. 214.

147. Magistrate cannot compel the attendance of a party.—Warrant to compel the attendance of a party is illegal, as it is entirely optional with the party to attend or not. 5 C N. 71.

(5). The position of persons claiming or holding possession on behalf of or through another.

148. Manager.—Whether the possession of a person interested in the disputed property merely as a

manager for the actual proprietor. Is such possession as is contemplated by S. 145? The leading case on the point is 31 C. 48 (F. B.) [See also 32 C 287] which by answering the question in the affirmative has finally overruled the opposite view taken in a series of decisions.—See 21 C 915, 21 C 916 (N), 25 C 423, 7 C N. 208, 24 B 527 is disapproved.

149. The guardian of a minor.—A guardian's right to be made a party to the proceedings as a claimant to actual possession on behalf of his ward has been recognised in 1 Pat W. 373 and 1 Pat W. 214.

150. Servant.—The position of an ordinary servant is different from that of a manager. He cannot be treated as a person in actual possession either in his own right or on behalf of another. If he is dismissed from service, the order passed could not be treated as binding on his master. 5 L W. 118, 6 C L 193. See also 31 C 48 (F. B.), 10 C N. 1058.

151. Karpardaz.—is not a party concerned.—21 C. 916 (Note).

152. Agent.—Possession of an agent or servant is permissive and cannot give a party to a proceeding a *locus standi* against his principal or master. 10 C N. 1088, 3 C L 94, 36 C 986. See (14) M N. 795, 24 A 443.

(b) Where however the master or principal is absent, possession of the servant or agent is possession of the master or the principal as against a third party. 31 C 48 (F. B.), See 3 C L 94, [overrules—21 C 915, 916, 25 C 423, 7 C N. 208, 3 C N. 670, 24 B 27 is no longer good law.]

(c) But a Magistrate cannot decline to exercise the jurisdiction vested in him by law to determine the question of actual possession, merely on the ground that the dispute was between the principal and the agent.
indicated by

153. Managing co-shebbat.—His possession being merely that of an agent on behalf of other co-shebbats is not a fit subject for a proceeding under S. 145.—10 C N. 1088.

154. Manager of a Joint Hindu Family is entitled to be protected in his possession by proceedings under S. 145 Cr P C as against any other member of the family. [10 C N. 1088 D.] 31 M 318.

155. Receiver.—The possession of a receiver is to be sharply distinguished from that of an agent, manager or trustee. He is an officer of the Court and manager of the property on behalf of the Court. His possession is the possession of the Court. He can be made a party to a proceeding only with the permission of the Court. 30 C 761; 30 C. 599.

A Receiver not in actual possession is not a necessary party. 9 M T. 502.

156. Co-partner.—Where there are several partners, the claim of one of them to exclusive possession of the partnership property as manager is a question outside the purview of S. 145 Cr P C. 32 C 249.

157. **Reverser oner**.—A person claiming merely a reversionary interest in the property in dispute is not a necessary party.—21 A 113 (115)

(6) *Who are to be regarded as parties to the proceeding?*

158. **Are all persons who have notice of the proceedings bound by the final order**—or only the persons who are actually summoned to appear and to file written statements of their respective claims?

The High Courts of Calcutta and Madras hold the view that a final order made under the section binds only persons who are *actual parties* to the proceedings [3 B. L. (A) 1 3 C N 329 *See also*—7 C L 294 and 4 C 650 2 M J, 277, 18 M 51 2 Weir 106]. The Bombay High Court has held however that not only the actual parties but all parties who have notice of the proceedings that are bound by the order [11 B B 377—in view taken also by Bangalore J in 21 C 101 and by the Patna High Court in 4 Pat W 136]

159. **Witnesses** The fact of a person being examined as a witness in the case does not make him a party bound by the order.—18 M 51

160. **Hears and assigns**—An order under § 115 affects not only all persons bound by or parties to the order but also other persons who may claim the disputed property through any such persons under a title derived subsequent to the order, 21 C 731 (735) *See* 13 C 175

(7) *Necessary parties.*

161. **Owners as well as occupiers**—The section contemplates disputes between owners as well as occupiers of lands. When a Zemindar has let his lands, or a portion of them in farm, he, his farmers and the occupiers are all in their degree, concerned in any dispute as to possession which may arise and ought respectively to be maintained in possession of their interest which they severally enjoy 3 C L 287 4 C N 753 25 W R 18

162. **Master a necessary party when servants dispute on his behalf**—If it is shown that servants concerned in the dispute are acting in the interests and for the benefit of their master, the master is a party concerned and as such a necessary party to the proceedings—36 A, 143, 6 C L 193 5 L W 118

163. **Zemindars.**

(1) A Zemindar who has set up tenants to dispute on his behalf, and who himself remains in the back-

ground should be made a party 15 C, 889 *See* 1 C N, 718; 6 C R, 257-27 C, 502; *See also* 1 C N, 753

(2) Zemindars not necessary parties, when they do not move in the dispute between tenants and keep themselves aloof from it. 6 C N, 206, *But See* 25 C 116

164. **Tenants**.—Where the dispute is between certain zemindars and their tenants on one side and certain other zemindars and their tenants on the other, the presence of the tenants is necessary for the proper and effectual decision of a case under § 115 and an omission to join them as parties is bad 27 C 802, 15 C, J, 181, 3 Bar T, 71, 38 C 880 *See* 6 C N, 101; 25 C, 445

Where the dispute is between a landlord on the one side and the tenant on the other, as to what tenants are in possession of certain plots, the tenants are necessary parties 10 C N 929

165. **Undivided members of the joint family**. Persons who are found from the police report to be concerned in a dispute regarding lands and who are brothers of the original party, living in joint mess and belonging to a joint undivided family, ought to be made parties to proceedings under § 115 C P C 3 C N 229

166. **Owners not in actual possession may be a necessary party**.—A proceeding under § 145 Cr. P. C. is not limited to disputes between parties in immediate possession, but applies where the disputed possession consists of receipts of rents from tenants in actual possession 16 C 513 *See* 5 C R 257 4 C N 748 1 C N, 753

167. **Receiver not in actual possession**.—In an enquiry under § 115 Cr. P. C. in a dispute between the old tenants and the new tenants to whom the Receiver has granted leases, the Receiver who is not in actual possession is not a necessary party 9 M T, 502

168. **Order cannot bind a person who was not a party to the proceeding**.—2 Weir 106, *But see* 11 D R 377.

(8) *Substitution of parties.*

169. **By introducing the proviso contained in subs. (7)**—the Legislature has provided for the substitution of a representative of the party who dies in the course of the proceedings. The ruling in 21 C 404 (where it was held that a son could not be made a party in the place of his deceased father) is obsolete

(9) *Miscellaneous.*

170. **If parties are absent**.—Magistrate may proceed *ex parte* after taking due proof of service of notice on the absent parties
See 4 C N 753 J

171. **Party disclaiming interest**.—Order cannot be made in favour of a person, who is made a party to the proceeding but disclaims all interest 6 C N, 101.

XII. ATTACHMENT UNDER SUBS. 145(4).

(1) *Powers of the Magistrate under Cl. (4).*

172. **Receivers**—(1) Under § 145 Cr. P. C. as amended, a Magistrate has in cases of emergency

the power to direct an attachment of the disputed property, but has no power at that stage to appoint a Receiver 4 Pat 359 8 M T, 314. *But see* 13 Cr 295 (M), 21 Cr 73 (M)

- (2) In 13 Cr 295 (M.) *Nair J.* held that there was nothing to prevent or prohibit the appointment of a Receiver. But a Receiver so appointed cannot exercise all the functions of a Receiver appointed under S 146. He must be treated only as an agent or servant of the Magistrate whose order is only an administrative one.
173. (3) *Custody of attached property.* (3) In 4 Pat 379, *Junia P.J.* held that the Magistrate may take proper steps for the care and custody of the property (e.g. crops) and prevent its removal by any of the rival claimants or strangers.
174. (4) *After cancelling the proceedings.* The Magistrate cannot direct that the property attached under cl (4) be delivered to a particular party. 1 L W 1012

(2) *The nature of the attachment under Subs. (4).*

- 175.—The order of attachment which the law empowers the Magistrate to make has no greater force than any civil court attachment the effect of which is generally to restrain alienations. 1 Pat W. 339

(3) *What may be attached.*

176. *Crops and rents*—It is competent to a Magistrate to order the attachment not only of the land but also the crops harvested and the rents received since the beginning of the disturbances. 13 Cr 295 (M.)
177. *Elephant*—When a forest has been attached under S 145 (4), and the elephant was not removed from it at the time of the attachment the attaching officer will be entitled to take possession of the animal. (12) M N 549
178. *Cattle*—Where a *muth* had been attached, held the attaching officer was competent to attach the

cattle found therein [(12) M N. 510 P.J.] 1 Pat J 376

What may not be attached.

Crops—Although crops may be attached (See *Dispute*) crops on the land belonging to tenants cannot be attached in a dispute between rival landlords. 5 C N 107

(4) *The period during which the order is effective.*

179. (1) *The attaching order subsists till the final order*—S N. 207
- (2) Where a magistrate after issuing an order of attachment under subs (4) postponed the proceedings *incho*—Held that the postponement did not operate as a withdrawal of the order which continued till the disposal of the case. 13 C N. 601
180. *On the termination of the proceedings*—A magistrate cannot order that if any *fruits* had been gathered on any of the said lands since the attachment, the proceeds of the same *incho* expenses should be handed over to one of the parties. 7 C J 369 See also No 174 above
181. *Magistrate after making an order for attachment is bound to carry the proceedings to conclusion*—He cannot rest content with making the emergent order only. He is bound to follow the procedure provided in subs (5) and (6)—(01) A N 151.
182. *Order for restitution*—A magistrate has jurisdiction to order for the restitution of the property placed after attachment in the hands of the receiver on cancelling proceedings. 2 W 109
183. *Illegal order to police to take charge of crops*—Although it may not be strictly legal to direct the police to take charge of and guard the crops on the disputed land an owner cannot exercise his right of private defence against the enforcement of the order. 4 C N 125

XIII. ENQUIRY AND PROCEDURE.

(1) *Magistrate to ascertain who are the parties claiming to be in possession before commencing enquiry.*

184. A Magistrate ought before entering on an enquiry under cl 4 of the section to satisfy himself to the best of his ability on the information before him as to who are the persons claiming to be in present possession of the subject of dispute. 30 151 (F. B.)

(2) *Scope of the enquiry.*

185. The scope of an enquiry under S. 145 is confined strictly to the fact of *actual possession* irrespective of the merits of the claim of the parties concerned. A claim therefore merely to a right to possession as distinguished from a claim to be in possession would be outside the scope of the enquiry. 30 C 151 (F. B.) 7 C 46 27 C 918 30 C 112 32 C 602 32 C 1093 36 C 705 40 C 942 6 C J 182 7 C J 369 16 C J 784 31 M. 416 2 W 194 16 Cr. 736 (M.) 25 B 179 6 B 11 30 4 Pat W 120 21 Cr 136 (Pat) 6 P

L 1913 40 P R 1917 3 N. P. 171. But see 12 O C 409.

186. In a proceeding under the section the Court practically says "I cannot look at your title—possession is now the only question, and therefore if your title is not clothed with possession you must go to another Court to establish that title." See 5 M I A 413 also 7 M I A 233
- 187-88. *Nature of the proceedings under S 145 Cr. P. C.*—See (2) object (12-14)

(3) *The enquiry is not to be treated as a civil suit.*

189. (1) A party to a proceeding under S 145 Cr. P. C. is not in the position of a plaintiff in a civil suit who has set the Court in motion and has a right to require a decision upon question raised by him. 30 C 112
190. (2) A Magistrate should not treat a proceeding under S 145 as if it were a civil suit. The framing of numerous issues and an elaborate discussion of each issue is outside the scope of an

enquiry under S 145 Cr. P. C.—35 C 795, 32 C 1093, 11 W 36, 19 P. R 1917, O S 127. See 18 Cr 912 (Pat).

191. (3) It is no business of the Magistrate to enter upon an elaborate investigation into the merits of the claim of the parties.

Where the dispute is among Mahomedans and the Magistrate is really called upon to determine the rights under the Mahomedan Law, he should leave such questions to the Civil Court and if necessary bind them all over to keep the peace under S 107 Cr. P. C. 27 C, 914, 32 C 1091.

192. (7) A Magistrate acting under S 145 is not bound to come to a conclusion as to the fact of possession as in Civil Suits. Where it is difficult for him to do so, the wise and proper course to be adopted is to pass an order under S 146 Cr. P. C. 11 C 361. See 5 C N 900, 11 C N 80.

193. An enquiry under S. 145 Cr. P. C. is an enquiry within the meaning of S. 4 (K.) Cr. P. C.—11 C 894, 13 C N 420.

194. S. 350 applies to proceedings under S. 145.—Where in the course of a proceeding under S. 145 the Magistrate is transferred, his successor is competent to deal with the case under S. 350. 13 C N 420, 22 C 818.

(4) Procedure.

195. Procedure as in summons case.—Although it is nowhere declared in the Code as to whether the procedure for an enquiry under S 145 should be that of a summons case or a warrant case, it is clear from the nature of the enquiry that the procedure should be regarded on all points as that prescribed for a summons case. 11 C 762, 21 C 29, 5 Pat W 103. But see—30 C 508, 32 C 1093.

196. Which party is to bear the burden of proof?

197. Quick disposal.—Sub sec. (4) contemplates that on the date originally fixed the Magistrate should take all the evidence that is produced before him and unless he considers it necessary for good reasons to require further evidence should decide then and there if he can, which of the parties is in actual possession [Calcutta H. C. Gen L. no 3 of 1909 on page 10 Vol. I of General Rules and Circular Orders referred to] 17 C N 144.

Where however the land in dispute is under attachment a Magistrate should not refuse a reasonable prayer for adjournment. 19 Cr 799 (C).

198. Magistrate bound to come to a finding as to the date of dispossession with regard to each plot (15) Possession etc. (310).

199. A Magistrate cannot refuse to proceed with the case merely because the parties

have neglected to file written statements on the day fixed for the purpose especially when there is some evidence on record.—11 W. R. 9.

- 199A. Magistrate bound to come to a finding as to the date of dispossession with regard to each plot.—(15) Possession and Dispossession (110).

200. Petition of non-prosecution by one of the parties.—Where a party after examining 3 witnesses filed the following petition "I shall not prosecute the case under that (S 145) section. I shall conduct the case in the Civil Court and I shall not enter upon the land until the matter shall have been settled by the Civil Court. If, that under the circumstances, the Magistrate was justified in making an order in favour of opposite party without taking any evidence." 22 C. N. 342.

201. Adjournments.—Where the parties have had no reasonable opportunity of filing written statement and to produce evidence in support of the same, an adjournment ought to be granted. 1 Pat W. 55; 30 C 914, 19 Cr. 799 (C); 12 C. N. 694.

Where the parties apply for time to file written statement it is within the discretion of the Court to grant the application or not. 14 Cr. 302 (C); 14 C. N. 10; 5 C. N. 612.

[Where the land is under attachment under subs (4) an adjournment ought to be allowed—19 Cr 799 (C).]

202. Magistrate should take cognizance from witness present in Court on adjournment. 60 P. L 1912. See (14) Evidence and witnesses (No 262).

203. Mode of recording evidence.

(1) Evidence should be recorded in extenso.—[10 C N 124] A mere memorandum of the evidence taken is not sufficient. (42 C 381).

(2) Evidence must be recorded even in Ex parte Cases.—6 C. N. 935; 8 C N. 642, 12 C. N. 771, 9 W. R. 64.

For a detailed treatment of the matter see (14) Evidence and witnesses.

(3) Magistrates in cases in which they proceed suo motu are bound to take oral evidence see (14) Evidence and witnesses (222).

(4) Evidence recorded by predecessor etc. (14) Evidence etc. (226).

204. As to the powers of the Magistrate to recall and re-examine discharged witnesses. See 540 Cr P C. [See 12 A. J. 15, also 18 W. R. 64].

205. S. 350 applies to proceedings under S. 145.—(See No 194 above).

206. Proceedings under S. 145 shall not abate by the death of a party.—See Subsec. (7) which follows 2 C L 264 [Subs (7) has rendered 21 C. 404 obsolete].

207. There is no limit and fast rate of law that a Magistrate is bound to hold a local investigation in every case under S. 145 Cr. P. C. 20 Cr. 17 (C) (12 C. N. 593 D.).

208. Magistrate bound to hear the arguments of the parties.—A Magistrate's refusal to hear the arguments addressed to him on behalf of the party vitiates the final order. 11 Cr. 762; 1 Pat W 214, 5 Pat W. 103.

(2) A Magistrate cannot refuse to proceed with the case merely because the parties

221—(3) Evidence of title should not be arbitrarily refused.—In a proceeding under S. 115 Cr. P. C. a Magistrate commits an error in the exercise of jurisdiction in refusing to admit documents of title as they are often of great assistance in arriving at a right conclusion on the question of possession. 10 Cr. 761 (Pat). 22 C N 191 (Per Tennyson J) 21 C 1079

222—(4) Magistrates in cases in which they proceed *suo moto*, are bound to take oral evidence.—When the Magistrate acts *suo moto*, it is most important that he should not be content to rely upon documentary evidence. He is bound to take oral evidence to show that the anterior possession, which the documents prove has continued up to the date of the proceeding. 15 C N 704

223. Proof of the existence of a dispute likely to cause a breach of the peace.—As the very essence of a Magistrate's jurisdiction consists in there being a dispute of the description mentioned in the Subs (1) and which is likely to cause a breach of the peace, the Magistrate is bound to call for and record evidence of such likelihood. If the parties fail to show that there is such a dispute, the Magistrate should hold his hand and proceed no further. 6 C 835 4 C 750 (R 3 B L 70) 6 P R 1857. See 4 C N 57 5 C N 900 20 C 520 3 W R 119 W R 64 6 M J 113

224. Previous act of possession over forest land.—The fact that a party in possession felled timber in the forest land on an occasion immediately before the dispute arose, is relevant. 16 C, 231

(2) Evidence recorded by another Magistrate etc.

225—(1) A Magistrate can not act on evidence recorded by a Subordinate Magistrate deputed for the purpose.—A Magistrate is bound to record and consider the evidence himself. He *cannot* delegate the task to a Subordinate Magistrate and base his decision merely on the evidence recorded by the latter. 31 M 82 3 C L 134 2 Wei 118 10 A J 165 2 Wei 97. See 30 M J 549 20 Cr 107 (N)

But where the parties do not tender evidence although they are called on to do so, the Magistrate may act thereon (17 C N 244) 14 Cr 302 (C)

226—(2) Evidence recorded by the Magistrate's predecessor may be acted on. But he should take any additional evidence which may be necessary

Pro—22 C. 898 13 C. N. 120 See 10 C N 1095 Con—23 W R 62 4 M H (Ap) XX 2 Wei 97

227—(3) Procedure on receiving a case by transfer.—When a case is transferred under S. 529 Cr. P. C. the Magistrate is bound to follow the procedure laid down in S. 450 Cr. P. C. 22 C 898; See 2 C J. 614 10 C N 420 13 C N 420.

Reports by Police officers etc.

228—(1) Reports of a Zaildar.—A Magistrate must himself enquire into the question whether a

dispute likely to cause a breach of the peace exists concerning land etc., and must record a judicial decision thereon. He can not invoke the report of a Zaildar on basis of his final order. 115 P L 1917

229—(2) Kanango's report admissible under Sec 157 Evidence Act. Sec 148 Cr. P. C. is an excluding section and the deposition of a Kanango to make an inquiry under that section is not valid. If the Kanango is examined, his report will be admissible under S. 157 of the Evidence Act. 12 Cr. 140 (C)

230. Admission before police.—An order cannot be based upon the mere facts at the police report showed that the second party had admitted possession of the first party. 6 M T 91

(3) Evidence recorded by the Magistrate in another proceeding.

231.—A Magistrate ought not to refer to other proceedings before him in coming to a decision under S. 145—17 Cr. 117 (N)

(4) Right of the Parties to adduce evidence.

232. A Magistrate is bound to give the parties to the proceedings an opportunity of adducing evidence in support of their claim. He cannot refuse to do so on the ground that the evidence even if taken can not be relied on.

21 C. N. 924; 25 C. 416; 31 C. 685. 34 C. 840 35 C. 774. 4 C. N. 779; 2 C. J. 246; 20 M. 561 1 Pat W 214; 23 P. H. 1902; 7 P. R. 1907 17 B R 382. 18 Cr. 296 (A); 20 Cr. 107 (N) 20 C. 110 (N) 20 Cr. 117 (N).

233.—Magistrate bound to record evidence. A Magistrate taking action under S. 145 is bound to record all the evidence produced by a party to the proceedings. An order passed without recording such evidence is without jurisdiction.

31 C. 840 31 C. 685; 4 C. N. 779. 17 C. N. 144 21 C. N. 929; 2 C. J. 246; 9 W. R. 64; 29 M. 561. 15 M J 533 6 M. H. (ap) 17 Cr 217 (M) 11 A. J. 586 11 Cr 17 (A). 7 P. R. 1907. 4 P. R. 1910; 22 P. R. 1916.

234. Magistrate's discretion in examining witnesses. A Magistrate acting under the section is not bound to examine all the witnesses in attendance, but may limit the number for good and sufficient reasons. 3 C J. 478. 16 C. 513; 26 C 625 32 C 1093 24 A 315; 1 Pat J 336 (F. B.) But see 31 C. 685. 34 C. 840. 17 Cr 217 (M).

But he should always be chary of taking on himself the duty of deciding on behalf of the parties which witnesses should be examined—23 M J. 134

(5) Is the Magistrate bound to assist the parties to produce witnesses by summoning them?

235.—This point is by no means free from doubt. A direct negative is given in 32 C 1093 [Ed in 32 C 24 and 11 Cr 630 (C); 17 M. T. 225] In 18 C N 95 on the other hand an order refusing to summon an important witness was held to be illegal. In

17 C N, 144 it has been held that "Even if the Magistrate goes out of his way to issue process for the attendance of witnesses after the date on which the case should have been disposed of, he is not bound to exhaust the processes of the Court in order to enforce the attendance of such witnesses as do not appear."

But in 21 C 29 the Magistrate is held to be bound to summon such witnesses as the parties desire to call "unless he shows good reasons to the contrary." In 32 C 508 [See also 32 C 508 Foot note] *in via media* is struck between the two extreme points of view. A refusal to summon witnesses would be a fatal irregularity amounting to a denial of justice when it is shown that the parties have been deprived thereby of a hearing on the question of possession, and an application ought not to be rejected simply because a large number of witnesses are mentioned therein [11 C 762].

(6) Who may adduce evidence.

236. Persons not actually involved in dispute when made parties have a right to adduce evidence in support of their claim and to have such evidence considered—20 C 320

237. Any person interested in the dispute property though not a party to the proceedings may offer evidence to show that no dispute exists and a Magistrate is bound to receive such evidence. See 31 (5) 29 M 561 1 Pat W 373 See 24 W. II, 40

[In 1 Pat W 373—A third party was allowed to appear and adduce evidence *etiam* after an order under S 145 Cr P C had been passed.]

(7) Sufficiency of Evidence.

238. Although the High Court will not ordinarily interfere merely because it differs from the Magistrate.

See 6 M, T 91 (order based on police report confirming a so-called admission by one of the parties). Orders based on mere written statement of one of the parties [See—8 C N 642, 12 C N 771, 14 C N 200] or on the result of a *local enquiry* [10 C N 18] or on the materials contained in the petition by an officer employed by one of the parties [29 M 561] See [20] Reference etc (132)

(8) As to mode of recording evidence.

See—13 Enquiry (No 201)

(9) Magistrate's obligation to take legal evidence.

239. A Magistrate is bound to take evidence in a case under S 145 Cr P C. An order without taking any evidence whatever is an order made without jurisdiction. 16 C 1074, 31 C 810, 31 C 684, 30 C 418, 4 C N 771, 6 C N 71,

6 C N 325, 8 C N 642, 10 C N 181, 12 C N, 771, 15 C N 144, 16 W R 64, 16 W R 13, 17 M J 537, 17 W R 382, 20 C 107 (N), 20 Cr, 110 (N), 20 Cr 117 (N)

240. After local enquiry.

(1) A Magistrate cannot base his order on the result of a local enquiry by himself without recording any evidence. 4 C N 770, 10 C N, 181, 16 W R 13, 16 C 1076, 21 Cr 16 (M).

241. Where a recent Civil Court decree is produced.

(2) A Magistrate acts improperly in refusing to receive the oral evidence offered by a party to disprove possession on the basis of a decree claimed by his opponent. 8 C N 710. See (16) Civil Court (32)

242. Ex parte cases.

(3) A Magistrate is bound to take evidence *etiam* in *ex parte* cases. 8 C N 642, 6 C N 225, 12 C N 771, 9 W R 64

243. Exception

Procedure on admission by a party.

(1) A Magistrate is not bound to take evidence when the person against whom the order is made has admitted the possession of his opponent. 6 M, T 91. See (14) M N 795, 7 C N 351

But the admission must be clear and unequivocal [30 C 918]. An admission by a party's legal practitioner is sufficient for the purpose [7 C N, 351]. But an admission contained in a letter addressed to the Magistrate is not sufficient for quashing the proceedings [13 C N 125]. Nor does a police report showing that one party had admitted the possession of the other justify a summary finding without taking any evidence. [6 M T 91]

(5) When a party *bona fide* brings suit and has admitted the possession of the other party. See (15) Possession and Dispossession (31)

(10) Documentary Evidence as proof of possession.

244. General Principles. An documents of title are often of great assistance in arriving at a right conclusion upon the question of possession. A Magistrate commits no error in the exercise of his jurisdiction in refusing to admit documents of title. 16 W R 701 (Pat). See 21 C N 110

245. Sale certificate is no proof of possession unless in fact delivery of possession has taken place. 31 M 116

246. As to civil court decrees and evidence of withdrawal possession obtained by the Civil Court. 10 C N 11. See (16) Civil Court (No 327 in 11)

247. Record of rights. There is a presumption that a record of rights is correct. 191 M N, 121, 24 C N 795, 24 C N 110

248. Court Records.—Are not conclusive proof of possession. 12 M N 12, 31 M N 12 (100)

249. Police Report.—Is not evidence of possession. 7 W R 324

250. Succession certificate (Act XXVII of 1949) is no evidence of possession—25 W R 16 18 W R 31
251. Previous order under S. 51 Chowkidari Act is not evidence of possession—7 C N 112
252. Documentary evidence of possession being inferior to title of proceedings is not sufficient proof of continuance of possession in the date of the preliminary order—18 C N 700
253. Orders by Revenue Courts—A Magistrate is bound to respect recent possession given by a Revenue Court whether its decision is right or wrong—193 P L 3912 See (25) Miscellaneous (512 515)
254. Record of other proceedings—A Magistrate should not concern himself with the record of other proceedings pending before himself—17 Cr 141 (M)
255. Order for possession given in Butwara proceedings—1 C 378
256. Kabulyat Chittas, accounts and rent receipts are valuable without proper oral evidence in support—291 A 24
257. Solenama, previously executed by Parties and confirmed by decrees of Civil Courts flow for binding—S C 11 C N 691
- (11) Witnesses.
258. A witness is not bound by the final order in the case, 18 M 51
259. Statement of a witness as basis of the preliminary order. To initiate a proceeding under the section it is not sufficient that it should appear from the statement of a witness examined in the course of a trial that a dispute likely to arise in breach of the peace exists concerning certain lands—20 C 520
260. Witness not called by any party Order based on the evidence of witness not called by party is valid—8 C N 719 1 P R 1916
261. Refusal to examine witnesses tendered by party is allowed. If a Magistrate refuses to examine, except on the ground of vexatious or dilatory, the witness tendered by the parties, he fails to exercise jurisdiction vested in him by law and the High Court will be petitioned to set aside the order—17 Cr 217 (M) S C 29 M 254 31 C 685 11 Cr 219 (M) 26 M J 218 31 C 849
262. Duty of Magistrate to take cognizance from witnesses on adjournment. Where the Magistrate is able to record the evidence of the witness produced by the party, on the adjourned date it is his duty to direct the witnesses in attendance to appear in the adjourned hearing. The parties should not be required to repeatedly summon witnesses on payment of fresh process—44 P L 1912
263. Suit for Costs maintainable—A witness claiming a Callout to recover costs incurred by him in appearing to give evidence in a proceeding under S. 113—8 C N 179

XV. POSSESSION AND DISPOSSESSION.

(1) Possession what is and what is not.

264

possession is, in the eye of law, right to possess in his own right or on behalf of others—31 W 1164

265 A Magistrate must maintain possession even if unlawful.

J L W 161 [16 Cr 52 (M) D] See 1 O. C. 982 See also 27 C 918 9 C N. 857 4 C N. 126 5 C L 200 1 C L 138 6 R. H 30 1 Pat W 120 2 Weir (M) 35 C 795 6 C. L. 152 Pat 27 5 C J 369 1 O J 212 25 H 179 10 P R. 1917 Con—11. W 919 (M) [Rulings which are absolute—5 P R 1876 4 C 417 6 M H 13]

(2) Possession of servant, tenant or mortgagee.

266. Actual possession includes the possession of a servant on behalf of his master, of immediate tenant on behalf of his landlord, of the usufructuary on behalf of the mortgagor—16 W. R 11 See 25 W R 18 15 C J 181 5 C L 257 4 C N 748 753 16 C 513 36 A. 143. 3 L W. 161 17 M T 235

267. Disturbed possession.—Possession means undisturbed possession and implies that the

struggle for it has ceased. If the struggle is still going on, an order of attachment under S. 146 should be made—Per Chatterji J 5 P R 1895 22 C 237

(2A) Limited or interrupted possession.— Possession of a portion of disputed property

268 (1) Possession in only one portion of a large area in dispute is not sufficient—23 W R. 15

269 (2) While A is in Khis possession of a large tract in forest land, the mere cutting of a few trees by B in a small portion of the area is not possession under S. 145 Cr. P. C. 32 C 257. See—L. 13 A C 793 (799)

270. Possession for a limited period only. Possession to be determined is absolute continuous possession. Right of possession for one day the year or any such limited period is in the nature of an easement, and is not possession properly called—17 C N 205 See 22 W. R 15

271. Possession which can be exorcised certain periods only. Possession to be determined must depend on the nature of the property. Where the possession can be exercised only certain periods during the year, the party who had interrupted possession on the occasion immediately preceding the date of initiation of proceedings should be confined in his possession—16 C 241.

- point of time, viz the date of the initial order, or, in the case of forcible dispossession, a date within 2 months next preceding such order.
- 32 C 1043 31 C 71 2 Cr 505 (M) 16 M. J. 279
19 Cr 977 (M) 16 Cr 229 (M) See 33 C
65 (FB) 21 C 101 25 B 179
- [Note The mere fact that the Magistrate does not in his finding about possession refer to the date of the preliminary order would not be a material irregularity if the parties are contending for possession not only on the date of order, but some time previous, and also subsequent to it.—5 L. W. 165.]
286. Possession at the time of a previous proceeding. A Magistrate cannot treat a subsequent proceeding as a continuation of a previous one in determining possession with reference to the date of the latter proceeding.
1 C. N. 400 (1897).
- 286A. Where possession has been interrupted by an order of injunction under S. 144. See (10) Dispossession (No. 307) Post
287. Possession subsequent to the proceeding. Possession obtained subsequently to the institution of the proceeding is of no avail.
27 C 271 12 C 541 15 C 527.
288. Possession 3 months anterior to proceeding admitted. The payment of rent by the tenants in possession to the opposite party, 3 months anterior to the date of preliminary order was admitted.—Held that possession 3 months ago was no evidence of possession at the date of the proceeding.
16 C 513 See 16 C 233 (M)
289. Change of law. In 4 C 417 (1878)—it was held that the Magistrate is to go back to the time when the dispute originated. In C. L. 126 a similar proposition is laid down. In 15 B 152 (1890), the time was fixed to be the time when the Magistrate decides the question of possession. In 2 Weir 49 ("at the time of the enquiry") These are now obsolete. Under the 1872 Code the date with reference to which the possession was to be determined was the date of the institution of the proceedings and not the date of the preliminary order. See 11 C 365 12 C 521 12 C 539 20 W. R. 51 24 W. R. 73 13 A 362. 18 M 41 15 M 513
290. No hard and fast rule can be laid down as to the exact point of time to which an enquiry under S. 145 must be directed. The Magistrate must decide the time at which possession of the disputing parties should be taken into consideration, according to the facts of each case. [1894] 22 C. 297.
- [N.B.—This ruling must be held at a discount in view of subs (4).]
- (7) Possession not recognised in S. 145 proceedings.
291. (i) Possession given in Butwara proceedings.—Possession given by an Amia in a Butwara proceeding is one of ownership and is irrelevant for the purposes of S. 145. 10 Cr. R. 6 (1894)
292. (2) Possession of a Managing Co-partner as against the other partners.—32 C. 219
293. Possession of servant or agent as against the proprietor. See (10) Parties to Proceeding (No. 152)
294. (1) Possession of an occupant of the land against the owner.—1 S. 27.
295. (7) Public Possession is outside the scope of S. 145.—17 C. N. 205
296. (6) Possession declared in former proceeding under S. 115 cannot be presumed to have continued up to the date of a subsequent proceeding.—5 C. N. 100
297. (7) Possession of the manager of a coal company.—21 C. 915; 25 C. 421.
298. (4) Possession obtained under a decree for foreclosure as against a person not a party to the suit.—1 C. J. 562. See 31 M. 116
299. (6) Possession obtained by trespass in the face of a prohibitory order.—5 M. T. 291
- (8) Possession which is recognised in S. 145 proceedings.
300. (1) Possession of a lambardar. Where it appeared that none of the parties were in actual possession, but one of them was lambardar of the villages (collecting rents and paying revenue) Held—that the latter was in possession within the meaning of S. 145.—(20) A. N. 178
301. (2) Possession of a Roodivora. The possession of the Receiver may for the purposes of S. 115 be regarded as possession, on behalf of the party who should ultimately be found by the Magistrate to be in possession.—10 M. T. 573.
302. (1) Possession by receipt of rent. Receipt of rent up to date of dispute is evidence of possession although the tenant may have attorned to the opposite party after the date of the dispute. 15 C 527.
- [Proceedings under S. 145—proceedings include in 15 C 53: 58:]
- (L. R.) 3 Bur. T. 74 19 P. R. 184 17 M. T. 225]
- (9) Powers of the Magistrate.
303. Magistrate cannot determine the method or agency by which possession is to be exercised by the parties. 36 C. 956 See (17) Final order (371).
304. Magistrate may maintain possession of both parties. Magistrate may maintain possession of both the parties. A Magistrate can maintain both the parties in possession, if he finds that one party has possession of a definite portion of the disputed property, and the other is in possession of the rest. 11 C. N. 713. 5 C. N. 70 2 Weir 109, 7 C. N. 462. Contra 22 C. 297.
- (10) Dispossession.
305. Wrongful dispossession within subs. (4). Where more than two months have elapsed

from the date of death of the last person in possession, there is no force to dispossess within 2 months as defined in S. 115—17 A. J. 257

306. **Presumption in subs. (4) not exhaustive.** The jurisdiction of a Magistrate to initiate proceedings under S. 115 is not determined by the date of dispossession of one of the parties claiming the land. Forcible dispossession within two months previous to the date of the preliminary order constitutes only one of the many possible circumstances under which presumption may be made in favour of the party dispossessed. The Magistrate's discretion is not confined to this circumstance alone—11 A. J. 305
307. **Dispossession as a result of an order of injunction under S. 144 Cr. P. C.** Where owing to an order under S. 144 Cr. P. C. prohibiting the parties from exercising acts of possession, they are unable to show possession within the period mentioned in rule (1) the Magistrate may find possession as it obtained immediately before his intervention [27 C. 785 See 10 M. T. 571]. But where the 2nd party took possession and the 1st party were dispossessed on the 5th April, and on the 8th April an order under S. 144 Cr. P. C. was passed by the S. D. O. prohibiting the 1st party from entering upon the land and on the 23rd June the preliminary order under rule (1) was made *Held*—that the 1st party could not be said to have been forcibly and wrongfully dispossessed within the meaning of subs. (4) and in any case the dispossession having taken place 2 months and 18 days before the order under subs. (1) the case did not fall within the first provision to subs. (1) [18 C. 301 (O)] But where the prohibitory order was passed against landlords only in a proceeding under S. 144 Cr. P. C. to which the tenants were not parties, a subsequent finding in a proceeding under S. 145 Cr. P. C. that the landlords were in possession through their tenants at a date when the prohibitory order was still in force was held not to be bad in law—36 C. 370.
308. **What may amount to wrongful dispossession.** Where within 2 months from the commencement of the proceeding, the 1st party obtained sanction from the municipality and proceeded to dig a tank on the land in dispute to the exclusion of the party who was then found to be in possession *Held*—that this amounted to wrongful and forcible dispossession within the meaning of S. 145 (1) Cr. P. C.—20 C. N. 178
309. **Complainant's admission that he has been more than 2 months out of possession will not prevent the Magistrate initiating the proceeding**
19 Cr. 444 (N)
310. **Magistrate bound to come to a finding as to the date of dispossession with regard to each plot.** The date of forcible dispossession must be determined, and unless there is a finding that it occurred in the case of

all the fields at the same time, the Magistrate is bound to find the date of such dispossession with regard to each field separately—40 P. N. 1917

(11) Magistrate's option to attach the disputed property.

511. A Magistrate has an option to proceed under S. 146. It cannot be said that he is bound to come in any circumstances to a finding about possession—14 C. 311 5 C. N. 900
312. **Proceduro when Magistrate finds possession on his with a person who does not claim to be in possession.** Where the dispute was about a property of which the first party claimed to be in possession by virtue of an usufructuary mortgage and the second party by virtue of a deed of gift executed by the proprietress and the Magistrate found that neither party was in possession but the possession lay with the proprietress who was not a contending party so far as the property in question was concerned; [having supported the mortgagee] he had no authority to declare the proprietress to be in possession but the proper course for him was to attach the property under Sec. 146 Cr. P. C. 20 Cr. 215 (Pat.) See 22 C. 297 14 C. 361

When possession of one party is admitted

313. **Magistrate has no jurisdiction to proceed under S. 145.** He may proceed under S. 107 against the party admittedly out of possession—11 A. J. 307.
314. **Where one of the parties has, by bringing a Civil suit for possession against the other, admitted the other party to be in possession, the Magistrate has no jurisdiction to proceed under S. 145.** He may if necessary proceed under S. 107 Cr. P. C. or S. 144 Cr. P. C. 7 C. N. 555 See however 36 C. 670 (11) M. N. 98 (J)

(12) Possession declared under subs. (6) entitles the successful party to a right of private defence of property.

315. **He cannot be convicted of rioting.** A Magistrate is bound to protect the party in possession. 10 W. R. 64.
316. **Magistrate's finding as to possession whether right or wrong cannot be questioned in revision.** 120 C. 400 See 27 C. 239.
See (18) Revision (175)
317. **Magistrate bound to uphold possession actually delivered by the Civil Court.** 32 C. 796; 29 C. 208 See (16) Civil Court (No. 32)
318. **Pending possessory suit under S. 9 Specific Relief Act does not oust jurisdiction.** See 36 C. 670 [see however 7 C. N. 558] See (16) Civil Court (No. 311)

has to be determined with reference to a specified of time. Upon this question every of a Civil Court or order of

XVI. CIVIL COURT.

(1) Evidentiary value of decrees or orders of Civil and Criminal Courts.

319. **The question of possession under S. 145 Cr. P. O.**

(5) Recent possession found by other courts.

337. Recent possession found by a Criminal Court can not be treated in the manner in which recent possession given under a Civil Court decree is treated in cases under S 145 Cr P C 147.
338. For Recent Possession found by a Revenue Court. See (26) Misc (142)

(6) Effect of pendency of Civil Proceedings.

339. Proceedings not to be taken during pendency of Civil Suit. If one of the parties by bringing a suit for the recovery of possession, a litigant the possession of the other party, a Magistrate should not proceed under S. 145, but, if necessary, under S 107 and S 145 Cr P C N 558. But see 30 C 370 (below)
340. Pendency of a partition-suit. Where the Civil Court in which a suit for partition is pending, had declared certain properties to be joint, and ordered partition to be effected, a Criminal Court is precluded from taking proceedings under S 145 in respect of such properties as the properties have been declared to be in joint possession. See 6 C N 483, 23 P R 1902 (See however S 1 C 413 [L. B.]. For orders by Revenue Courts which the Magistrate ought to respect, See (21) Miscellaneous (512 to 517)

(7) Civil Court's jurisdiction under S. 9 Specific Relief Act, is not ousted by order in S. 145 proceedings.

341. (1) Civil Court may entertain a suit under S 9 of the Specific Relief Act in spite of a pending proceeding under S 145 Cr P C 30 A 331 But See 7 C J 517 20 W. R 12 43 L C 153
- [A Mamlatdar has similar powers under Bombay Act III of 1876,—20 II 379—But See 5 B 357 A Criminal Court's jurisdiction to take proceedings under S 145 Cr P C is not ousted merely because the properties in dispute form the subject matter of a pending suit under S 9 Specific Relief Act.—30 C 370

342. (2) The power of a Civil Court to appoint a Receiver is no way affected by an order of a Magistrate under S. 145 Cr P C 22 A. 211

343. Civil Court may take possession of property in a suit for partition.

regarding the subject-matter of the suit, the civil court has jurisdiction to issue an order of injunction which would have the effect of staying such proceedings. 21 C 206 (C)

(8) Limitation of Civil Suits.

344. (1) A Civil suit to recover property affected by an order under S. 145 Cr P C must be brought within 3 years from the date of the order under cl (3) Art 47 Limitation Act See 23 C 731 19 C 616 6 C L 93 4 W T. 91
345. Note.—The period will be computed from the date of the final order, and not from the date on which the High Court Rule was determined [12 C N 540 6 C 709] nor from the date of attachment [24 C 656]
346. (2) The limitation will apply even when the order is illegal 38 M 432 But see 9 M T 91
347. (3) The limitation applies to suits by the unsuccessful party [6 C 1, 24] but not to the successful party [10 W R 21], nor to suits for partition [1 B 25]
348. (4) Art 47 of the Limitation Act governs suits for recovering property under S 145 Cr P C even when the plaintiff was not a party to the proceedings (if he had notice of the proceedings) See 19 C 640
349. (5) Where a party to the proceedings filed a petition praying that he might be allowed to withdraw from the proceedings and the Magistrate thereupon recorded an order declaring the other party to be in possession, Held—that a suit brought more than three years after the date of the Magistrate's order was barred, under Art 47 Lim Act 22 C N 312 See 9 M T 91

XVII. FINAL ORDER.

(1) Nature of the order made under Cl. (6).

350. (1) The order decides no question of title—It merely maintains the successful party in possession who can be evicted only by a suit by a person who is able to establish a better right to possession. 23 I A 187 (P.C.) See 25 B 179 30 C. 112
- (2) It is not the intention of the system to give the person in possession the right to retain it. The Magistrate cannot terminate possession declared under S (6) by his own order. It can be determined only by due course of law 1 C L 136

351. Order tentative pending determination by Civil Court.—The order is valid only until the person to whose favour the possession is declared, is ousted by due course of law [i.e. until the actual right of one of the parties has been determined by any competent Court.] 2 C L 62: 26 C 625 29 C 209 35 C 79: 17 W R 3.

352. The order is not a final order.

(2) Orders which may be made.

353. The order is a judicial order which must be based on evidence placed on the record.—See 17 B R 382 20 Cr. 644 (C)

354. Order can only be made in favour of a party to the proceeding.—[See Note No. 315]

(3) Order cannot be made when.

355. It cannot be made on a mere consideration of the written statement. See (B) Written statement (No. 180)
356. It cannot be based on a Police report alleging that one of the parties had admitted possession of the other party. 6 M T 111.
357. It cannot be passed on the result of a local enquiry by the Magistrate himself. 10 C N, 181; 3 C. L. 134. See also 1 C N 779; 10 W. R. 13
358. Or on the statement of a witness not cited by either party. 8 C N 710
359. An order made without taking any evidence is illegal.—See (14) Evidence and witnesses (No. 239) See also Nos. 225 to 231.

(3.1) The effect of the order.

[Note.—But an order may be based on admission alone when it is clear and unambiguous. See 7 C N, 351. J M T. 61.

360. Order though erroneous is binding till reversed by a competent Court. 81 A. 123; 11 I. A. 37. See 20 C 187 (P. C.)
361. The effect of the order is to entitle the successful party to take possession. See 7 C J. 547

(4) Orders in the nature of execution are beyond the scope of the Section.

362. Note.—A Magistrate cannot however oust a person and place another person in possession under the Section, 37 A. 654; 27 A. 300; 11 C. 363; 3 N P. 172; 22 C. 297.] There is no specific provision in the Code authorising a Magistrate to take proceedings corresponding to execution proceedings of the Civil Courts. 14 C. N. 78; 7 C. J. 547; [See 16 I C 898 (C)]; 14 A. J. 146. The successful party is entitled to enter upon the disputed land. If he is resisted, the persons resisting are liable to prosecution under Sec. 188 I P. C. [See 14 C. N. 78; 13 C N. 175] This is the only way, albeit round-about, of enforcing the order. The Magistrate cannot restore the party wrongfully dispossessed within the meaning of Section 188.

found to be in possession has been held to be a proper one. [2 Pat. W. 67]

363. Order directing that two pathways in the disputed land should remain intact and the party found to be in possession of it should remain in possession of the "remainder of the disputed plot" 17 C. N. 793

the instance of the unsuccessful party. The proper course for the Magistrate in such a case is to take proceedings under S. 107 Cr. P. C. against the unsuccessful party.—Per Mullick J. [1 Pat. W. 642]

A Magistrate should not supplement his order by binding down under S. 107 Cr. P. C. the unsuccessful party. 17 Cr. 527 (A). But See 1 Pat. W. 642 [11 C. 365].

(5) The order is merely declaratory. The Magistrate cannot order specific acts to be performed by way of consequential relief. [See 27 A. 300; 17 C. N. 26]

The following orders have therefore been held to be illegal:—

364. Order directing that two pathways in the disputed land should remain intact and the party found to be in possession of it should remain in possession of the "remainder of the disputed plot" 17 C. N. 793
365. Order directing a bundh in dispute to be removed and that one of the parties should pay 4 the other compensation for damage done to crops 32 C. 602; See 6 P. L. 1913
366. Order directing the removal of any superstructure on the disputed land. 6 P. L. 1913.
367. Order directing the property in dispute to be demarcated by boundary pillars defining the limit of the possession of the respective parties 27 A. 300. See 13 A. J. 912
368. Order directing the division of crops between the parties. 8 C J. 242; But See—1 Pat. W. 513
369. Order that if any fruit had been gathered on any of the lands attached, the proceeds thereof minus expenses be made over to one of the parties 7 C. J. 369.
370. Order directing a party to be ejected and decides which of the parties is to reap crops. 40 P. R. 1917
- 370A. Order directing a party to be dispossessed. 13 A. J. 932
371. Order laying down the method or agency by which possession is to be exercised and rent collected 36 C. 956; 2 Weir 108.
372. Order granting a party other than the one found in possession permission to cultivate the disputed land. 18 W. R. 27.
373. Order forbidding payments or collections of rent. 4 C. N. cxxviii
374. Order directing a party admittedly in joint possession not to make use of the land in such a manner as to cause annoyance to his co-sharers. 2 C L 62.
375. Order "binding down" a party under Cl. 6 S. 145—30 C. 443
376. Order to the effect that a party should be maintained in possession till he has reaped the crop and that he shall thereafter give way to another. 1 C. L. 136.

proceedings under the same section at

377. Order directing that a passage should be left in the wall which was being built to enable the first party to tap a tree.—3 Pat J. 316

(6) After cancelling proceedings a Magistrate.

378. (1) Cannot direct the delivery of the produce of certain trees attached to a party. 1 L. W. 1032

379. (2) allow one of the parties to reap crops to the exclusion of the other.—3 C J 573

[Note—An order striking off proceedings under Sec 145 does not amount to an adjudication of the question of possession for the purposes of Sub-sec. (6)—30 C 112

(7) When each of the parties is in separate possession of specific portions of the property

380. The Magistrate can pass an order that such separate possession should continue.

2 Weir 105, 5 C N. 710, 7 C. N. 462, 9 C N. 877, 11 C N. 104, 11 C N. 74, 14 C N. 1219, 24 W R 73, 21 W. R 55. Con.—22 C 297.

[Note—But where the land in dispute is indivisible it must be treated as a whole.—22 C 297]

(8) An order as to possession Subject to reservations.

381. An order as to possession subject to reservation is not forbidden by Cl (b) of Sec 145 17 Cr 235 (U). But see 17 C N 793 [above] But a Magistrate cannot make an order declaring (1) joint possession [27 M J 169] or (2) Public possession [17 C N 293]

(9) Final order cannot be made in proceedings taken under another Section

382. Final order cannot be made in proceedings taken under another Section

(a) in a proceeding under Sec 147 Cr P C 19 M J 18

(b) in a proceeding under Sec 107 Cr P C 30 C, 443 [See (8) Proceeding (92)]

383. (c) In favour of persons who claim no interest in the disputed property.—6 C N 104, 2 Weir 106

(10) Final order will not bind whom.

385. (1) Persons not parties to the proceeding—e.g. children of a person who was not a party [2 M J 277] 3 C N 329, 3 B L (sp) 1 (F.B.) [Pd in 18 M 51] 24 C 55, 27 C 592, 5 C N 900 But Sec. 4 Pat W 136, 21 C 404, 11 B R 377

386. (2) A person allowed to appear for the limited purpose mentioned in Subsec. (1) but not made a party 19 Cr 533 (C). See 3 C N 323.

387. (3) Witness to the proceedings.—18 M 51

388. (4) Order against *beaudinar* may not bind real owner.—2 B L (S N) t.

389. (5) Order against *lessee* may not bind the *lessor* 24 W R 128. (Civil) 11 C 562, 11 C L 122

390. (6) A person on whom no notice has been served. [5 Pat W. 251] See (9) Service of Proceeding (125)

(11) The contents of the Final order.

391. possession either with reference to (1) the date

392. There must be a distinct finding that the dispute between the parties is likely to cause a breach of the peace 115 P L 1917, 92 P L 1915, 6 P L 1913, 6 P R. 1885, 6 M J 191, 5 W R 14

393. The order should embody a clear finding as to who was in possession at the date of the preliminary order under Sub. (1) 9 Cr. 505 (M), 16 Cr 239 (M)

394. The final order should be in the form prescribed in form no 22 (Sch. V)—See 14 C N 78—But printed form is deprecated [ibid] The forms in the Schedule are not obligatory *Richardson J.* [22 C N 312] A Magistrate cannot “bind down” a party under clause (b) 8 145—30 C, 443

395. Should specify the boundaries of the land in dispute.—4 C N, *revin*.

396. Property to be specified by metes and bounds—A final order under S 145 must specify by metes and bounds the exact portion of the disputed property of which the successful party is entitled to possession.—2 Weir 107.

397. The Section under which the order is made should not be left for speculation by a Court of revision.—18 Cr 295 (M)

398. Order must be in terms of sub-sec (6).—27 A 300, 17 C N 205 Any direction as to delivery of possession is illegal—14 C N 78

399. The total quantity of land of which possession is declared must not exceed the amount claimed. The precise area claimed should be ascertained.—18 Cr 995 (C)—See 7 C N 462, 7 C N 558, 11 C N *alim*, 18 Cr. 692 (Pat).

400. Where the disputed land has been surveyed and measured—and found not to include certain plots alleged to be included by one of the parties, a Magistrate acts without legal authority in passing an order under sec. 145 in respect of those plots.—17 Cr 296 (Pat)

401. The Magistrate should sign his name in full in a judicial order under S. 145 and, should also note his official position.—12 C N. 771

402. An order addressed to persons who were not parties to the proceedings is illegal, 2 Weir 126.

(12) Order partly under Sec 145 and partly under Sec. 146, Cr. P. C.

403. The subject matter referred to in Sec. 145 and 146 may be read as referring to the whole or to any component part or parts thereof. If that component part is distinct and separate from the rest, it cannot be rightly held that because the Magistrate cannot hold possession of one of the component parts with either party, he is bound to attach the whole. An order partly under S 145 and partly under S 146 is not under the circumstances without jurisdiction [3 G. N. 710]. In the case of a palkar extending over 6 miles it was held that even if on the evidence the Magistrate was unable to satisfy himself as to the possession of the whole of the six miles in question, that did not relieve him from the duty of proceeding further and ascertaining in so far as he could, the possession of some portion or portions thereof. As to the portion of which he was able to say "so and so is in possession" he should have proceeded under S 145 Cr. P. C. and only as to the remainder should he have proceeded under S 116 Cr. P. C.—20 Cr. 17 (C).

404. **Procedure when Magistrate fails to find possession.**—An order under Sec. 149 can only be made when the Magistrate is unable to decide which party is in possession. Where it is possible for him to do so, an attachment will amount to a refusal to exercise jurisdiction. It is not sufficient that it is "very difficult" for him to come to a decision, it must be "impossible" for him to do so—20 Cr. 17 (C). The order will be valid only if made after considering the evidence fairly and judicially [23 O. N. 910].

405. In a proceeding under S 145 Cr. P. C. the parties appeared on the day of hearing but did not file any written statements or produce any evidence. They prayed for time which the Magistrate did not grant. He then heard the parties and being unable to satisfy himself as to which of them was in possession attached the subject of dispute under S 146 Cr. P. C. Held that the Magistrate ought to have granted time to allow regular proceedings to be followed, or he might have informed himself of the facts of the case either by local enquiry or in other ways. An

he did neither, his order was bad in law. C. N. 8485 (F.B., in 10 G. N. 1052) *Chaba I* 60: 11 Cr. 19 (C).

- 405 A. Order by a settlement officer putting an entry in the record of a favour of an unsuccessful party has effect of countermanding an order under Cr. P. C. in favour of the successful party. W 612.

(13) Final order will not necessarily justify a prosecution for trespass.

406. (1) Where the party prohibited from acts of possession on the disputed land to be on the date of alleged trespass possession, a conviction for criminal cannot be sustained—8 M. T. 259. See 64.

(2) A party against whom the order has been made cannot be convicted of for cutting down the crop sown by him or the order—7 Cr. 75 (A).

407. Disobedience of final order rendered to punishment under sec. 188 I. I.

(1) Persons set up by the unsuccessful trespasser final order—Where the unsuccessful instigates certain persons not parties to the

the final order,—15 G. 119

(2) But a person who disobey an order *ultra vires* being made without proper cannot be punished—32 P. L. 1013.

(14) Miscellaneous.

408. Magistrate cannot rectify mistake absence or the party affected.—When a final order, a Magistrate cannot rectify omission by mistake without hearing the likely to be affected by the correction—552. See 2 Weir 107. See (16) Review [No.

409. Final order under S. 145 is no bar to appointment of Receiver by Civil Court 214 See (10) Civil Court [312]

XVIII. REFERENCE REVISION ETC.

- 410 What is meant by "jurisdiction"—The term "jurisdiction" may be defined to be the power of a Court to hear and determine a cause to adjudicate or exercise any judicial power in reference to it. (3) the C. J. 611. See also 101 decision—5

(1) Can the High Courts interfere under the Code. (Sec. 435 and 439 Cr. P. C.)

411. It may now be taken as well settled that the High Court has no jurisdiction in the exercise of its revisional powers under the Criminal Proc. Code to interfere with the orders of the criminal Courts

under Chapter XII of the Code [Note the of law introduced by Act V of 1894]

Calcutta High Court—See 33 C. 68 (F.B.) • 3 28 C. 416 27 C. 259—*Contra* 25 W. R. 74 483: 20 C. 520 23 C. 557 • 26 C. 625 2 C.

Bombay—See 24 B. 527. 25 B. 179 7 B. N.

Allahabad—21 A. 315: 26 A. 144. 31 A. 150 233 • 39 A. 612 40 A. 364 18 C. 557 also 9 A. 104 • (77) A. N. 50 10 A. J. 465 27 A. 296 26 A. 141 25 A. 537 11 A. J.

Madras—31 M. 318 • 36 M. 275 26 M. J. 209 707 (M) 17 Cr. 357 (M) 23 M. J. 499 20 (M) 21 Cr. 73 (M)—*Contra* 11 M. 220 (F.B.) M. 410 (F.B.) 20 M. 561

Patna—1 Pat J. 330, (F.B.)

In S 8 207 it has been held that where the proceedings are in intention, in form and in fact, proceedings under S 145 and the order is passed by a Magistrate duly empowered to act under S 145, the Judicial Commissioners Court can not interfere.

- 417C Central Provinces—"It is settled law that the Court (Judicial Commissioners) can interfere when the Subordinate Court has acted without jurisdiction"—*g*—when it has passed an order without giving a party an opportunity of adducing evidence [20 Cr 107 (N); 20 Cr. 116 (N)].

The principle is that when an order is passed without jurisdiction it is really not an order under Chapter XII hence S 435(1) does not apply. [20 Cr 117(N)] 20 Cr. 124 (N). 20 Cr. 176 (N); 20 Cr 445 (N) 20 Cr 775 (N); 20 Cr. 816 (N); 17 O P 133 must be regarded as overruled.

- 417D Oudh—The Judicial Commissioners have in the recent cases steadily receded to the view that they have no power to set aside in revisions orders purporting to be made under Chapter XII. [See *Pro*—18 O C 60 12 O C 400; 16 O C, 60—*Con* 5 O C 1] In 19 O C 136 however it has been held "when the proceedings are absolutely without jurisdiction—*viz*—(1) Where the Magistrate is not empowered to act under the Section or (2) when there was no information that a dispute existed likely to cause a breach of the peace, concerning any land etc the Court will have power to interfere."

- 417E Upper Burma—When proceedings are only in name and not in fact proceedings under S. 145, S 435(3) is no bar to interference. [3 U. B. 33; 3 U. B. 35]

(7) *High Courts have interfered with proceedings under S 145 on the following grounds:*

418. Disregard of Civil Court decrees. 29 O 208. 26 C. 625 5 C N. 653; 2 A. J 274; 6 B R 246 23 P R 1902 But See 33 C. 33 See (16) Civil Court. (290 302)

[N B—As to decree of a Revenue Court See (25) Miscellaneous (542).

419. Refusal to examine witnesses tendered by parties to proceedings. 31 C. 686. 34 C 840. 29 M 561 See (14) Evidence and witnesses (233).
- 420 Refusal to summon witnesses 30 C 508 2 C J. 286 But See 32 C. 1093. But See (14) Evidence and Witnesses (235).
421. Absence of jurisdiction owing to there being no likelihood of a breach of the peace within the meaning of the Section. 11 C. N. 198 11 C. N. 835
422. Misjoinder and Non-joinder of parties 27 C 892. 28 C 446. 24 B 527. But See 30 C 155 (F. B) 18 Cr. 692 (Pat.) and (10) Parties to Proceedings (145)
- 423 Order is wide of the mark and opposed to law and natural justice 193 P. L 1912; 20 M. J. 204

- 4 4. The final order alters the essential factor of the proceeding (preliminary) 27 C. 862.

425. Defects in the proceeding. See (9) preceding (91).

- 426 Order made without taking ovid (82) A. N. 81; *cc* (14) Evidence and wit (232).

427. Order is ultra vires 33 C. 68 (F 14 A. J. 146; See (17) Final order (321-339)

428. Magistrate has acted arbitrarily or materially in the exercise of jurisdiction. 30 C. 504; 35 C. 774; 34 C 81 C. N. 181.

429. Magistrate has improperly decline exercise a jurisdiction vested in him by law. 12 C. N. 806; 30 C. 155 (F. B); 29 M.

- 430 Award of a greater amount than claimed by a party. 18 Cr. 682 (Pat). 193 (C)

431. Failure to find which of the disputing parties was in possession on the day the preliminary order. 16 Cr. 239 (M)

432. That no final order has been passed in the case. 17 B. R. 382; See (70) A. N. Con. (16) M. N. 37.

433. Omission to enquire into the facts of possession after attachment under S 14 Cr P. C. (70) A. N. 54.

(8) *High Court will not interfere (the*

434. Except in exceptional cases,—17 C (Pat)

435. Unless the proceeding is void for want of jurisdiction. 17 Cr 345 (Pat); 9 851.

436. On the ground of a mistake of law if it goes to the jurisdiction—18 Cr. 692 (Pat)

437. *Suo moto* when the Magistrate has con with all the formalities essential to his jurisdiction—36 M. 275; 17 Cr 389 (M); 4 A. 30 A. 41; 24 W R 16 See 39 A 612; 40 A

- 438 With any decision by a Magistrate matter within his jurisdiction be erroneous in law and fact it may be if it has arrived at after a fair trial

33 C 68 (F. B.) 41 C. 876 36 C 204; 188; 15 W. R 86 11 W. R. 402, 9 W. R 7 W. R. 430. 18 Cr. 23 (M). (14) M N 26 M 224. 120 C. 400; But See 19 C. N 123

439. When a Magistrate in his discretion *ref* make any order affecting either of the parties C. 112; 19 Cr. 63 (M); (18) M. N. 37.

440. When other remedies are open to aggrieved party.—33 A. 331; See 29 C. 65 P L 1914

441. When the order made by the Magistrate be unjust is made *extra-judicially* e. g. order payment of money (being proceeds of the crops attached) to a party.—6 C. N. 882.

(9) Powers of the High Court in revision.

442. Can the High Court consider the whole evidence in revision?—(1) The preponderance of opinion is on the side of a direct negative. [See 33 C. 64 (F.B.), 15 W. R. 14, (14) M. N. 79; 41 C. 870, 36 M. 275; 17 Cr. 399 (M); 1 Pat. J. 396 (F.B.); 39 A. 612; 17 A. 391 See also 1 A. J. 10-39 A. 41; 23 B. 178]

443. (2) Sufficiency of evidence.—In criminal revision proceedings re-orders under S. 115, the High Court will see whether there is evidence on which the Magistrate could come to the conclusion he has arrived at, and not whether that evidence is sufficient or insufficient.—14 C. 161 See 22 C. 98 (1001) 19 C. N. 121; 18 Cr. 301 (C) C. 22 C. N. 493 (Per Chetty J.).

444. (3) Rejection of material evidence is a ground for interference.—19 Cr. 529 (Pat). 22 C. N. 493 (Per Trunon J.)

Notes. [In this view it must be held that the decision to the contrary in 14 C. 361; 22 C. 297 is obsolete].

445. Alteration and variation of the order.—In the case reported in 14 C. 361 the High Court substituted an order under S. 145 for one under S. 145 Cr. P. C. The High Court has power not only to set aside an order but has also the power itself to pass the proper order upon the facts proved at the enquiry.—22 C. 297; 20 C. N. 1014.

446. Order partly bad and partly good.—The High Court may set aside the portion of the order which is bad in law and maintain the portion which is good.—2 Pat. J. 637.

447. Remand.—In (1) A. N. 154 the High Court remanded the case for enquiry as required by Subs. (5) and (6) of S. 145 Cr. P. C. Where a Magistrate passed an order under the section without taking evidence, the High Court directed that the case be tried according to law [5 C. N. 71.] Where the enquiry was confined to 172 bighas but the Magistrate made a declaration in respect of 237 bighas originally in dispute, the High Court remanded the case for rectification of the error. [18 Cr. 995 (C)] See also 23 C. N. 910

448. Subs. (7) does not apply to proceedings in revision.—Where the respondent against whom an order was passed had after presenting the Charter allowed to R. 1919. See G. P. R. 1893.

449. Order for costs.—The High Court cannot make an order for costs in revision [O S 227] nor interfere with an award of costs by the Magistrate. 17 Cr. 348 (Pat); 9 C. N. 887.

450. Further enquiry.—S. 437 has no application to proceedings under Chapter XII [See 20 C. 729] The High Court has no power to direct initiation or revival of proceedings [See (4) Proceeding (No. 8490)] See 30 C. 112; 35 C. 117 3 C. N. 297-23 W. R. 64

Magistrate's finding as to possession whether right or wrong cannot be questioned in revision by the High Court.—12 O. C. 400.

451. Where there is no final order under subs (6) High Court will not interfere.—In a proceeding under Sec 145 the Magistrate did not issue any order as required by Subs. (6) but merely said "I refrain from taking proceedings either under S. 145 or 107 Cr. P. C."

N 37

(10) Reference.

452. Proceedings under Chapter XII are not proceedings with which a Sessions Judge has any power of revision or reference. There is no provision of law which gives the Sessions Judge the power to call for the record in such proceedings [28 C. 416; See also 4 C. N. 779.] In 14 A. J. 146 the High Court held that the Sessions Judge had no power to refer a case under S. 145 but the reference having been made was accepted [See also 20 A. 144 16 W. R. 1] The ruling in 5 C. N. 71 that Sessions Judges should refer cases in which they find that the Magistrate's proceedings are ultra vires under S. 438 Cr. P. C., is the solitary instance in which the power to refer is recognised.

(11) Letters Patent appeal.

453. An appeal is provided for under Cl. 15 of the Letters Patent from an order under Chapter XII by a single Judge of the High Court made in the exercise of the ordinary Criminal jurisdiction. 17 M. J. 158 (F.B.)

See the analogous Cases 29 C. 286 (F. B.), [S. 491 Cr. P. C.] 27 M. 510 [S. 107 C. P. C.] 12 M. J. 408. [S. 195]

(12) Review.

454 A Criminal Court has no authority to review final orders passed by it under S. 145 Cr. P. C.—35 C. 350 16 O. C. 192 2 Pat. W. 386 But See—2 Weir 107

XIX. IRREGULARITIES WHICH VITIATE.

455. Irregularities committed during the enquiry.

(1) Refusal to examine witnesses tendered by the parties (except on the ground of vexation or delay) 17 Cr. 217 (M); 16 Cr. 239 (M); 29 M. 601; 26 M. J. 208, 31 C. 685; 34 C. 549.

(2) Rejection of material evidence offered by a party 19 Cr. 529 (Pat). 20 Cr. 231 (Pat)

(3) Failure to give the parties an opportunity to adduce evidence.—21 C. N. 123.

See (14) Evidence and witnesses (No 209).

In S. 207 it has been held that where the proceedings are in intention, in form and in fact, proceedings under S. 145 and the order is passed by a Magistrate duly empowered to act under S. 145, the Judicial Commissioners Court can not interfere.

417C. Central Provinces—"It is settled law that the Court (Judicial Commissioners) can interfere when the Subordinate Court has acted without jurisdiction"—*see* *g*—when it has passed an order without giving a party an opportunity of adducing evidence [20 Cr. 107 (N) 20 Cr. 110 (N)]

The principle is that when an order is passed without jurisdiction it is really not an order under Chapter XII hence S. 135(3) does not apply. [20 Cr. 117(N) 20 Cr. 121 (N) 20 Cr. 170 (N); 20 Cr. 445 (N) 20 Cr. 775 (N); 20 Cr. 816 (N); 17 C P. 133 must be regarded as overruled.

417D. Oudh—The Judicial Commissioners have in the recent cases steadily veered to the view that they have no power to set aside in revisions orders purporting to be made under Chapter XII. [See Pro—18 O C 60 12 O C 100 1 O C 89—Con. 5 O C 1] In 19 O C 136 however it has been held "when the proceedings are absolutely without jurisdiction—*viz*—(1) Where the Magistrate is not empowered to act under the Section or (2) when there was no information that a dispute existed likely to cause a breach of the peace, concerning any land etc, the Court will have power to interfere"

417E. Upper Burma—When proceedings are only in name and not in fact proceedings under S. 145, S. 435(3) is no bar to interference [3 U. B. 33; 8 U. B. 35]

(7) High Courts have interfered with proceedings under S. 145 on the following grounds:

418. Disregard of Civil Court decrees. 29 C 208 26 C 625 5 C N 653 2 A. J. 274; 6 B. R. 246 23 P. R. 1802 But See 33 C 33. See (16) Civil Court. (290-302)

[N. B.—As to decree of a Revenue Court See (25) Miscellaneous (542)]

419. Refusal to examine witnesses tendered by parties to proceedings. 31 C 685 34 C. 840 29 M. 561 See (14) Evidence and witnesses (233).

420. Refusal to summon witnesses 30 C. 508. 2 C J. 236 But See 32 C 1093 But See (14) Evidence and Witnesses (235)

421. Absence of jurisdiction owing to there being no likelihood of a breach of the peace within the meaning of the Section. 11 C N. 188 11 C N. 835.

422. Misjoinder and Non-joinder of parties 27 C 892 28 C 446 24 B. 527 But See 30 C. 155 (F. B.) 18 Cr. 692 (Pat.) and (10) Parties to Proceedings (147).

423. Order is wide of the mark and opposed to law and natural justice 188 P. L. 1912. 20 M. J. 208

4 4. The final order alters the essential character of the proceeding (preliminary) 27 C. 802.

425. Defects in the proceeding See (5) Proceeding (14).

426. Order made without taking ovid (82) A. N. 81; *see* (14) Evidence and wit (230).

427. Order is ultra vires. 33 C. 68 (F. 14 A. J. 146; See (17) Final order (324-334)

428. Magistrate has acted arbitrarily and materially in the exercise of jurisdiction 30 C. 504; 35 C. 77; 34 C. 8 C. N. 181.

429. Magistrate has improperly declined to exercise jurisdiction vested in him 12 C. N. 846; 30 C. 165 (F. B.); 29 M.

430. Award of a greater amount than claimed by a party. 18 Cr. 692 (Pat). 1915 (C).

431. Failure to find which of the disputing parties was in possession on the day of the preliminary order. 16 Cr. 219 (M)

432. That no final order has been passed by the court. 17 B. R. 382; See (10) A. N. Con (15) M. N. 37.

433. Omission to enquire into the facts of possession after attachment under S. 1 Cr. P. C. (10) A. N. 51.

(8) High Court will not interfere where

434. Except in exceptional cases.—17 (C) (Pat)

435. Unless the proceeding is void for want of jurisdiction. 17 Cr. 348 (Pat); 9 887

436. On the ground of a mistake of law it goes to the jurisdiction—18 Cr. 692 (Pat)

437. Suo moto when the Magistrate has complied with all the formalities essential to his jurisdiction—36 M. 275; 17 Cr. 380 (M); 4 A. 30 A. 41; 24 W. R. 16; *see* 39 A. 612 40 A.

438. With any decision by a Magistrate on a matter within his jurisdiction be erroneous in law and fact it may be if it has arrived at after a fair trial.

33 C. 68 (F. B.) 41 C. 876; 36 C. 904; 189 15 W. R. 86 11 W. R. 402 9 W. R. 7 W. R. 430. 18 Cr. 23 (M). (14) M. N. 26 M. 22; 120 C. 400 But See 19 C. N. 12;

439. When a Magistrate in his discretion refuses to make any order affecting either of the parties C 112; 19 Cr. 63 (M) (18) M. N. 37.

440. When other remedies are open to an aggrieved party.—33 A. 331. See 29 C. 65 P. L. 1914

441. When the order made by the Magistrate be unjust as made extra-judicially *e.g.* order for payment of money (being proceeds of the crops attached) to a party.—6 C. N. 882.

(9) Powers of the High Court in revision.

442. Can the High Court consider the whole evidence in revision?—(1) The preponderance of opinion is on the side of a direct negative. [See 23 C 64 (F.B.); 15 W. R. 54 (14) M. N. 74; 41 C 576-58 M. 275; 17 Cr 381 (M). 1 Pat J. 396 (F.B.). 31 A 612; 43 A 361 See also 4 A. J. (9)-33 A. 41. 25 B 170]

443. (3) Sufficiency of evidence.—In criminal revision proceedings *reorder* under S. 115, the High Court is to see whether there is evidence on which the Magistrate could come to the conclusion he has arrived at, and not whether that evidence is sufficient or insufficient.—14 C 163 See 22 C 948 (1001) 19 C. N. 121-15 Cr 301 (C) 22 C N 490. (Per Chitty J.).

444. (6) Rejection of material evidence is a ground for interference.—19 Cr 524 (Pat) 22 C N 493 (Per Tension J.).

Note. [In this view it must be held that the decision to the contrary in 14 C 361 22 C 297 is obsolete]

445. Alteration and variation of the order.—In the case reported in 14 C 361 the High Court substituted an order under S. 141 for one under S. 145 Cr. P. C. The High Court has power not only to set aside an order but has also the power itself to pass the proper order upon the facts proved at the enquiry.—22 C 297, 20 C. N. 1014

446. Order partly bad and partly good.—The High Court may set aside the portion of the order which is bad in law and maintain the portion which is good.—2 Pat J. 637.

447. Remand.—In (1) A N 154 the High Court remanded the case for enquiry as required by Subs (5) and (6) of S. 145 Cr. P. C. Where a Magistrate passed an order under the section without taking evidence, the High Court directed that the case be tried according to law [5 C N 71.] Where the enquiry was confined to 172 *bighas* but the Magistrate made a declaration in respect of 237 *bighas* originally in dispute, the High Court remanded the case for rectification of the error. [18 Cr. 985 (C)] See also 23 C. N. 910

448. Subs. (7) does not apply to proceedings in revision.—Where the respondent against whom an order is made is a party to the proceedings in revision the Char allowed R. 1919 See 6 P R 1893.

449. Order for costs.—The High Court cannot make an order for costs in revision [O S 227] nor interfere with an award of costs by the Magistrate. 17 Cr 348 (Pat); 9 C. N. 897.

450. Further enquiry.—S. 137 has no application to proceedings under Chapter XII [See 20 C 729] The High Court has no power to direct initiation or revival of proceedings [See (8) Proceeding (No. 64-90)] See 33 C. 112; 33 C 117; 3 C. N. 297; 23 W. R. 58.

Magistrate's finding as to possession whether right or wrong cannot be questioned in revision by the High Court—12 O. C. 400

451. Where there is no final order under subs (6) High Court will not interfere.—In a proceeding under Sec 145 the Magistrate did not issue any order as required by Subs. (6) but merely said "I refrain from taking proceedings either under S. 145 or 107 Cr P. C. just at present If the counter petitioners persist in interfering with the petitioner's possession of the mill, I shall be constrained to institute regular proceedings under S. 107 Cr P. C." and stopped the proceedings that he commenced under S. 145; the High Court declined to interfere.—(18) M. N. 37

(10) Reference.

452. Proceedings under Chapter XII are not proceedings with which a Sessions Judge has any power of revision or reference. There is no provision of law which gives the Sessions Judge the power to call for the record in such proceedings [24 C 416; See also 4 C N 770] In 11 A. J. 116 the High Court held that the Sessions Judge had no power to refer a case under S. 145 but the reference having been made was accepted [See also 26 A. 144 15 W R 1] The ruling in 5 C. N. 71 that Sessions Judges should refer cases in which they find that the Magistrate's proceedings are *ultra vires* under S. 438 Cr. P. C. is the solitary instance in which the power to refer is recognised.

(11) Letters Patent appeal.

453. An appeal is provided for under Cl 15 of the Letters Patent from an order under Chapter XII. by a single Judge of the High Court made in the exercise of the ordinary Criminal jurisdiction. 17 M J 154 (F.B.)

See the analogous Cases 29 C 246 (F. B.) [8 401 Cr. P. C.] 27 M 510 [S 107 C P. C.] 12 M. J. 408 [S 195]

(12) Review.

454 A Criminal Court has no authority to review final orders passed by it under; S. 145 Cr. P. C.—35 C. 350 16 O. C 102 2 Pat W 346. But See—2 Weir 107

XIX. IRREGULARITIES WHICH VITIATE.

455. Irregularities committed during the enquiry

(1) Refusal to examine witnesses tendered by the parties (except on the ground of vexatious or delay) 17 Cr 217 (M); 16 Cr. 239 (M.); 29 M. 561 29 M. J. 209, 31 C. 845; 34 C. 840.

(2) Rejection of material evidence offered by a party 19 Cr. 524 (Pat); 20 Cr 271 (Pat)

(3) Failure to give the parties an opportunity to adduce evidence—21 C. N. 924

See (14) Evidence and witnesses (No 200).

- (4) Refusal to re-summon an absent material witness 18 C. N. 91.
 (5) Basing final order on the evidence of a person who was not called by other party 41 R 1906 8 C N 719
 (6) Failure to record evidence produced by a party—17 C N 111 21 C N 924 See (11) Evidence and witnesses and (18) Revision etc

456. Proceedings by a Magistrate not empowered—S. 539 (1) Cr P C.
 457. Orders in excess of the Magistrate's powers—1 C. J. 118.
 458. Orders with regard to property sit beyond the local limits of the Magistrate's jurisdiction. See (21) Jurisdiction (121)

XX. IRREGULARITIES WHICH DO NOT VITIATE.

459. Omission to state the necessary grounds in the initial order.—The omission to state the grounds (on which the Magistrate has satisfied himself as to the existence of a dispute likely to cause a breach of the peace) does not amount to an illegality which vitiates the whole proceedings, but such omission is an irregularity for which the High Court may set aside the proceedings if it is shown that it has operated to the prejudice of any of the parties 33 C 152 (F. B.) 7 C N 594 See (5) Proceeding (No 41)
 460. Omission to serve notice prescribed by Cl. 3 is not an illegality which deprives the Magistrate of his jurisdiction and will not be regarded as material unless it is shown that some one interested has been materially prejudiced by it 33 C 63 (F. B.) See (9) Service of Proceeding (117).
 461. Omission to serve fresh notice on conversion of a proceeding under S. 144 to one under S. 145.—1 Pat W 231
 462. Addition of parties after the commencement of enquiry is contrary to the intention of the Legislature, but does not invalidate the enquiry 30 C 153 (F. B.) See (11) Parties to Proceedings (112-143)

463. Non-joinder and mis-joinder of parties when not fatal—
 (1) The manager being made a party instead of zemindar 32 C. 287.
 (2) Omission to make the representative of the death of a party 2 C. 1. 241.
 (3) Omission of a necessary party. 157 (F. B.) 18 Cr 692 (Pat) 1 Pat W 21
 464. Joint enquiry into several disputes See (4) Disputes (No 14)
 465. Erroneous decision on a question of law or fact.—1 Pat 316 (F. B.) 18 C (Pat)
 466. Order for payment of costs made after the final order. 1 Pat W. 231 J. 267; 29 M. 373.
 467. Refusal to summon witnesses. 111 See (11) Evidence and witnesses
 468. Omission to record source of information forming the basis of the finding. 7 C. N. 593; See (5) Proceedings See (18) Revision etc. (136)

XXI. ALLIED SECTIONS.

469. (1) Ss. 107 and 145 Cr. P. C.—The mere fact that there is a dispute concerning land, which is likely to cause a breach of the peace does not deprive a Magistrate of jurisdiction to act under S. 107 Cr P C [39 C 150 (F. B.) See also 31 A 449 28 A 405 32 C 965 21 Cr. 134 (C) 7 C. N. 746 5 N 91 16 Cr 211 (M) See 2 Weir 50 28 18 Contin 35 C 117 25 C 559 6 C N 883, 7 C N 29 7 C N 142 1 C J 632 21 W R 67 4 W R 12. 25 A 537. 9 C N. 1471
 470. Where one of the parties is admittedly in possession.—Where the complainant alleges that the accused has threatened to use violence to him, if he should go upon the land of which he is in possession the Magistrate is justified in instituting proceedings under S. 107 7 C N. 558 9 C N 674 26 M. 471. See 7 C N. 746. 6 C 835 7 M 460. 38 A 143. 5 N 91

Note.—But where the party trying to oust the other has a *bona fide* claim to the property, the Magistrate should proceed under S. 145 and not 107 Cr. P. C. 5 C. J. 117 See 3 C. N. 297.

471. Where a suit is pending between parties.—Where the Magistrate, owing to being a joint title of the disputants, is to hold that one of them is in possession exclusion of the other and a suit is between the parties in the Civil Court Civil Court has passed orders for the continued management of the property pending Magistrate should take action under S. P. C. not S. 145. 36 A 19; 27 C. 918. 1 C. J. 632.
 472. But when one of the parties claims exclusive possession, while the other claims joint possession, the proper proceeding to proceed under S. 145 and not 107 C. J. 632.

473. ... to cause ...
 regard to sandal wood tree ...
 idol, a Magistrate should proceed under Cr. P. C. and not S. 145—4 B. R. 439

474. When a competent Court has given a decision on the rights of the parties, the Magistrate should proceed under S 107 Cr. P. C. and not under Chapter XII. 6 C 835; 21 W. R. 17; 16 W. R. 21; Pat 423; Pat see 27 C 33.

475. Parties exercising right of private defence of property.—Where the parties opposing the performance of *lata puga* on a waste land are found to be acting properly and within their rights, and a Magistrate finds that a breach of the peace is likely, he ought to institute proceedings under S. 145 Cr. P. C. and not to proceed under S 107 Cr. P. C.—3 G N 103.

476. Bonafide dispute.—When there is a bonafide as to the right to the possession of land giving rise to likelihood of a breach of the peace it is unfair to bind down the only party who happens to be in possession. The proper course will be either to bind down both the parties or take action under S. 145 12 C. N. 606 See 36 A. 11—Central B S 207.

477. Proceedings taken under S. 107 Cr. P. C. does not preclude action under S. 145 Cr. P. C.—There is nothing either in S 107 or S 115 leading to the conclusion that proceedings taken under S 107 preclude a Magistrate from taking action under S 145 Cr. P. C. [D. A. J. 961 See 20 C. N. 109] But whether after proceeding under S 107 Cr. P. C. it will be proper for the Magistrate to act, under S. 145 of the said Code, depends on the circumstances of each case [39 C. 150 (F. B.) See 36 M. 315 2 Weir 50]

478. It cannot be laid down as a general rule, that simply because members of one party have been bound down under S 107, no order of attachment can be made under S 145 Cr. P. C.—39 C 469

479. Proceedings under S. 145 Cr. P. C. do not preclude action under S. 107 Cr. P. C.—39 C 469

Cr. P. C. But whether it will be proper for him to do so, must depend on the circumstances of each case as it arises—39 C 150 (F. B.) 32 C 966 21 C N 160 36 M 315 2 Weir 50 See 19 C 127 9 C N 126 6 N 94

Note.—But an order under S 107 cannot be made in a proceeding under S 145 Cr. P. C.—[14 A. J. 791] Similarly an order under S 145 cannot be made in a proceeding under S 107—30 C 413 32 C 552 7 C N 174 25 A 537

480. Simultaneous proceedings.—Simultaneous proceedings on same materials under Ss 107 and 145 Cr. P. C. cannot be taken 1 Pat W 546 14 A. J. 791 8 S 207

481. Where parties voluntarily enter into recognizance, an order under S 107 Cr. P. C. is not illegal although the Magistrate has sufficient materials to make an order under S. 145—See 6 W. R. 4

(2) Ss. 144 and 145 Cr. P. C.

482. Where there is a dispute regarding land and there is a bonafide dispute regarding actual possession action should be taken under S. 145 Cr. P. C. and

not under S. 144. Cr. P. C. [11 C. N. 271 27 C. 918, 3 U. B. 17] A Court acts illegally if it resorts to S. 144 Cr. P. C. in order to avoid the labour of taking oral evidence under S. 145 Cr. P. C. [3 Pat. J 213]

483. S. 144 should be preferred to S. 145 when the dispute is not a bonafide one.—The use of S 144 Cr. P. C. is a suitable method of averting a breach of the peace if it is clear upon reading the police report that the claim of party creating the disturbance is not a claim made in good faith.—27 A. 537 28 A 406 See 30 C. 150 (F. B.) 31 Pat J 213.

484. S. 144 instead of S. 145 should be resorted to, when prompt action is necessary.—Where the procedure in S 145 (1) by attachment in the case of emergency will not give the necessary relief in a case where—e.g.—unless crops are promptly reaped they would be ruined, action ought to be taken under S 144 if one of the parties is found to be in possession—3 U B 17 26 M 471 32 C 966 See 27 C 918 19 Cr 1002 (Pat) But See 27 C 785

485. ————

of the peace is impending, it is incumbent upon the Magistrate to maintain the party in possession and forbid the party who is not in possession by an order under S 144 Cr. P. C.—3 Pat W 333.

486. Distinction between the two sections.—Where there is a dispute as to land which calls for settlement, S 145 should be resorted to S 144 is applicable only to temporary orders in urgent cases of nuisance or apprehended danger—19 Cr 1002 (Pat) 4 Pat W 234 See 1 Pat T 44

487. ———— substitution of Magistrate's order in action 145 Cr P C instead—24 C 391

487A. Order under S 145 during the subsistence of an order under S. 144.—It is competent to a Divisional Magistrate to initiate proceedings under S 145 Cr. P. C. during the subsistence of an order under S 144 Cr. P. C.—21 Cr 73 (M)

487B. Order under S. 145 or S. 146 after issuing notice under S. 144.—Order passed under S 145 or 146 after issuing notice under S 144 Cr. P. C. is illegal—32 C 552 16 M T 52

488. Conversion of S. 144 proceedings into one under S. 145 Cr. P. C. without fresh notice not illegal.—On receipt of a police report the Magistrate issued notice to the parties under S 144 Cr. P. C. On a subsequent date, the Magistrate ordered in the presence of both parties

dispute 145 was held— that the omission to serve the notice under S. 145 (1) did not vitiate the proceeding.—4 Pat W 234

(3) 147 and 145 Cr. P. C.

489. Order under S. 145 cannot be made in a proceeding under S. 107 Cr. P. C.

19 M J 18.

490. Dispute about a right to perform puja.—A dispute about the right to perform puja in a temple should be dealt with under S. 117 and not 145 Cr. P. C.—11 M 323 29 M 237 27 M J 547 3 B R 416 37 C. 578—*Contia*—2 Weir 112 24 B 527

Note.—but where the dispute is in effect for the possession of the temple and the right to perform puja therein only a portion of the large relief, S. 145, applies—17 Cr 235 (M)

491. For a comparison—of the scope and provisions of the two sections—See 21 C N 139

(4) Ss. 145 and 522 Cr. P. C.

492. Where an order made under S. 522 Cr. P. C was infructuous and never carried out, it was no bar to the jurisdiction of the Criminal Court under S. 145 Cr. P. C.—18 C. N 1084

493. Ss. 145 and 522 Cr. P. C. compared.—Section 522 which enables a Magistrate to oust a wrong-doer of his possession is limited to cases in which the possession was obtained by criminal force attending an offence and in which there has been a conviction. The provisions of the section cannot be made auxiliary to those of S. 145 Cr. P. C.—(40) 2 Weir 98. See 11 C. 305; 2 Weir 99. 10 P. R. 1917; 37 A. 651.

494. When it is found that neither party is in actual possession.—An order under S. 522 Cr. P. C. cannot be made. It is open to the Magistrate in the event of a probable breach of the peace to deal with the question of possession under S. 145—(33) 2 Weir 675

495. In his opinion entitled to possession, nor can he make declaratory order prescribed by S. 145 (6), in as much as an order under S. 145 Cr. P. C. cannot be made in the course of a criminal trial—(82) 2 Weir 674.

XXII. MAGISTRATES.

(1) Who can act under S. 145 Cr. P. C.

496. (1) Presidency Magistrate.—The Code does not authorise Presidency Magistrates to act under S. 145 Cr. P. C.
497. (2) Presidency Magistrate.—The Code does not authorise Presidency Magistrates to act under S. 145 Cr. P. C.
498. (3) Commissioners of Police—Can act under chapter XII.

Madras—S. 7 Mad Act III. of 1888

Calcutta—If invested under Bengal Act IV of 1896.
Bombay—If invested under Bombay Act IV of 1892 and Act V of 1902

499. (4) District Magistrate.

tates against this view J

(2) Satisfaction of Magistrates.

- 500.

501. Grounds of satisfaction must be set forth in the preliminary order.

- (1) Expressly—See (8) Proceeding (85)
(2) By Implication—See (8) Proceeding (90)

(3) Powers of Magistrates.

502. A District Magistrate can

- (1) Act under Sections 102 and 523 Cr. P. C. with reference to a case under S. 145 Cr. P. C.—2 C J 614; 22 C 893; See also 3 B R 416 13 C. N. 135
(2) Take action under S. 145 Cr. P. C. on a police

- (3) 145 Cr. P. C. here exists no of the peace—
13 C N. 125.

503. A District Magistrate cannot

- (1) Direct further enquiry into proceedings under S. 145—20 C 729.
(2) Direct a subordinate Magistrate to initiate proceedings. 24 C 391 1 Pat W. 258.

504. Sub-Divisional Magistrates.—Have same powers as District Magistrates

505. A Magistrate of the first class at Head quarters—Has local jurisdiction throughout the District 10 C. N 1093

506. 145 Cr. P. C. here exists no of the peace—
13 C N. 125.

507. Magistrates acting under S. 145 cannot

- (1) Delegate their duties to arbitrators, even with the consent of the parties 32 C 552 1 Pat W. 95 1 Pat W. 748 2 Pat J 86; *Contia*—7 C N. 461; 6 C N. civ See also 4 Pat W. 101
(2) Delegate their duties to Subordinate Magistrates. 31 M. 82 See (13) Enquiry (10),

XXIII. JURISDICTION.

(1) *Meaning of the word "Jurisdiction".*

2. The term jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate or exercise any judicial power in relation to it. Such jurisdiction naturally divides itself into three broad heads—namely, with reference to (1) the subject matter of the dispute (2) the parties (3) the particular question which calls for decision. 5 C J 611.

3. Jurisdiction depends on there being a likelihood of a breach of the peace. See (6) Likelihood (38)

The subject matter of the dispute.

4. As to the properties which come and do not come within the purview of the section.—See (7) Dispute 47, 49 to 51.

5. **Movables.**—A Magistrate has no power over movables.—Rat 501 (12) V. N 540 13 Cr 295 (N) 23 P R 1902 See (7) Dispute (45-49)

(2) *Local Jurisdiction.*

6. **General Rule.**—Under S 145 Cr P C a Magistrate has jurisdiction to institute proceedings only in respect of property situate within the local limits of his jurisdiction—17 W R 33 1 C J 329 29 C 885.

7. **Cases.**

(1) **Property partly within and partly outside local limits.**—Where a Magistrate has passed a final order in respect of a property a part of which lies outside the local limits of his jurisdiction, the portion of the order relating to that part will be without jurisdiction.—1 C J 329

(2) **Report of a police officer of another District.**—A Magistrate may act on the report of a police officer of another district in respect of that part of the property in dispute which is within the local limits.—29 C 885.

(3) *Exceptions to the rule.*

8. (1) **Proceedings of a Magistrate not having local jurisdiction will not be void**, when the case was initiated by a Magistrate exercising local jurisdiction before being transferred to his file.—5 C N 686

9. (2) **Situation uncertain.**—Where the situation of the property is uncertain—i.e., it is doubtful in which of the two areas it is situate, a Magistrate exercising jurisdiction over any one of such areas is competent to act.—12 O C 400

10. (3) **Char-lands.**—Where a Char was situate in a river forming the boundary between two Districts and a Magistrate of the First Class in one of the Districts took action, under S 145 Cr P C and found after taking evidence, and local inspection that the char really formed a part of his District, the Magistrate of the other District was not competent to take action on the allegation.

Parties to the proceeding.

517. **Proceedings are not without jurisdiction:**

(a) because some of the parties are concerned only with possession of portions of the land in dispute. 30 C 155 (F.B.)

18. (b) because some persons claiming to have possession in some way, of the lands or of a portion of the land in dispute, has not been made a party (when such person is not concerned in the actual dispute likely to cause a breach of the peace) 30 C 155 (F.B.) See (10) Parties to Proceedings (111)

519. **Third parties.**—A Magistrate cannot declare possession of a third party. See (17) Final order (383)

520. **The particular question which calls for decision.** See (15) Possession and Dispossession (236-237)

(4) *Excess of jurisdiction.*

521. The distinction should not be neglected between things done wholly without jurisdiction and things done within jurisdiction though erroneously done [Per Baron Fiske in 2 M L A 203] Before want of jurisdiction can be predicated, a vice must clearly be established which infects the whole proceedings. There must be an illegality as opposed to an error.

[1]

Order in excess of jurisdiction.

522. (1) **Order for performance of specific acts.** See (17) Final order (322-324 to 339)

523. (2) **Order declaring a party to be entitled to more lands than he has claimed.** See (17) Final order (349)

524. (3) **Orders in favour of third parties.** See 2 Weir 106 (17) Final order (343)

525. (4) **Order made in favour of a party who disclaims all interest.**—6 C N 104

526. (5) **Order made in favour of a party who has been allowed to participate in the proceedings for the limited purposes of subs (5).** 6 C N 104 2 Weir 106

No jurisdiction when a competent Court.

527. (1) **Has recently decided the question of title or possession.**

To take proceedings which necessarily must have the effect of modifying or even cancelling any previous order passed by a competent Court is to assume a jurisdiction which the law does not contemplate. 6 B R 246

528. (2) **Has already seized of the subject matter of dispute.** A Magistrate is not competent to proceed under S 145 with regard to properties which form the subject-matter of a pending suit in the Civil Court. [56 C. 370—*Contra* 30 A 331] The

Magistrate should if necessary proceed under S. 107 Cr. P. C. [30 A. 19]. See (21) Allied Sections (174)

(5) Refusal to exercise jurisdiction.

529. **Meaning**—Any violation of the law which deprives a party to the proceedings from placing the necessary materials before the Court in holding it to arrive at a correct conclusion on two vital points—viz. (1) apprehension of a breach of the peace (2) possession at the date of the preliminary order, would amount to a refusal to exercise jurisdiction by the Magistrate—17 Cr. 217 (M).

Orders amounting to a refusal of jurisdiction.

530. (1) Refusal to summon a necessary witness. [15 C N 91]
 531. (2) Failure to receive evidence tendered by a party [17 Cr 217 (M) 31 C 840 21 M. 561. 16 Cr 239 (N) 4 P R 1916 22 P. R 1916].
 532. (3) Refusal to proceed further after making the preliminary order and issuing notice. 17 B. R 342 (O) A N. 154
 533. (4) Rejection of material evidence arbitrarily 19 Cr 529 (Pat) 31 C. 810.
 534. (i) Reliance on mere evidence of title for coming to a finding on actual possession—16 Cr. 736 (N)
 535. (ii) Failure to find which of the parties was in possession either on the date of the preliminary order or on a date within 2 months thereof (if a party has been wrongfully and forcibly dispossessed) when such decision is possible 16 Cr. 239 (N) 21 P R 1932 32 C 1033.

538. **The High Court's power of transfer**—The High Court has power to transfer proceedings under S. 145 from one Court to another, subject to all the conditions under which a transfer order S. 620 can be made. *Pro*—34 A. 533; 26 M. 148 11 O C 61; 25 C 709 (*Per Chose J*): *Con*—25 B 179. 15 C. N. 331, 8 S 215; 25 C. 709 (*Per Taylor J*).

[In 18 C. N. 393—The Court after carefully considering the cases—24 C 709 25 B. 179 26 M. 145 2 C. J. 113 and 31 A. 531; held "we are of opinion that a party to a proceeding under S. 145 is not entitled to an adjournment of a case under sub. (4) of S. 529"]

537. **District and Sub-divisional Magistrate**—A District Magistrate has jurisdiction to withdraw a case under S. 145 to his own file and transfer it to a Magistrate of the first class subordinate to him.—10 C. N. 1085; 2 C. J. 614; 5 P. R. 1204 22 C. 898.
 538. **S. 192 applies** to proceedings under S. 145 Cr. P. C.—2 C. J. 614. 22 C. 898; 3 B. R. 116. 4 C. N. 821 See 13 C. N. 125
 539. **Transfer by a Magistrate not empowered to do so**.—When a Magistrate empowered transfer proceedings under S. 145 transfer such a case to a Magistrate empowered to act under the section, the proceedings by the latter will not be void.—*Pro*, 4 C. N. 821; 5 C. N. 646 26 C 370; *Con* 150 P. L. 1918
 540. **A Magistrate of the 1st class even when duly empowered to transfer cases, can only transfer an enquiry or trial relating to an offence. He cannot transfer an collateral proceedings like proceedings under Chapter XII—4 C N 421** See 26 C 370.

XXV. MISCELLANEOUS.

(1) Orders of Revenue Courts.

541. (1) When the question of title to certain lands had been definitely determined in a proceeding under the Land Registration Act—*held*—that a Magistrate was not competent to take action under S. 145 (then S. 530) and proceed to consider the question of possession between the parties—6 C 835 [16 W R 25 Appd]
 542. (2) A Collector's order under S. 41 of Bengal Act V of 1875 declaring possession in favour of a party has the force of a decree of a Civil Court and should be maintained by a Magistrate in a proceeding under S. 145 Cr. P. C.—*Beckerhoff J.* 16 Cr. 301 (C).
 543. (3) A Magistrate is bound to uphold recent possession given by a Revenue Court whether its decision is right or wrong—193 P. L. 1912.
 544. **Note however**—Possession given in Butwara proceeding is one of ownership and therefore irrelevant for the purposes of S. 145. See (15) Possession (291)
 (4) An order made in total disregard of a decision under S. 41 Survey Act and of entry in the

Record of Rights is without jurisdiction—21 C N. 1059

545. (5) An order by a Settlement Officer substituting an entry in favour of the unsuccessful party has not the effect of existing in due course of law, a successful party in a proceeding under S. 145 Cr. P. C.—1 Pat W. 612.
 546. (6) Finding of possession by a Mamlatdar under Bomb. Act III of 1874 is not conclusive—See 5 B 357. 15 B 238. 26 B 353.

(2) Miscellaneous.

547. **Appointment of receivers**.—A Magistrate has no power to appoint a receiver after attaching under Subs (4) *Pro*—3 Pat J 147. 8 M T 314 *Con*—13 Cr. 295 (M) 21 Cr 73 (N)
 548. **Admissibility of the Final order in evidence**.—Orders under S. 145 are admissible on general principles as well as under S. 13 of the Evidence Act—29 I. A. 24.
 549. **S. 185 Cr. P. C. does not apply** to proceedings taken under S. 145 Cr. P. C.—12 A J 390

(3) Costs.

550. See S. 148 Cr. P. C. Notes Nus (4-16)

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.

Proposed amendments to the section.—After sub-section (2) of section 146 of the said Code, the following shall be added, namely:—

"Provided that, in the event of a receiver of the property, the subject-matter in dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged."

Arrangement of notes.

S 146 S 331 (1872) S 310 (1861-9)

I. Object Scope and Application of the Section.

- (1) S. 146, corollary to S. 145
- (2) Condition precedent to jurisdiction
- (3) Meaning of "unable to satisfy himself"
- (4) Magistrate's jurisdiction is ousted if it is possible to decide the question of possession.
- (5) S. 146 does not relieve the Magistrate from his duty to decide on merits.
- (6) If the contending parties are found to be in joint possession
- (7) Jurisdiction not ousted because parties are already under security
- (8) Action under S. 146 Cr P C cannot be taken before enquiry is completed
- (9) Magistrate's obligation to take evidence
- (10) Possession irrespective of right or title ousts jurisdiction.
- (11) Documentary evidence cannot be disregarded
- (12) Magistrate cannot "strike off" proceedings
- (13) Magistrate not bound to make local enquiry before passing the order
- (14) Nature of attachment under S. 146 Cr P C
- (15) Fresh attachment after release

- (16) Boundary Disputes
- (17) Property must be capable of being defined.
- (18) Properties which may not be attached
- (19) When subject-matter is divisible only the portion regarding which possession cannot be found, can be attached
- (20) Procedure

II. Receiver and Administration and Disposal of Profits.

- (1) Receiver
- (2) Administration
- (3) Magistrate's power of the disposal of profits
- (4) Withdrawal of attachment
- (5) Magistrate bound to release property on adjudication by competent Court

III. Miscellaneous.

- (1) Revision
- (2) Order binds only actual parties to the Proceedings
- (3) Civil Suits consequent upon the order
- (4) Effect of violation of the order
- (5) Costs and other matters

1. OBJECT SCOPE AND APPLICATION OF THE SECTION.

(1) S. 146 Corollary to S. 145.

- 1 S. 146 Cr P C is a sort of corollary to S. 145 and the legality of an order under it depends on its having been preceded by legal proceedings under S. 145 Cr P C and on the holding of an enquiry as to the fact of possession under S. 145 (1) ending in the Magistrate's finding either that none of the contending parties was in possession at the date of the preliminary order or that it was not possible for him to satisfy himself as to which party was in possession on that date 40 C. 163-34 C. 840-14 C. N. xci 12 C. N. 806 9 C. N. lxxx. 11 Cr. 90 (C). 1 G. L. 86 18 W. R. 4 17 W. R. 53 16 M. T. 52 2 Weir 110 M. H. Pro 28-11-70 2 A. J. 149: 110 J. 242 18.33

(2) Condition precedent to jurisdiction.

2. It is only, when, after making a full enquiry into the *factum* of actual possession the Magistrate finds that it is not possible for him to find who is in possession of the subject-matter of dispute, that he has jurisdiction to proceed under S. 146 Cr P C. An order under S. 146 Cr. P C would be *ultra vires*, unless the Magistrate records a finding that he is unable to find which party is in actual possession under Section 145 Cr. P C [40 C. 105-9 C. N. 847. 27 C. 745: 22 C. 297, 14 C. 361 1 C. L. 86, 14 W. R. 4: 17 B. R. 352 7 B. R. 18-6 B. R. 723: 16 Cr. 739 (M). 16 M. T. 53-2 Weir 110. M. H. Pro 28-11-70-20 Cr. 829 (1st). 1 G. J. 215. 29 Cr. 117 (N)]

(3) Meaning of "unable to satisfy himself."

3. Question of title.—A Magistrate cannot take action under this section merely because he is unable to satisfy himself as to which of the parties is entitled to possession or has a right to the property. Inability to decide the question of a right to the property in dispute will not justify the attachment of the property under S. 146: [6 B R 723, 7 B R 15. See 10 O. C 89]

4. Property in possession of a person other than disputing parties.—Where the land was claimed by one party as usufructuary mortgagee of one S. and by the other party as donee of the same S., and the Magistrate on enquiry found that the property was in fact in possession of S. but who did not claim to be in possession and was not a party to the dispute held that the Magistrate could, under such circumstances, attach the property under S. 146—20 Cr 215 (Pat)

5. When one of the parties has been put in possession by Civil Court.—Where the petitioner was put in possession of the disputed property in execution of a decree obtained by him in the Civil Court, it does not lie with the Magistrate to say that he is unable to satisfy himself as to who is in possession. He should find possession in accordance with the decree and is not competent to attach the property under S. 146.—32 C 739. See 7 C N 115, 6 C N, 541; 14 C N 381. But see 1 C L 273.

6. When none of the parties have complete control over the subject of dispute.—It is only when the Magistrate finds that the struggle for possession is going on and none of the parties are able to prove a complete control over the subject-matter of dispute that the order under S. 146 Cr P C. can be made [5 P R 197]. But where each party is found to be in possession of different parts of the disputed land, a Magistrate cannot pass an order for attachment under S. 146 Cr P C.—[9 C. N 887]

7. Land subject to diluvion.—Land which owing to its remaining under water, cannot be considered to be in the possession of any of the parties, should be attached under S. 146 Cr P C. in the case of a dispute within the meaning of S. 145 (1)—20 C. N 1014

8. Enquiry into possession pending before a Revenue Court S. 146 does not give a Magistrate jurisdiction to pass an order of attachment in a dispute between parties whose rights would have to be determined by Revenue Court.—13 A 394

9. Written statements.—When the proceedings are drawn up, but applied for time to file written statements, held that the Magistrate did not act without jurisdiction in

refusing to grant time and in attaching the disputed land under S. 146 Cr P C.—[14 C. N. 80. See 11 Cr. 99] (C). Con—12 C. N. 82] But when the absence of evidence is due to the refusal of the Magistrate to grant a reasonable period for adjournment, an order of attachment is invalid [1 Pat W. 55]

(4) Magistrates jurisdiction is ousted if it is possible to decide the question of possession.

10. Where, in an enquiry as to possession the parties put in claims based on different titles, one claiming under a Will, another under a partition, settlement and Will and the Magistrate holding that he was unable to decide as to the question of possession, ordered that the property do remain under Court attachment till the parties had settled their differences in Court. Held that the Magistrate acted without jurisdiction and should have decided the question of possession.—S. M. T. 447. 2 Weir 40; M. Cr. Rev. 11 of '06; 99 of '01; 113 of '04

(5) S. 146 Cr. P. C. does not relieve the Magistrate from his duty to decide on merits.

11. S. 146 does not enable a Magistrate to make a short cut across a proceeding under S. 146 Cr P C. on the plea that the claims put forward by the parties are conflicting and require a decision on the questions of title. He is bound, if it is possible to come to a finding as regards the question of possession notwithstanding the difficulty. The special provision contained in S. 146 is not meant to relieve the Magistrate from the duty of deciding on the merits [S. M. T. 447, 2 L. J. 139; 2 Weir 110—See 43 C. 103 W. R. (S. N) 28] An order made after arbitrarily rejecting every piece of evidence that might have led the Magistrate to a correct conclusion is bad [21 C. N. 1039].

(6) If the contending parties are found to be in joint possession.

12. A Magistrate has no jurisdiction to pass an order under S. 106 on his finding that the contending parties are in joint possession of the disputed property. Neither S. 145 nor S. 146 Cr. P. C. applies to cases of joint possession. [10 C. N. 1088 11 C. N. 512; 15 C. N. 205. 9 C. N. 887. 27 M J 109; 2 Weir 108]. Where the rival parties although jointly entitled to the disputed property are found to be in possession of different portions of it, the section will not apply [10 C. N. 887; 11 C. N. 743. 24 W. R. 73] where the possession is by turns, jurisdiction is ousted [See M. Cr. Rev. 11 of '09 and 101 of '04] A Magistrate cannot after finding joint possession direct that the rooms in dispute should not be opened except in the presence of certain public officers [2 Weir 105]

(7) Jurisdiction not ousted because parties are already under security.

13. A Magistrate is not ousted of his jurisdiction to proceed under S. 115 Cr. P. C. and ultimately to

to pass an order under S 146 on finding that neither party is in actual possession, merely because he had passed previously an order under S 107 Cr P. C. against both the parties—18 Cr 123 (C); See 39 C 150 (F. B.)

(8) *Action under S. 146 cannot be taken before enquiry is completed.*

14. No action can be taken under S 146 before completing the enquiry under S 145 as required by S 145 (4). An order appointing a Receiver under S 146 (2) before completing such enquiry is *ultra vires*—13 Cr 536 (N) See 1 O. J 212 11 Cr 90 (C). 12 C. N. 806

(9) *Magistrate's obligation to take evidence before passing order.*

15. Under S. 147 Cr. P. C. the Magistrate has got no jurisdiction to issue any order for the attachment of the disputed property unless and until he has made the enquiry which is contemplated by S 145 Cr P C that is to say until he has received and considered the evidence which the parties put before him—1 O J 212. 20 Cr 117 (N). 40 C. 105 12 C. N. 806 1 C L 80 18 W R 4 31 C 810 11 Cr 90 (C) 2 Wei. 110 2 A J 148 See 14 C N 80. 14 C. N. 81 12 C L 221 1 S. 33; 6 M H. (sp) 4

(10) *Possession irrespective of right or title casts jurisdiction.*

16. A Magistrate cannot proceed to attach the land because the possession claimed is without the "colour of law" If actual possession is established, a Magistrate cannot refuse to recognise it, because in his opinion the right to possess is doubtful [24 W R 40] Where a person is in possession, he is entitled to be declared to be in possession, irrespective of the fact that his possession is only that of an agent [3 C L 91] Possession of tenants is possession of the landlord within the meaning of S 145 and casts jurisdiction under S 146 [15 W R 1 9 C N 887]. See also Madras Cr. R. P. 99 and 149 of 1904 11 of 1906

(11) *Documentary evidence cannot be disregarded.*

17. Where a Magistrate in proceeding under S 145 writes a very brief judgment and without specifically referring to important materials placed before him (e.g.—Record of Rights)—held that the order under S 146 could not be supported [case remanded] 23 C N 910.

(12) *Magistrate cannot "strike off" proceedings.*

18. Where proceedings under S 145. Cr. P C has once been started, the Magistrate has no jurisdiction to strike them off He must pass an order under S 145 or under S 146—20 Cr 461 (Pat) 11 W. R. 9.

(13) *Magistrate not bound to make local enquiry before passing the order.*

19. There is no hard and fast rule of law that a Magistrate is bound in every case to order a local in-

vestigation under S. 148 Cr. P. C. before he can proceed to attach the disputed property under S 146 Cr. P. C.—20 Cr 17 (O.).

(14) *Nature of attachment under S. 146 Cr. P. C.*

20. An attachment under S. 146 Cr. P. C. connotes more than a Civil Court attachment and implies the taking and keeping possession of the property attached by the Magistrate [21 Cr 73 (N) - Con. 3 Pat J 117] The possession of the Magistrate after attachment is on behalf of particular party who may be able to establish a right to possession in the Civil Court [32 C. 856 26 M. 410 10 M. T 573 See 29 C 86] The Magistrate is not entitled after the final decision of the Civil Court to return in his hand the profits derived from the property during attachment [—(13) A N 100] A Magistrate cannot treat the profits as derelict and hold that they had lapsed to Government because the parties had taken no steps to obtain the decision of the Civil Court within a reasonable time [123 P L 1911]

(15) *Fresh attachment after release*

21. Where the property attached was released on the

(16) *Boundary disputes.*

22. "The dispute is as to the boundary between the

point of possession—4 W R 20

(17) *Property must be capable of being defined.*

23. Before a property can be attached, the subject-matter of the dispute must be clearly determined.—11 C. N 198

(18) *Properties which may not be attached.*

What cannot be attached.—

24. (a)

cannot be attached in a dispute between the rival landlords [5 C N 107]

25. (b) *Cattle*—Movable property such as cattle cannot be attached under S 146 But where the possession of the cattle is a necessary concomitant of the property in dispute an order may be passed—1 Pat J. 350 (12) M. N 540

26. (c) *Movable property*—S 146 does not confer on a Magistrate the same power as to attachment of moveables as of immovable property—Rat 691.

- 27 (d) Mosque—an order under S 146 Cr. P. C. attaching a mosque is without jurisdiction—146 P. L. 1903. But See 2 Weir 110; 2 Weir 112

(19) When subject matter is divisible

28. The subject-matter referred to in Ss 145 and 146 may be read as referring to the whole or to any component part thereof. If that component part is distinct and separable from the rest, it cannot rightly be held that because the Magistrate cannot find possession of one of the component parts he is bound to attach the whole—3 C. N. 710 24 W. R. 73 11 C. N. 198
- 29 (2) Where in a dispute concerning certain colonies, the Magistrate found that the first party

were in possession of the office building and all checkbooks and business papers but that the second party had only about 2 weeks prior to the commencement of the proceedings, had in a high-handed and unwarrantable manner, succeeded in obtaining possession of the place, wharves, tramways etc, and the Magistrate considering himself bound to consider who was in actual possession, declared possession in favour of the second party—held, that the order was valid as putting the second party in possession also of the portion of the property in possession of the first party; and that the proper order under the circumstances was an attachment under S. 146 Cr. P. C.—22 C. 257.

(20) Procedure.

30. For Procedure. See S. 145 Cr. P. C.

II. RECEIVER AND ADMINISTRATION AND DISPOSAL OF PROFITS.

(1) Receivers.

31. Receiver cannot be appointed in anticipation.—A receiver cannot be appointed under S 146 (2) Cr. P. C. before the completion of the enquiry under S 145 Cr. P. C.—13 Cr. 536 (N.). 6 M. T. 314
32. The Status of a Receiver.—A receiver appointed by the Court is not an 'owner' of the property he holds as a receiver; if he receives rents profits etc he does not do so on his own account, or as agent or trustee for any person but as an officer of the Court and as manager of the property on its behalf, [30 C. 721; 14 C. N. 651] A distinction should be drawn between a receiver appointed under S. 145 (1) and one appointed under this section. The former has not and cannot exercise all the functions of the latter. He is only an agent or servant of the Magistrate [13 Cr. 295 (M)] The possession of the receiver may for the purposes of S. 145, be regarded as possession on behalf of the party, who should ultimately be found by the Magistrate to be in possession, as for the purposes of limitation the possession of the receiver is held to be that of the party entitled to possession [10 M. T. 573; See. 27 C. 785; 26 M. 410]
33. Powers of the receiver.—A receiver who has been appointed under S 146 Cr. P. C. in respect of any property in dispute, is entitled, unless some special circumstance is established, not only to the subject-matter of the proceeding under S. 145, but also to the accreted land, and to give a good title to a tenant under him—such title will prevail against a trespasser but not against a person who establishes a title to the accreted land, acquired prior to the vesting of the lands in the Receiver [14 C. N. 691; See 10 C. J. 55]. See also, Civil Procedure Code, Order, XL
- (2) Administration.
34. Power to lease out the property.—A Magistrate may lease out property attached under S. 146 [17 W. R. 34] He does not act without

jurisdiction; a compelling a lessee for a term of years on the application of the lessee and making another arrangement [30 C. 32]

35. Administration of temples.—Where the property attached is a temple, the rights of the general community must be preserved. The Magistrate has no jurisdiction to close the temple but may make the best arrangement possible for public worship—2 Weir. 110; 2 Weir 112.
36. Perishable property.—If the property is perishable or difficult to keep in custody, the Magistrate may sell it and keep the proceeds in deposit pending an adjudication by a competent Court.—1 L. W. 1032
37. Live stock.—If a forest is attached, the Magistrate is entitled to the elephants found within it [112 M. N. 540] Similarly if a cow is attached and cattle is found within it, as part and parcel of the property attached, they may be taken into possession [1 Pat J. 356]
38. Nature of Proceedings in administration.—The proceedings of a Sub-deputy Magistrate, deputed to settle lands attached under S 146 Cr. P. C. by auction are not judicial proceedings within S. 146 Cr. P. C.—20 Cr. 257 (Pat).
39. Status of Lessee.—The lessee of a property attached under S 146 Cr. P. C. may be bound down under S. 107 Cr. P. C. if so necessary in the interests of public peace—18 Cr. 1007 (Pat)
40. Duty of Magistrate on appointing Receiver.—The Magistrate should on appointing a Receiver give him proper instructions with regard to the management of the property attached.—18 C. N. 1245.

(3) Magistrate's power of disposal of profits etc.

41. Magistrate cannot deliver any profits or the property, before adjudication by Civil Court, to any of the parties.—A Magistrate cannot direct the property attached to be delivered to any party even after cancelling the proceeding in the ground that there was

no immediate danger of a breach of the peace, until one or the other has obtained an order of a Civil Court in his favour [1 L. W. 1032]. He is entitled to refuse to hand over the profits to any party pending that event [123 P. L. 1911]. But he cannot treat the profits as derelict and property of government, even if the parties take no steps within a reasonable time to obtain a decision of the Civil Court—[121 P. L. 1911]

(4) Withdrawal of attachment.

12. Where a third party comes forward after the attachment and offers to and is able to prove that none of the contending parties had ever been in possession of the attached property or had any interest in the land and that he was in possession of the same, the Magistrate ought to withdraw the attachment—[24 W. R. 10 1 Pat W. 353]. A withdrawal of attachment has the effect of vacating the proceedings. If the property has to be attached again, fresh proceedings must be taken under S. 145—[25 W. R. 68].

(5) Magistrate bound to release property on adjudication by competent Court.

13. Once the Civil Court has determined the rights

of the parties, the Magistrate ceases to have any authority to retain control of the attached property. A Magistrate acts *ultra vires* in refusing to give possession in pursuance of the determination by the Civil Court on the ground that the other party was going to appeal to the Civil Court—[7 Bur. T. 293. See 14 C. N. xc]. A Magistrate cannot refuse to abide by the order of a Civil Court because the appellate Court in an appeal from the Civil Court decree has remarked that the "defendant's evidence of enjoyment is *essentially* weak"—[17 M. T. 322]. It is not necessary that there should be a decree in favour of all the parties to enable the Magistrate to withdraw the attachment. If there is an adjudication by a Civil Court in favour of some of the parties, that is sufficient for the purpose of enabling the Magistrate to walk out of the property—[20 M. T. 217].

44. Decision of Revenue Court.—A person who after the attachment has obtained the order of a Collector under S. 41 of the Bengal Survey Act 1873 in his favor, is entitled to have the attachment reversed—[37 C. 331].

III. MISCELLANEOUS.

(1) Revision.—See Notes under S. 145. Cr. P. C.

15. The High Court has power to alter an order under S. 145 (6) into an order under S. 146 Cr. P. C. in revision [See 14 C. 361 22 C. 297 31 C. 840 18 M. 41]. The High Court may after setting aside an order under S. 146 direct proceedings under S. 145 to continue [14 C. N. xc]. But the High Court cannot interfere with the order of the Magistrate as to the details of administration of the attached property—[24 C. 352 18 C. N. 1215]. A Sessions Judge has no power to revise an order of attachment under S. 146 [15 W. R. 1].

(2) Order binds only actual parties to the proceedings.

16. The word "parties" in S. 146 Cr. P. C. means "parties concerned in the dispute"—[123 P. L. 1911]. An order under this Section will not bind persons who did not participate in the proceedings, though notice was issued upon them to file written statements—[3 C. N. 329]. Tenants of the actual disputants will not be bound by the order unless they are made parties to the proceedings—[5 C. N. 105 2 Weir 106].—See Notes under S. 145 Cr. P. C. Parties newly added in the course of proceedings are not bound by the order—[1 C. N. lxxviii].

(3) Civil Suits consequent upon the order.

17. Suit for damages.—No suit lies for the recovery of damages by reason of the land being kept under attachment under S. 146 Cr. P. C. against the party who had caused proceedings under S. 145 to be started—[See 14 C. N. 96 10 C. J. 226 12 Cr. 14 (C). 6 M. 426].

18. Suit for recovery of possession.—A suit for recovery of possession of property attached

under S. 146 is governed by Arts. 142 or 144 and not Arts. 47 or 120 of the Limitation Act [20 A. 120 4 N. P. 65 1 M. 409 20 M. 110 28 C. 50]. See 32 C. 850]. Such a suit must be brought within 6 years from the date on which the Magistrate takes possession [20 M. 410 20 M. T. 217]. The title of the true owner cannot be extinguished by the operation of S. 24 of the Limitation Act 1877, however long such attachment may continue [20 M. 410]. The fact that neither a set of tenants brought any suit to establish their title to the lands or paid any rent for them to the landlord for nine years cannot be said to constitute an abandonment of rights by the rightful tenants [32 C. 856]. A jalkar was attached under S. 146 Cr. P. C. The plaintiff brought a suit for recovery of the jalkar and proved unimpaired and peaceable possession *fur eleven* years before the attachment and the defendant was proved not

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(4) Effect of violation of the order.

19. Dis-obedience of an order under this Section is not an offence punishable under S. 188 I. P. C. [6 M. J. 237]. But the person who commits a trespass upon and cultivates the attached property, commits the offence of criminal trespass punishable under S. 147 I. P. C. [vii]. A person cannot however be convicted of criminal trespass because he asserts a genuine right which has never been decided against him and which he thought to be valid [18 C. N. 1215]. The Magistrate who orders attachment on the ground cannot himself try the accused for disobedience—[13 C. N. cxxviii. See Bat 1904].

(5) *Costs and other matters.*

50. **Form of warrant of attachment.**—S. & S. L. V No 23 post.

51. **Costs.**—See Notes under S. 118 Cr P. C. An order for costs can only be made by the Magistrate who passed orders under S. 116 Cr. P. C. [13 O. C. 60; 23 M. 373; 10 Q. N. 1010]. But the

amount may be assessed by the successor. [13 O. C. 60; 22 C. 384; 23 C. 37; Con 21 C. 60; 21 C. 757.] If assessed subsequently the assessment must be made in the presence of both the parties [21 C. 757; 23 M. 373].

52. **Omission to sign the order.**—(Omission to sign and merely initialling the order is not a fatal irregularity.—12 C. L. 221.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right of use of any land or water (including any right of way or other easement over the same) within the local limits of his jurisdiction, he may inquire into the matter in manner provided by section 145, and may, if it appears to him that such right exists, make an order permitting such things to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Court adjudging him to be entitled to prevent the doing of, or to do such thing, as the case may be.

Provided that no order shall be passed under this section permitting the doing of anything which the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or occasions before such institution.

Proposed amendments to the section.—For section 147 of the said Code, the following section shall be substituted, namely:—

"147 (1) Whenever any District Magistrate, Presidency Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of use of any land or water as explained in section 147 (4) (whether such right be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may inquire into the matter in the manner provided in section 145.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right.

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or, where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction."

Arrangement of Notes.

S. 147—S. 320 (1861—7)—S. 432 (1872).

1. Change in the Law.**2. Object, Scope and Application of the section.**

(1) The first essential condition for the exercise of jurisdiction.

(2) *Id.*

(3) *Id.*

(4) *Id.*

Id.

(5) Recent use must be established in order that the section may apply.

(6) Right to use a public highway.

(7) Decision by competent Court bars jurisdiction.

(8) Scope of S. 147 compared with the scope of S. 145.

3. Enquiry, Procedure and Evidence.

(1) Nature of the Enquiry.

- (2) Procedure.
- (3) Evidence.
- (4) Parties to Proceeding

4. Orders which may or may not be passed.

- (1) Orders which may be passed
- (2) Disputes within the purview of the section
- (3) Disputes based on religious intolerance
- (4) Disputes not within the section
- (5) Authority to permit or prohibit the doing of a thing
- (6) Frame of the order

- (7) Order stands good only till contrary decision by Civil Court

5. Allied sections

- (1) ss. 147 and 153
- (2) ss. 144 and 147
- (3) ss. 146 and 147
- (4) ss. 147, 145 and 107 Cr. P. C.

6. Miscellaneous.

- (1) E vision
- (2) Effect of the order in subsequent Civil Suit.
- (3) Punishment for disobedience of the order
- (4) Definition of "Easement"

I. CHANGE IN THE LAW.

1. The words "*To do or to prevent the doing of any thing in or upon any tangible immovable property estate*" in the Code of 1852 have been replaced in the Code of 1881 by the following words: "*of use of any land or water (including any right of way or other easement over the same)*". The alteration in language was made with the object of enlarging rather than restricting the scope of the section—[23 M. 97; 21 C. N. 479; 24 C. 734]
2. The word "easements" appeared only in the marginal note of the section in the Code of 1852.

3. The Codes of 1881—9, 1872, 1882, and 1898 compared.—The first essential condition for the jurisdiction of Magistrates is a likelihood of a breach of the peace [See Ss 147 of the Codes of 1852 and 1898 and 532 of 1872] under the Code of 1881—9 (S. 320), this was not necessary [See 2 W. R. 61]. In the Code of 1872, the section conferred authority on the Magistrate to exercise jurisdiction only when the subject of the dispute was open to the use of the public [4 M. 121; 5 W. R. 57; 11 W. R. 3]. No such limitation is imposed in the later Codes. The present Code gives Magistrates the power to refer parties to Civil Courts in case of such disputes as are mentioned in the section, if they think proper. [Note the word "may" in S. 147]. No such power existed under the Code of 1861—9 [See 14 W. R. 23; Cf. 24 W. R. 20].

120 (125)], now no longer therefore holds good.

II. OBJECT, SCOPE AND APPLICATION OF THE SECTION.

- (1) *The first essential condition for the exercise of jurisdiction.*

4. A Magistrate can take action under S. 147 Cr. P. C. only when he is satisfied that a real danger of a breach of the peace occurring, exists. If the danger is imminent, it is sufficient that the Magistrate is satisfied. [23 M. 97; 7 M. J. 460; 7 C. N. 778]. In 4 C. N. 779 the word is held—to refer to use by party other than a person in possession [4 C. N. 779].

Note—The word "dispute" means an actual dispute and not a mere discussion or verbal altercation between parties claiming rights of the kind described in the section—5 C. 194.

(2) *Scope of the section.*

5. S. 147 does not apply to cases where dispute as to the title or possession of the land itself is involved [16 O. C. 192; 4 C. N. 779]. The section does not enable a Magistrate to make a purely declaratory order. It enables him to prevent arbitrary interruption by any person of rights actually enjoyed which have been enjoyed by the public or a person or class of persons [5 C. 194; 6 W. R. 74; 14 W. R. 29; 24 W. R. 20]. A Magistrate should avoid a long and complicated enquiry

into the rights of the parties where an order under S. 107 Cr. P. C. would serve his purpose.—[21 C. 727; 23 C. 557]

(3) *Object of the words used in the section.*

6. (1) The word "use".—There is a conflict of rulings as to the scope of this word. It has been held that the word "use" is wide enough to include "user by person in possession" [29 M. 97; 7 M. J. 460; 7 C. N. 778]. In 4 C. N. 779 the word is held—to refer to use by party other than a person in possession [4 C. N. 779].
7. (2) The word "person".—The 'person' spoken of in S. 147 must evidently be the person claiming a proprietary right in the tangible immovable property in question [2 C. N. 670 (672)]. It is sufficient if a person claims for himself the right in question, though it is derived from others.—[23 C. 55]
8. (3) The expression "land".—In S. 147 does not necessarily include buildings [37 C. 574]. A privy is neither 'land' nor 'water' nor is the use of it an easement over the same [15 B. R. 329].
9. (4) The word "easement".—is the section includes profits a prendre [23 C. 55; 21 C. 727]. Section 147 is not confined to mere [12 Cr. 319 (C)]

(2) Procedure.

18. In long enquiries.—The proper course for a Magistrate to follow in a case under S 117 Cr P C is to lay down such of the persons as are likely to disturb the peace under S 107, if the case involves a long and complicated enquiry and the presence of a great number of people—23 C 557; 21 C 737.
19. Opportunity to show cause.—A Magistrate is bound to give the parties an opportunity to file written statements and to produce evidence—15 C N 667; 4 M 121, 20 Cr 107 (N); 20 Cr 110 (N); 103 P L 1009; 101 P L 1007.
20. Formal proceeding not compulsory.—S 147 does not require the Magistrate formally to record a proceeding that there is in his opinion, a danger of a breach of the peace—2 C N 670; 27 M J 565; Con 2 Weir 117.

[Note.—But an order cannot be passed in the absence of a complaint—5 W R 37.]

21. Notice.—An order should not be passed without complying with the procedure prescribed and without giving notice to party concerned to show cause why an order should not be passed—103 P L 1007; 7 P R 1937; 23 P R 1902.

Note.—Notice to servant is not notice to the master—21 C 727.

22. Ex parte order should not be passed.—A Magistrate does not act properly in passing an *ex parte* order in cases under S 117 Cr P C—4 M 121.

(3) Evidence.

23. Opportunity of calling evidence must be given.—An enquiry under S 117 has to be made in the manner provided by S 145 Cr P C and Magistrate conducting such enquiry is bound to record the evidence adduced by the parties. Failure to give the parties the opportunity of calling evidence affects jurisdiction—[20 Cr 107 (N); 20 Cr 110 (N)].
24. Order must be based on evidence.—An order under S 117 cannot be based merely on the written statements of the parties or merely on the report submitted by a subordinate Magistrate deputed to hold a local enquiry. Evidence of facts justifying the order must be recorded and legally brought on the record. A Magistrate is bound to take evidence which may be produced by the parties and any further evidence that he may find necessary under S 145 (1) before he can make an order under S 147 Cr P C—27 C 727; 30 C 918; 4 C N 779; 5 W R 57; 9 W R 64; 11 W R 3; 14 W R 28; 7 B L 379; 3 B R 416; 4 M 121; 20 M 237; 2 Weir 118. See 3 C L 134; 34 C 840; 33 M J 78.

25. Local enquiry.—The rule that in Criminal cases, Courts are only justified in holding a local inspection in order to explain the facts appearing in evidence, does not apply to cases under S 117 Cr P C; nor is there anything in the law to prevent the presiding Magistrate from making a local investigation himself, provided, he records what he saw, and does not act upon hearsay evidence—[12 C 310 (C)]. But although the report of a subordinate Magistrate deputed to hold a local enquiry under S 145 (1) may be read as evidence in the case, a Magistrate is bound to record evidence which may be produced by the parties and cannot base his order on that report alone—[33 M J 78; 4 C N 779; 34 C 840; 3 C L 134; 7 B L 329; 9 W R 64; 2 Weir 118; 3 B R 416]. But where there is nothing to show that the parties tendered any evidence which the Magistrate refused, an order based on such report and a consideration of the written statements of the parties was upheld—[17 C 748 (V)].

26. When evidence need not be recorded.—Evidence need not be gone into when the opposite parties' pleader admits the claim of the petitioner—[7 C N 351]. But a Magistrate can act on an admission only when it is made in clear and express terms—[30 C 918].

27. Power to resummon witnesses after close of the case.—It is discretionary with the Magistrate after the petitioners had closed their case to allow witnesses to be resummoned upon a petition presented towards the end of the enquiry—17 M T 225.

28. Onus.—The burden of proving the existence of rights of the nature of easements lies on the person alleging them, such rights being different from the ordinary rights of owners of land—11 C 52; 11 W R 3.

- 28A. Evidence of title.—In a proceeding under S 147 the Magistrate may if necessary, take and consider evidence of title to enable him to decide the question of actual possession, but such evidence should be used only to "supplement" the evidence of user—14 M 138.

(4) Parties to proceeding.

29. S 147 Cr P C contemplates an order to be

order in favour of persons but parties to proceeding is illegal—[7 M 461]. It has been held that a Magistrate cannot admit parties to a proceeding under S 145 [24 C 734 but see Notes under S 145 (1) Parties to Proceeding]. A manager or servant is not a proper party—[See 21 C 727; 21 C 915; 2 C N 670 but see 31 C 44 (F. B.)]. In a dispute between license proprietors are not necessary parties—[23 C 55].

IV. ORDERS WHICH MAY OR MAY NOT BE PASSED.

(1) Orders which may be passed.

30. Removal of obstructions.—A Magistrate is competent under S 117 to direct the removal of a *bandh*, the erection of which has obstructed the

flow of water, for the purpose of irrigation from a certain channel—[7 C N 67; 5 C N 273; 15 C J 267; 13 W R 54; 6 W R 63] or the removal of an obstruction to a right of way

V. ALLIED SECTIONS.

(1) *Ss. 147 and 133.*

61. An order under S. 147 cannot be made after proceeding under S. 133 Cr. P. C. without taking a fresh proceeding [15 C N 667]. The fact that S. 133 Cr. P. C. expressly provides for an order by the Magistrate directing the removal of an obstruction to pathways does not necessarily imply that a similar order cannot be passed in a proceeding taken under S. 147 Cr. P. C. [26 M. J. 227. Can 4 M. 121. 1 Weir 143. 5 W. R. 5] where the dispute is concerning the right to use water which the other party had obstructed by putting up an embankment, a Magistrate should proceed under S. 147 and not S. 133—[13 W. R. 51]

(2) *Ss. 144 and 147.*

62. The special jurisdiction under S. 147 Cr. P. C. bars the general powers given by S. 62 (=S. 144 Cr. P. C.) [3 M. H. (sp) 23]. A Magistrate is legally competent to pass an order under S. 147 Cr. P. C. within a week of passing an order under S. 144 Cr. P. C. if the likelihood of a breach of the peace still existed—[26 M. J. 223]

(3) *Ss. 146 and 147.*

63. A Magistrate after passing an order under Ss. 14 Cr. P. C. cannot, on the report of the *Teshildar* observing that an attachment of the property was impracticable, cancel the order and substitute an order under S. 147 Cr. P. C. instead—S. 367 does not apply. He could not pass an order under the latter section without taking fresh proceedings.—16 O. C. 192

(4) *Ss. 147, 145 and 107 Cr. P. C.*

64. A Magistrate has a discretion to proceed either under S. 107 or S. 147 or S. 145 Cr. P. C.—[7 M. 460. 29 M. 97] where the dispute is regarding matters not cognisable by Civil Court, a Magistrate should proceed under Chapter VIII instead of S. 147, if he apprehends a breach of the peace [14 B. 23]. A Magistrate is not legally competent to pass an order under S. 145 after proceeding under S. 147 without drawing up a fresh proceeding [19 M. J. 18 (19)]

VI. MISCELLANEOUS.

(1) *Restraint.*

65. The High Court has no jurisdiction to interfere if the proceeding is in intention and in fact a proceeding under S. 147 [13 Cr. 495 (A) 31 A. 160]. But it will interfere if the order is without jurisdiction or obviously unreasonable and unjust—[10 Cr. 797 (M) 36 M. 275. But See 7 M. 460. 29 M. 97] See Notes under S. 145 Cr. P. C. *Supra*

(2) *Effect of the order in Subsequent Civil Suits.*

66. The fact that a Magistrate has declared a right of way in favour of a party claiming the right

in a proceeding under S. 117 Cr. P. C. does not relieve that party from the onus of proving the claim in a subsequent Civil Suit brought to establish the right.—2 C. L. 555 (560) [F B]—Overruling 21 W. R. 140

(3) *Punishment for disobedience of the order.*

67. An order which declares that as between the contending parties, certain land in dispute does not belong to the public, is not one, the contravention of which is punishable under S. 188 I. P. C.—24 W. R. 20

(4) *Defulsion of Easement?*

68. See S. 4 of the Easement Act (V of 1882)

148. (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him

with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid

(2) The report of the person so deputed may be read as evidence in the case

(3) When any costs have been incurred by the party to a proceeding under this Chapter for witnesses, or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct

by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

Proposed amendments to the section.—(6) In sub-section (1) of section 148 of the said Code, after the words "District Magistrate" the words "Chief Presidency Magistrate" shall be inserted,

PART V.

INFORMATION TO THE POLICE AND THEIR
POWERS TO INVESTIGATE.

CHAPTER XIV.

154. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Notes.

1. Meaning of the word "Information"—The word "Information" is not defined in the Code. To inform against somebody is to communicate facts by way of accusation against him. The word has been deliberately substituted for the word "complaint", used in the Code of 1872 to avoid confusion with the same word as defined in S 4 (1) (h) *supra* and dealt with in Chapter XVI of the Code.

2. Applicability of the Chapter to the Police in Calcutta and Bombay.

(1) Chapter XIV of the Code except S 155 *infra* does not apply to the Police in the town of Calcutta—15 C 595 (T. B.)

(2) The application of the Chapter to the Police in the town of Bombay was formerly confined to S. 155 only [21 B 493]. It has now no application [S. 2 (1) and Schedule of the Bombay Police Act (IV of 1902)]

(3) What is meant by First Information.

The law does not contemplate that when in the course of investigation, something has been elicited, which shows that an offence has been committed, a first information can be recorded. In every trial, it is important that it should be known to the Judicial Officer what are the facts given out immediately after the occurrence and reported to the Police and the object of the first information is to render him so acquainted—[7 C N. 345—See 21 Cr 457 (N) (11) M N. 373]. The object of a first information being to show what was the manner in which the occurrence was related when the case was first started, it should always be carefully and accurately recorded [16 C N 145]. The first information is the first step in the proceeding—*Per Sankaran Nair J.* [32 M. 258 (F.B.)]. The information is really given (no matter in what form) which the police may select and record.

as the First Information—7 C N. 345; 8 C N. 218; 6 C N 921]

(4) What is not First Information.

(1) "What is not First Information."—there recorded a statement made by him, and

(2) "What is not First Information."—an officer in charge of a Police Station, and it was recorded, held—that the statements recorded were inadmissible in evidence as a first information under S. 153(3) of the Evidence Act—8 C N. 218(220)

(3) Information given to a village Magistrate and transmitted to the Police—when a person gives information or makes his complaint to the village Magistrate, and the latter forwards it to the Station House Officer, that person is not the first informant but the village Magistrate is. The statement taken down by the village Magistrate cannot be regarded as legally made under S. 154 Cr. P. C. but one really made under Ss. 161 and 162 Cr. P. C.—*Per Nair J.* [Benim and Munro J. J. Contai] in 32 M. 278 (F. B.): 31 M. 506. Can—24 M. 355.

(4) Information recorded after commencement of investigation—A, finding his brother B. to be missing, gave information to the Sub. Inspector of Police but the latter did not record it under S. 154 Cr. P. C. Nevertheless he commenced investigation; and after four days,

6. **Duty of Commissioner of Police.**—The Commissioner will see to the maintenance of cordial and intelligent co-operation between the Police in different districts and between the Police and the Magistracy, the organisation of security proceedings under the Cr. P. C., the surveillance of bad characters and the measures of the control of crime on the borders of British territory and Native States.—*Punjab Pol. Cr. p. 211*

6. **Co-operation of Mukkadams.**—It is most important that the Police should secure the ready co-operation of the landed proprietors and responsible of villages known as Mukkadams. These functionaries can do much more than to assist or thwart the Police, that it must always bear in mind that there are the rule of Cr. P. C. P. 1 Man p. 26

150. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. A police-officer knowing of a design to commit any cognizable offence may arrest without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. A police-officer may of his own authority interfere to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

153. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

Notes.

1. **The section does not apply to Presidency towns.**—The section does not apply to the Police in the towns of Calcutta, Bombay and Madras. For similar powers in Calcutta [See Ss. 55 and 56 of the Calcutta Police Act IV of 1846] in Bombay [See S. 4 of Act IV of 1882 and Bombay Act IV of 1902, Act XLVIII of 1900] in Madras [by Madras Act III of 1849, S. 32]
2. **False weights and measures.**—See (1) Act XXXI of 1871 (Indian Weights and Measures of Capacity Act and the rules framed under S. 11 of

that Act) (2) Chapter XIII I. P. C. which deals with offences relating to weights and measures.

3. **Powers confined to the officer in charge of a Police Station.**—S. 153 Cr. P. C. expressly authorises an inspection of the weights and measures by an officer-in-charge of a Police Station. In comparing weights used in the bazar. Some reasonable allowance should be made for wear and tear, and for the rough and ready methods of bazar shop-keepers.—20 P. R. 1913.

PART V.

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as the First information—7 C N 345 8 C N 218, 6 C N 921]

- (4) **What is not First Information.**

(1) "What is not First Information."—there recorded a statement made by him, and had the writing containing the statement so recorded, attested by the witness, it cannot be regarded as evidence. The statement may be proved only in the ordinary way by one who heard it, with recourse to the writing to refresh the memory, if necessary.—6 C N 921.

(2) "What is not First Information."—an officer in charge of a Police Station, and it was recorded, held—that the statements recorded were inadmissible in evidence as a first information under S 153(3) of the Evidence Act—8 C N 218(220).

(3) **Information given to a village Magistrate and transmitted to the Police**—when a person gives information or makes his complaint to the village Magistrate, and the latter forwards it to the Station House Officer, that person is not the first informant but the village Magistrate is. The statement taken down by the village Magistrate cannot be regarded as legally made under S 154 Cr. P. C. but one really made under Ss. 161 and 162 Cr. P. C.—*Per Nair J* [Hassan and Munro J J. Contra] in 32 M. 255 (F.B.)—31 M 506 Com—28 M. 245.

(4) **Information recorded after commencement of investigation**—A. finishing his brother M. to be missing, gave information to the Sub-Inspector of Police, but the latter did not record it under S 154 Cr. P. C. Nevertheless he commenced investigation, and after four days,

is in practice always and very rightly produced and proved in criminal trials, is not a piece of *substantive* evidence, and it can be used only as a previous statement *admissible* to corroborate or contradict the author of it [17 C N. 1213. See 14 P W. 1909] A report of the commission of an offence made at a *thana* may be used to corroborate or cross-examine a witness at the trial, but such a report is no evidence of the facts therein mentioned [(97) A. N. 47] The diary in which the F. I. is recorded is admissible in evidence as also any memorandum by the Police Officer of what the informant said, to acquaint the trying court with the facts as stated immediately after the occurrence to the police [7 C. N. 345]

(3) **Evidentiary value in a different case.** The first information in a *different case* can not be put in evidence as evidence of the facts stated therein, but it may be used to cross-examine a witness.—See (97) A. N. 47

7. **Duty of police officer to make a truthful record.**—A police officer is bound to enter truthfully in the general diary all reports of cognizable or non-cognizable cases made to him at the *thana*. If he makes a false report, he is liable to be punished under S 177 I. P. C.—29 A 151

8. *Prosecution for giving false information to the Police.*

(1) **No sanction under S. 195 (1) (b) is necessary** when the false charge made to the Police have not followed up by a judicial investigation thereof by a court.—43 C. 1152 14 C 707 (F.B.) 33 C 150 184 24 W R 41, 11 B R 1160 3 A 222 10 M 232 7 M 292 12 P R 1905 5 Bar T 129

(2) —

See 5 C 184 5 C 291 6 C 496 6 C 582 7 C 87 11 C 79 14 C 707 (F.B.) 32 C 180 8 C L 289, 23 W R 10 3 A 222 7 M 292

(3) **The mere fact that the false charge has not been reduced to writing in accordance with S 154 Cr P C will not prevent the statement from being a false charge**—27 M 127

(1) **Legal proof of the F. I.**—Having regard to the provisions of S 154 Cr P C. and S 91 of the Evidence Act, the only legal proof of the contents of a first information to the police is the written record of the same except where second-

nary evidence is legally admissible—1 Bar S. 572; (72-92) L. B. I. 572.

(5) —

overruled 31 M 300, and 20 M 3 102 which has distinguished 32 M 258 (F. B.) [See per *Abdur Rahim J*] In view of the opinion of the majority in 32 M 258 (F. B.) a prosecution under S 211 I P C would lie in such a case.

9. **Compensation for false information leading up to a trial.**—See Notes under S 250, Cr P C *infra*

10. **Effect of omission in the F. I.**—The initial report of an offence to the Police is always of great importance, in every criminal case, when it has been made a *considerable time* after the occurrence, and by a person who is in a position to know the facts and the persons concerned, no person should be convicted whose name is not mentioned therein as one of the offenders, particularly when there is no likelihood of his name being omitted—44 P W 1909 See 7 P R 1689

11.

See at p. 264 the commission of a

12. **Record of information, a public document**—Information relating to the commission of a cognizable offence given orally to an officer in charge of a Police Station is a public document within the meaning of S 74 Evidence Act, and its contents may be proved by a certified copy under S 77 Evidence Act.—See (92-96) U B. I. 24(25)

13. **Copies of first information.**—No document recent or official paper of any kind or any copy

14. **Court-fee** Information to the Police is not a complaint within the meaning of S 4(1) (b), and is not chargeable with any Court fee See S. 19 Cr. P. C. of the Court Fees Act

155. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such cases or commit the same for trial, or of a Presidency Magistrate.

Investigation into non-cognizable

cases.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

Notes.

1. Subs (2) is mandatory. A police-officer has no power to enter upon the investigation of a non-cognizable case without the order of a Magistrate as required by subs (2)—24 C. 641, 26 B. 150 (156) [F. B.]; Rat 188, 10 P. B. 1498.

2. Report unless made in accordance with subs (2) is a complaint.

Where a police-officer of his own motion, as where he had seen the alleged offence committed, makes a formal report or complaint, it should be treated as an ordinary complaint within the meaning of S. 250 Cr. P. C.—26 B. 150 (F. B.). Rat 8 See Note below.

[Note.—It has been held in (11) P. B. 2—q. 10 fig (34-06) U. B. 125, that the police-officer in such a case can not be treated as a mere complainant and examined on oath. His report should be treated as a police report within the meaning of S. 190(1) (b) Cr. P. C.]

3. Powers of a Magistrate under subs (2)—It has been held that the Section is an enabling section conferring powers on the police-officer, but it confers no power or authority on a Magistrate to direct a local investigation by the police or call for a police report. Such power can only be exercised in accordance with S. 252 when (12 B. 161 (163) See 20 M. 387 (702) A. N. 135) on the other hand, it has been held that such power can be exercised under Sub Cl. (2) even before the examination of the complainant (8 B. R. 589, (11) U. B. 2—q. 10 See 16 C. N. 1017, 1 L. B. 137; 2 B. L. (S. N.) vi. 8 W. R. 12, also G. M. T. 229, 11 A. J. 331).

4. Report submitted by a police-officer. The term is limited to a report by police-officers who investigated a non-cognizable case under S. 153 Cr. P. C. under

the orders of a Magistrate having power to do such a case [11 A. J. 331 See (11) P. B. 2—q. 10]

5. Prosecution before police report declaring information to be false.—It is contrary to the method and the spirit, contrary to the whole system of our criminal procedure, if the police should be allowed to prosecute "and S. 211 P. C., the informant of a non-cognizable offence, after obtaining permission, investigate and investigate, but without admitting the report and before the case has been disposed of by the Magistrate.—17 B. R. 63]

6. Delegation of duty.—It is questionable whether a Police Inspector can really as a Magistrate to investigate a non-cognizable case can legally delegate the duty of making an investigation to a Civil Constable.—Rat 488.

7. No power to arrest without warrant.—The power to arrest without warrant is represented by this section from the police, in the course of the investigation of a non-cognizable offence.—(77-01) U. B. 1, 31 (33).

8. Magistrates empowered to act under sub cl. (2).—See Sub Cl. (2) infra. But the power is erroneously exercised, the investigation will be cured by S. 520 (1) Cr. P. C.

9. Liability for false only.—See Note No. under S. 154 supra.

10. Powers of Magistrates when to be exercised.—See Sub Cl. C. Cr. P. C. distal 207-71

11. Duty to keep a diary.—It is incumbent on a Police-officer, who investigates a non-cognizable case under the orders of a Magistrate, to keep the diary for which provision is made in S. 17 Cr. P. C. and the omission to keep such diary deprives the Court of the very valuable assistance which such diaries give, if legitimately used.—16 P. B. 1918. See 19 A. 200 (F. B.) [Per Ely C. J.]

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV. relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Notes.

1. Change in the Law.—cl. (3) of the section is new. There was no provision of a similar kind in the former Codes.

2. Scope of clause (3).—When a petition filed before a Magistrate empowered to act under S. 190 Cr. P. C. contains allegations which lead to

the suspicion of the commission of some offence, the Magistrate may under S. 156 (3) direct the Police to investigate, and upon the submission of the Police report, may hold a judicial enquiry himself under S. 159 Cr. P. C. without proceeding under Chapter XVI. Cr. P. C.—8 B. R. 589 30 C 223. Con. 10 M. T. 120

[Note.—In 10 M. T. 120 it has been held that on presentation of criminal complaint, a Magistrate is bound to take cognizance of the crime and proceed in the manner prescribed by Ch. XVI. and has no option to refer it to the Police under S. 156 (3)]

3. Refusal to entertain complaint because case was cognizable by the Police.—A Magistrate cannot refuse, when properly called upon to do so, to exercise jurisdiction merely on the ground that the complainant might reasonably have had recourse to the Police instead of

the Magistrate. See *Punj. Cir.* Vol II. p 163 et *Seq.* and 4 B 489. 7 C. 157.

4. Sessions Judges cannot act under the Section.—S. 156 Cr. P. C. only gives power to a Magistrate empowered under S. 190 Cr. P. C. to direct an investigation by the Police into a cognizable case. So a Court of Session has no power to order such an enquiry, and such order, if made, is *ultra vires*—11 P. R. 1910

5. C. I. D. Officer can exercise powers under the Section.—See 35 M 397 (F.B.) [*Abdur Rahim J. and Sundara Aiyar J.—Contra*] Con. 35 M. 247 (F.B.)

6. Delay in investigation.—If there is delay in investigating by the Police it is the duty of the Committing Magistrate and of the Sessions Judge to inquire fully into the circumstances of the delay and to consider its bearing on the prosecution story—2 B R 1092.

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed to the spot, to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided as follows:—

(a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot,

(b) if it appear to the officer in charge of police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section.

Proposed amendments to the Section—In section 157 of the said Code—

(b) In sub-section (1) after the words "one of his subordinate officers" the words "not being below the rank of sub-inspector" shall be inserted, and for the words "and to take such measures as may be necessary," the words "and if necessary to take measures" shall be substituted

(b) In sub-section (2), after the words "that sub-section," the words "and in the case mentioned in clause (b) such officer shall also forthwith notify to the informant, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated" shall be added.

Notes.

1. "Information received."—S. 157 Cr. P. C. empowers a Police Officer to take action when he has reason to suspect the commission of a cognizable offence, "from information received or otherwise." The phrase "information received" undoubtedly refers to information furnished

under S. 154 Cr. P. C. A telegram informing him that an offence has been committed is not such an information—15 Cr. 222 (M); 14 C. N. 333.

2. S. 154 and S. 157 compared.—Whereas every information covered by the former section must be referred to writing as provided in the

section, it is only information in which causes a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the Police Officer to whom it is given, which compels action under the latter section, although of course a report would be sent to the Magistrate—*Panji. Cir. Ch. XIV p. 171*

3. Village gossip is not information.—When a police officer hears of an alleged offence from less reliable sources than information taken recorded under S. 151 Cr. P. C.—*village gossip*—*or a rumour* and holds a preliminary and informal enquiry to verify it, his action does not amount to an investigation under S. 157 Cr. P. C.—*15 Cr. 622 (M)*

4. Police officers entitled to investigate.—S. 157 to 167 Cr. P. C. leaves no doubt that the Police Officers entitled to investigate an offence are the Police Officers referred to in the Criminal Procedure Code, i.e., the Station House Officer or his Subordinate or within the limits of the local area of his jurisdiction. *There is an exception of the C. I. B. when one of such officers is not legally competent to investigate and his evidence is not admissible under S. 156 Evidence Act—37 M 247 (F.B.) also 37 M 397 (F.B.) (P. H. L. B. and Sandhu Jigar JJ.)*

5. An "occurrence report" must be sent.—The sending up of an occurrence report to the Magistrate is an essential preliminary under S. 157 to the commencement of an investigation.—*[15 Cr. 622 (M) 18 38]* The report required by this Section is the best report of an offence, which an officer in charge of a Police Station is required to make to a Magistrate as soon as he receives information of an offence, and before entering upon its investigation. *[See Bomb. Pol. Man. p. 91]* Failure to send the report is a serious neglect of duty. Such conduct on the part of the Police would lead to a grave suspicion that the Police were conducting false evidence. *[18, 38]*

6. Object of the Report.—The object of this provision is obvious, and it involves more than a mere technical compliance with the law. The Magistrate is primarily responsible for the condition of the District as regards reputable crime, and he is not at liberty to direct himself of that responsibility or to relax that supervision over crime which the law intends that he should exercise. It is his duty to know and consider each cognizable case, as soon after its occurrence as possible.—*Smyth p. 62*

7. Procedure.—In *Burma*, the report must be submitted through the District Superintendent of Police or failing him, through the Assistant Superintendent. *It cannot be sent direct [See Bar. Gaz. 1879 P. H. p. 189]* In *Bombay* the report "is to be made direct to the Magistrate in order that he

may have an early information and be able to act, if necessary under S. 159 [See Bomb. Pol. Man. p. 91.]

8. The report is not a public document.—An occurrence report under S. 157 Cr. P. C. is a public document within the meaning of Evidence Act and the accused is entitled to copy of such report before trial.—*29 M. 149 [See Bombay Jigar J. ibid.]*

9. Magistrates powers on receiving report.

(a) Enquiry under S. 160 Cr. P. C.—Report submitted under S. 157 Cr. P. C. can under S. 177 Cr. P. C. be sent to the Magistrate to proceed under S. 159 Cr. P. C.—*1152, 14 C. N. 371*

(1) A police report under this Section was jurisdiction to a Magistrate to enter an enquiry. But the Magistrate is not bound upon an enquiry to call evidence. He may if as he thinks expedient, take no action or take action under the report under S.—*2 W. 119, 11, B. 197*

10. The report is not a complaint.—submitted in the usual way under S. 157 is not intended to be and cannot be as a complaint within the meaning of Cr. P. C. *[80 C. 1]*

11. Power to act in the jurisdiction of another Police Station.—In S. 157 there is no provision preventing the Police Station from acting under the jurisdiction of another Police Station. *[12 P. H. 1915]*

12. Power to lock up the door of suspect's house in another Police Station.—See Notes under S. 157 Cr. P. C. *infra*.

13. Investigation into petty cases.—Investigation should ordinarily be made only of a petty nature, i.e., when the report to the station is less than Rs. 50 or of such a nature as not to be easily able or where the case is so trivial that best for all parties to leave it alone.—*Pd. Code pp. 371 and 375; Pol. Man. 2 and 4th Ed. See X. p. 139; Malaviya P. Vol. I, p. 311.*

14. Investigation should be conducted at the spot whenever possible.—See *38 Man. p. 90*.

15. Investigation by another officer no sufficient ground exists.—When sufficient ground for investigation has been for an officer in charge of a police station, an officer is competent to make such investigation unless he is authorised by a Magistrate to do—*Cal. H. C. Cir. O. dated 20-7-71.*

158. (1) Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior of police as the Local Government, by general or special Reports under section 157 how submitted appoints in that behalf

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Notes.

1. Stage of the case at which Magistrate may act under S. 159 Cr. P. C.—An enquiry can be made under S. 159 only on a report submitted under S. 157 (1) Cr. P. C., on a report made before and not after the police investigation or enquiry into the case has been completed. The former is the preliminary report and the latter is the final report (generally called the *khatma*)—[4 C. N. 351 32 A 30 30 C 923 (199) A. N. 87. See also 43 C 1152 4 L B 197]

2. Cases.—So where the information referred to the offence of criminal trespass, into a house with intent to have improper intercourse with one of the female inmates, but the police reported that they did not believe the object of trespass but were not disinclined to believe the charge of trespass—held—the report was not within the terms of S. 157 Cr. P. C. and the Magistrate could not therefore act under S. 159 [4 C. N. 351] A Magisterial enquiry held by a Deputy Magistrate.

3. Nature of the enquiry.—The enquiry authorised by S. 159 is a preliminary enquiry and not a supplementary or further enquiry subsequent to the receipt of a report by the police after full

investigation into the truth of the information lodged under S. 154 Cr. P. C.—[(199) A. N. 87; 32 A 30. 17 C N 824] Once a police report declaring a charge of a cognisable offence to be false is accepted by the Magistrate, he cannot direct the police to send up a charge sheet for the offence, if there is nothing in the report or in the materials before the Magistrate to support a charge of that offence [11 C. N. 832]

4. Magistrate acting under S. 159 Cr. P. C. should not try the case.—If a Magistrate takes an active part in the arrest of persons charged with having committed an offence and tries them himself on that charge, he is bound to state to the accused, so far as he can, what are the facts he himself has observed and to which he can bear testimony; and the prisoner in such a situation has a right, if he thinks desirable, to cross-examine the Judge whose evidence should be recorded and should form part of the case. The better course, however, for the Magistrate would be to decline to try the case, and ask that it should be tried by some other Judge.—20 W R. 76 (Cr) See 20 C. 857.

5 The section does not apply when a complaint is made direct to the Magistrate. The proper procedure in such a case is to proceed under Chapter VI Cr. P. C.—See 30 C 923; 10 M T 220.

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being Police-officer's power to require attendance of witnesses within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Notes.

1. Order in writing.—The order must be in writing, and a person is bound to attend. Where a Police Inspector sent a Constable to bring two persons without an order in writing, and a person induced them not to accompany the constable and give evidence, held—no conviction would lie under Ss 186 and 187 I. P. C. [11st 850] A Police Constable who

proceeds without an order in writing to bring a person to the Thana is not acting as a public servant acting in the discharge of his duty. It is therefore not an offence under S. 353 I. P. C. to assault him [20 Cr 48 (N)] Where the order is not in writing, disobedience of the order is not punishable under S. 174 I. P. C. [2 Weir 127]

3. Disobedience punishable under S. 174 I. P. C.—Provided the order is in writing and issued by a police-officer authorised to issue it, disobedience of the order would be punishable under S. 174 I. P. C.—24 C. 320.

4. The term "any person" does not include an accused person.—The section applies only to the cases of witnesses and possible witnesses only; an order cannot be made requiring the attendance of an accused person. [7 M. 271 (F. B.) 2 Weir 121 4 D. R. 611 (615); (1906) L. R. 317.] It appears to have become the practice of Police Officers in the U. S. to hold a regular investigation of a quasi-judicial character in the presence of the accused and their agents but this is not contemplated by the law which lays down that the Police Officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case [11 C. 1021].

5. Powers of Police Officers under the Section.—

- (1) A police officer has no power to arrest or detain for even a single moment any person whose evidence may be required for the purposes of an investigation.—7 W. R. 3 (1)
- (2) He cannot in any case compel a witness to attend before him.—7 W. R. 3; See Rat 679. Also Beng. Ind. Mun. 2nd Ed. p. 374
- (3) He cannot require the attendance of an accused person and on the latter failing to attend, to take him into custody. If he takes an accused person into custody in such circumstances, he would be guilty of wrongful confinement.—2 Weir 121.

161. (1) Any police-officer making an investigation under this Chapter may examine orally

Examination of witnesses by police, any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Proposed amendments to the Section—In subsection (1) of section 161 of the said Code, after the word "Chapter," the words "or any police-officer not below such rank as may be prescribed by the Local Government, acting on the requisition of such officer" shall be inserted.

Notes.

1. Amendment to the Section.—

under the Codes of 1861 and 1872 [See 7 C. 121 (F. B.)]. By introducing the word "truly" after the word "answer" the Code of 1882 rendered a person answering falsely liable to prosecution for perjury [See 10 C. 405]. The word "truly" was deliberately omitted in the Code of 1894 for the following reasons—"We have amended this clause by reverting to the law as it stood under the Codes of 1861 and 1872. It seems to us unfair that a man should be liable to be convicted of giving false evidence, on the strength of or by the aid of a statement supposed to have been given to a Police Officer but which is not given on oath, which he has not signed and which he has had no opportunity of verifying. Such statements may be hurriedly taken down as rough notes; the Police Officer is not trained in taking evidence and the

(1) He cannot take a security bond for the production of any person before the Police. Such a bond is at best a void, and the Magistrate has no power to alter it and impose fresh conditions thereunder.—11 C. 77.

(2) He cannot require a surety to attend before the Police station to be examined and to give information as to the persons for whom he stands surety.—(7) A. N. 47

6. A Magistrate cannot direct witnesses to attend a police investigation.—A Magistrate has no power to issue a warrant for the arrest and production of a person in order that such person may give evidence before the police during an investigation under Chap. XIV Cr. P. C. [21 C. 320; Rat 177.] The Magistrate of a District cannot interfere (except by way of suggestion and advice) with the exercise of the discretion given to a Police Officer by this section [Rat. 177.]

7. Procedure in the case of female witnesses.—It is an unusual course for the police to take a number of women away from their homes to the Police Station on the pretext that they wished to examine them. The examination would be properly conducted at the women's court houses.—9 C. N. 119.

notes are often framed out by another officer. They bear no resemblance to deposition and ought to have no weight as such, attached to them"—Sel. Com. Rep.

[Note.—The amendment followed 7 C. 121 (F. B.) 7 P. R. 1896; Rat. 618 and superseded 20 W. R. 41 8 C. L. 280; 10 C. 405; 8 B. 216; 11 B. 659 Rat 674; 15 A. 11; (92-96) U. B. 195 and (97-01) U. B. 31 (34) which in 1897, laid down that an investigation by the Police under S. 161 Cr. P. C. is a stage of judicial proceeding within the meaning of explanation 2 to S. 193 I. P. C.; also 18 C. 319.]

2 Effect of the amendment.—Witnesses before the police cannot be prosecuted for giving false evidence. (95) A. N. 22. (95) 1 Weir 111. Rat 619; 6 S. 277; C. R. 43 of '92.

3. Refusal to answer.—A person, who refuses to answer, when examined under S. 161 Cr. P. C. cannot be said to commit an offence either under S. 176 or S. 187 I. P. C.—23 M. 544; 27 P. R.

1908; 1 Weir 111, 23 M. 544 (foot-note); 12 W. R. 23.

Statements made under S. 161 Cr. P. C.—In answer to questions put by the investigating officer, does not amount to giving information within the meaning of 182 I. P. C.—15 Cr. 630 (P); 227 P. L. 1914. See (1905) U. B. 13-31 M. 506. Con Rat. 124. A person making such statements cannot be said to institute or cause the institution of criminal proceedings within the meaning of S. 244 I. P. C.—6 M. T. 133 31 M. 506-1 Weir 193; 20 M. J. 132 See G. C. 630.

Are statements made under S. 161 privileged?—There is a divergence of judicial opinion on the point. It has been held in 20 C. 642 that "S. 161 of the Code provides for the taking down of statements of witnesses by the Police. Such statements are not privileged and S. 172 is not intended to include such statements. The mere fact that such statements are inserted in the Special Diary would not make them privileged"—See also (1906) A. N. 193 9 C. P. 33 19 A. 390 (F. B.) [Per Aikman and Bineri, J. J.] 16 C. 612, Con 16 M. 235. 28 C. 794 17 P. R. 1894.

Incriminating questions.—Although under the Code of 1882, a witness was bound to answer truly, the rule did not apply when the answers would have a tendency to expose the deponent to a criminal charge [See (80) Rat 488, (90) Rat 518; Cf Rat 674 See also the present Code S. 161 (2)].

Mode of recording statements.

(1) **Not necessary to record in the form of question and answer.**—It is not necessary that the statements of witnesses recorded under this Section, should be elicited and recorded in the form of question and answer.—[7 P. R. 1896]. It is sufficient if the answers recorded are substantially correct. See 164 and 361 Cr. P. C. do not apply to an examination under S. 161 Cr. P. C. [15 A. 11].

(2) **Witnesses cannot be put on oath or solemn affirmation.**—15 A. 11.

(3) **Such statements should not be entered in the special Diary.**—kept under S. 172 infra—33 C. 1023; See 20 C. 642 (36) A. N. 193 9 C. P. 33 Con 19 A. 390 (F. B.). So far as Burma is concerned the Executive Government have forbidden the incorporation in

Special Diaries of witness' statements *in extenso* [Bur. Pol Mun.—para 613] 18 Cr. 1022 (L. B.).

(4) **Attestation.**—It is not illegal, though unnecessary for a Police Officer, recording a statement under S. 161 Cr. P. C. to obtain the signature of a witness to it.—15 A. 11.

8. Notes of statements under S. 161 may be taken by any person.—There is no prohibition against any person present at the time when depositions are being taken or confessions made, to take down in writing what either a prisoner or a witness says. A pleader who uses such notes for his client's benefit will not be guilty of any misconduct, professional or otherwise.—10 C. 256.

9. Police Officer not bound to reduce Statements into writing.—It is not obligatory on the Station House Officer to reduce to writing any statement made to him during an investigation [11 B. 11 120]. S. 162 Cr. P. C. does not control S. 157 of the Evidence Act. Oral evidence may be given of the statement made to the Police by a witness in order to corroborate the witness at the trial [36 C. 284] or to impeach the credit of a witness who made such a statement, under S. 155 of the Evidence Act [11 B. 11 120].—See also 35 M. 247 (F. B.), 35 M. 397 (F. B.).

10. Record of statement of accused preliminary to arrest.—Where a Police Officer is already in possession of evidence sufficient to justify the arrest of a person, he should not preliminary to such arrest, examine and obtain from that person a statement under this Section [27 C. 295]. Such statement if taken down, may be proved if it does not amount to a confession [See 3 N. 51 6 N. 150, 6 C. 530, 171 P. L. 1913 But see (93-00) L. D. 42 (45) 11 P. R. 1903 6 C. L. 47].

11. For other matters.—See Notes under the next Section (S. 162 Cr. P. C.).

12. Provisions of section when to be utilised.—The provisions of this section should not be utilised in any but "heinous cases". Heinous cases include cases triable exclusively by a Court of Sessions and those cases in which

162. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if taken down in writing, be signed or admitted in evidence as evidence. Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the Court shall, on the request of the accused, refer to such writing, and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Indian Evidence Act, 1872.

Proposed amendments to the Section.—For sub-section (1) of section 162 of the said Code, the following sub-section shall be substituted, namely:—

"(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter, shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any part thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

Provided that when any witness is called for the production in such inquiry or trial of any statement or statements reduced into writing as aforesaid, the Court shall, on the request of the accused, refer to such writing, and may direct if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 115 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the examination of such witness, but for the purpose only of explaining any answer relevant in the case as aforesaid.

Arrangement of Notes.

S 162 S 115, 119 (1872).

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| 1. Object and application of the Section. | 4. Dying declarations. |
| 2. Use of the statements recorded in the special diary. | 5. Changes introduced by the Code of 1899. |
| 3. Access to and copy of the special diary. | 6. Miscellaneous. |

1. OBJECT AND APPLICATION OF THE SECTION.

1. Oral evidence of statements made to the police.—S 162 Cr. P. C. does not control S 157 of the Evidence Act. Oral evidence may be given of the statement made to the police by a witness, in order to corroborate him at the trial.—36 C 241 35 M 307 (F.B.) 35 M 217 (F.B.) 39 B 54 9 B R 366 7 A J 168 [Per Karamat Hussain J.] 5 Pat J 508 17 P R 1884 20 Cr 497 (N.) See also 32 B 111 (F.B.). *Con.*—34 B 599 22 B 596 11 B 657 11 B 11, 120; 17 A 57 7 A J 498 [Per Knox J.] 2 C. N. 702 13 O C 7 20 P R 1591 7 C. P. 21.

2. Use of the statements recorded for the purposes of contradiction.—See (2) use of the statements etc *infra*.

3. Compliance with the provisions of S. 162 Cr. P. C. compulsory.—A Magistrate need statements made before the chief constable without conforming to the provisions of S 162 Cr. P. C. and without giving the accused an opportunity of cross-examining the chief constable—held—that the irregularity was fatal and could not be cured by S. 537 Cr. P. C.—9 B R 303.

4. See 162 an exception to the ordinary rule of evidence.—See 162 Cr. P. C. plainly constitutes an exception to the ordinary rule of evidence. The proviso engrafts an exception upon exception. Before the present Section was amended, statements recorded under S. 162 might not be used as evidence against the accused but there was nothing to prevent them from being used in favour of the accused. The law has now

been amended to remove the possibility of this interpretation.—32 B 111 (F.B.)

5. *Section of first record*—no first information a statement obtained after investigation.—20 Cr. 457 (N.) See 7 C. N. 345.
- 6 Record of the statement of an accused person.

(1) A police officer, who is already in possession of evidence sufficient to justify the arrest of a person, should not preliminary to the arrest, examine him and record his statement. Such statement cannot be regarded as anything except a confession to a police officer within the meaning of S 27 of the Evidence Act [27 C. 20]

(2) Admissibility.—A statement of an accused person made to a police officer under S 161 and 162 Cr. P. C. not amounting to a confession is inadmissible in evidence on being proved by oral evidence.—6 N. 180; 3 N. 61; 6 C. 530 171 F.L. 1913 *Int* see 11 P. R. 1805, 6 C. L. 47; (1890) L. B. 42 (15).

(3) When such statement amounts to a confession—the rule in S. 27 of the Indian Evidence Act applies—viz. "only so much of a confession made to a police-officer relating distinctly to the facts thereby discovered is admissible in evidence" [15 P. W. 1913]. Therefore the prisoner's statement to the police that he buried the victim

(interrogation) which the person was asked to have been asked (1) in a certain way and (2) in a certain way and the first statement that it was the officer with whom he had been asked the matter. Subsequently the statement that he would point out a certain spot and that at the spot indicated, those statements would be found would be admissible, but not the first statement that it was at the spot that he mentioned the matter. [15 P. W. 1917].

Note.—See also principles relating to S. 27 of the Evidence Act—19 A. 399 (F.B.); 11 C. 67; 25 A. 413; 41 B. 116; 10 B. 53; 14 B. 590 (F.B.); 12 B. 153; 21 P. L. 1913; (1914) 1 B. 3.

II. USE OF STATEMENTS RECORDED UNDER 162 CR. P. C.

8. Rules summarised.

(1) A statement reduced to writing by a Police Officer under S. 162 Cr. P. C. cannot have the effect of a deposition and cannot be used as evidence against the accused. It cannot be used in evidence except for the sole purpose of contradicting the Police Officer.—32 B. 111 (F. B.); 9 B. 87; 9 B. 590; 12 B. 671; 25 C. 344; 13 Cr. 224 (M.); 15 A. 25; 157 P. C. 1092; 4 B. 24.

(2) It can be used by the Police Officer who wrote it to refresh his memory under S. 159 of the Evidence Act—19 A. 399 (F. B.); 21 A. 159; 11 B. 637; 11 B. 116; 12 B. 671; 10 C. 152; 16 C. 122 (128); 4 B. 35.

(3) The Court can use it for the purpose of contradicting such Police Officer.—[A. J. 811, 21 A. 159].

(4) Where the Police Officer does look at an entry in the diary for the purpose of refreshing his memory, the provisions of S. 161 of the Evidence Act apply, and the accused or his agent is entitled to see such entry and to cross-examine such Police Officer thereon—19 A. 399 (F. B.); 33 C. 1023; See 32 B. 111 (F. B.) [Per Beaman J.].

(5) The writing cannot be used to enable any witness other than the Police Officer who wrote it to refresh his memory and it cannot be used to contradict any witness for the prosecution with the proviso—19: 32 B. 111; 10 C. 7.

(6) The person making the statement recorded in the police diary may be properly questioned about it, and with a view to impeach his credit, the police officer himself or any other person in whose hearing the statement was made can be examined on the point under S. 155 of the Evidence Act—[11 B. 112; 33 B. 111 (F. B.); 11 B. 657; (1905) A. N. 64].

III. ACCESS TO AND COPY OF THE SPECIAL DIARY.

13. Who is entitled to use it.—It is the Court which is entitled to use the special diary for the purpose of seeking for sources and lines of enquiry and for the names of persons who may be

(6) It is of no consequence that the statement was made in a certain way and the first statement that it was the officer with whom he had been asked the matter. Subsequently the statement that he would point out a certain spot and that at the spot indicated, those statements would be found would be admissible, but not the first statement that it was at the spot that he mentioned the matter. [15 P. W. 1917].

7. S. 164 cannot override S. 162 Cr. P. C. A police officer cannot instead of recording the statement of a witness under S. 162 Cr. P. C. place him before a Magistrate not competent to deal with the case and ask him to record his statements under S. 164 Cr. P. C. [20 C. 453].

(7) The proviso could not have been intended to allow the prosecution to impeach the credit of its own witnesses for its own purposes and against the wish of the accused by reference to their statements recorded under S. 162 Cr. P. C.—32 B. 111 (F. B.).

(8) A statement to which S. 162 applies may be proved to contradict a witness called for the defence of an accused person, the witness having previously made a statement before the Police Officer different from and inconsistent with his subsequent deposition of the trial—19 A. 399 (F. B.); 32 B. 111 (F. B.); 27 A. 409; 21 A. 159; 15 A. 25; (1904) A. N. 22; 11 B. 503; 11 C. 650; 7 C. 122; Cou 130 C. 7. (1916) 3 U. B. 81.

9. Accused cannot insist on Police Officer to refer to his diary.—An accused person is not entitled to insist that a memorandum of a statement made by a witness and recorded by a Police Officer under the section shall be referred to by the officer to refresh his memory.—S. C. 154.

10. Oral statement of witnesses should not be incorporated in the Special Diary.—Reply by a Police Officer under S. 172 Cr. P. C. The practice in the Mofussil of incorporating such statements in the Special Diary is to be condemned—33 C. 1023.

11. Statements recorded under the section are not diaries within the meaning of S. 172 Cr. P. C. and an accused person has a right to have these statements produced for inspection and examining witnesses—16 C. 610 [See (3) Access to and copy of the Special Diary infra].

12. Reference by Judge in the interest of the accused to the diary.—Police diaries

171 P. L. 1913; 1 P. W. 1914

in a position to give material evidence. Neither the accused nor his agent is entitled to see the special diary for any purpose, unless it has been used by the Court for charging the Police

(3) No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily, and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate."

Explanation—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Arrangement of Notes.

S. 161-S. 122 (1872) S. 109 (1861).

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| 1. Object and application. | 9. Admissibility in evidence. |
| 2. Magistrates. | 10. Rectification of errors. |
| 3. Who can record confessions. | 11. Irregularities in recording. |
| 4. When can confessions be recorded. | 12. Retracted confessions. |
| 5. Persons making confession or statements. | A. Fatal. |
| 6. Procedure in recording confessions. | B. Not fatal. |
| 7. Language in which confession is to be recorded. | 13. Memorandum. |
| 8. Voluntary—meaning and cases. | 14. Prosecution for false statement. |
| | 15. Police officer. |
| | 16. Miscellaneous. |

I. OBJECT AND APPLICATION.

1. Application of the Section.—The section distinguishes between statements which are confessions and statements which are not, and not between persons by whom statements of either character are made; and it is made for the purpose of prescribing different modes of record. Magistrates are not to be instruments of the police, recording statements at the desire of the police, irrespective of the desire of persons produced for making statements. He has a discretion to refuse to do so, although the statement is not a confession.—2 P. R. 1891. 29 C. 143.
2. Statement of a person not accused of an offence.—S. 146 Or P. C. authorises a Magistrate to record the statement of any person not accused of any offence as well as the confession of a person accused of an offence.—2 B. 613. 5 S. 71
3. The word "confession" defined.—A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. Not only statements which amount to a direct acknowledgment of guilt are confessions, but also inculpatory statements which, although they do not amount to a confession, suggest the inference that it leads to an inference of guilt.—5 L. B. 131.

T. 21]

4. Witnesses.

4 C. N. 49

5. When witnesses are likely to be gained over—A police officer having reason to believe

delay.—3 C. 430.

6. Statements of witnesses recorded under the section to be taken with caution.—The statements of witnesses recorded under the section though admissible in evidence, are to be accepted with great caution. 14

the fact that it leads to an inference of guilt.—5 L. B. 131.

whether there was any occasion for pinning down witnesses to statements at a time when they were considerably under police influence.—7 C. J. 244

7. When witnesses appears of his free accord.—A Magistrate not having jurisdiction can record the statement of a witness under this section if the witness appears voluntarily before him.

29 C. 141.

8. Presidency Magistrates.—S. 161 (and as a necessary consequence S. 361 and S. 313 Cr. P. C.) does not apply to statements or confessions made to a Presidency Magistrate 15 C 595 (F. B.); 21 B 195

9. Statement made to Magistrate making investigation under S. 159 Cr. P. C. by the accused.—Such statements cannot be said to be statements either under S. 161 or S. 361 Cr. P. C.—2 C N. 702.

10. Confession within the scope of S. 164 Cr. P. C.—A confession to come within the scope of S. 164 Cr. P. C. must be made either (1) in the course of an investigation under Ch. XIV or (2) at any time afterwards and before the commencement of the enquiry. The condition requiring the confession to be prior to the commencement of the enquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the investigation.—37 C. 467

11. The word "statement" in S. 164 means the statement of a witness as opposed to the confession of an accused. The method prescribed for recording such statement is strongly confirmatory of this view. [Per Maclean J.].—2 C N 702. See 20 M T. 21.

13. Statement made by the accused to Magistrate deputed to make local enquiry. Where an accused person stated before the committing Magistrate that the deceased had fallen from a terrace, and his respiration stopped and that he had buried his ornaments under a tree, and another Magistrate deputed to verify these statements took the accused to the place of occur-

rence and was shown a place on the roof of his house from which he said the boy had fallen, and the place where he admitted he had buried the body of the boy—held 1—that the statements made to the latter Magistrate were not admissible in evidence.—4 C N 22; 2 C N 702

14. Statements of accused persons other than confessions cannot be recorded under S. 161 Cr. P. C.—2 C N. 702. Contra 2 P. B. 140

15. Statement of accused recorded during proceedings under S. 202 Cr. P. C.—A statement of a person against whom a complaint was made cannot be recorded by a Magistrate during an enquiry under S. 202. Under the provisions of S. 164, such a statement cannot be admitted in evidence against the accused, as proving itself.—32 C. 1045

10. Verification proceedings.—Verification proceedings are proceedings taken with the object of testing the truth of a confession, and of obtaining evidence either corroborating the confession or indicating its falsity. They are not illegal but in connection with such proceedings the main concern of the Courts is to ensure that evidence not strictly admissible is not admitted. Additional statements made by the accused in the course of such proceedings, when not recorded in the manner provided in S. 164 Cr. P. C. are inadmissible in evidence.—45 C. 537. See 2 C N 702; 7 C N. 220; 8 C N. 22.

17. Confessions must be recorded in writing "Under the Code of 1872, it was held by a Full Bench of this Court, and the view was followed in other cases, that a confession was a document required by law to be reduced to writing for the purposes of S. 91 of the Indian Evidence Act [10 B. H. 160; 11 B. 11; 1 B. 210; 6 B. 284] All that I feel concerned to point out is that a confession under S. 164 of the Codes of 1882 and 1894 requires no less to be in writing than one under the corresponding Section 122 of the Code of 1872.—Per Shah J. 21 Cr. G. (B); 35 A 200

II. MAGISTRATES.

18. Statement of a person not accused of an offence.—S. 164 Cr. P. C. authorises a Magistrate to record the statement of any person not accused of any offence.—2 B. 643

19. Power to administer oath.—A Magistrate acting under S. 164 Cr. P. C. has power to administer oath to the person (not being an accused person) making a statement before him, by reason of the powers given in S. 4 and 5 of the Oaths Act (X of 1873)—16 M. 421; 29 M 189

20. Powers under the Section.—A Magistrate has power to ascertain whether the person brought up is "disposed to make a statement of his own free will." He is at liberty to bring to the notice of such person that he is not under obligation to make a statement and that any statement he makes may be used against him.

2 P. R. 1893.

21. Confession recorded by a Magistrate who is also police officer.

In *Burmah*, a Magistrate exercising police powers and possessing the title of a police officer can record a confession, but a Magistrate so doing should be careful to record fully the circumstances under which he records the confession, both in order to show that the confession was voluntarily made, and also that he has, as far as possible, divested himself for the time being, of his police authority and of his police surroundings, and other signs of such authority before proceeding to record such confession.—7 Bur 100.

22. Examination of the accused.—Magistrate is not entitled to examine an accused in respect of facts of the case. He can only record his voluntary statement.—5 C. N. 564. But see 20 O. C. 136.

23. Magistrates who cannot record confessions.

(1) Honorary Magistrate with third class powers is not empowered to enquire in the field (when a Magistrate in the field).—24 C 151 C 153 Pat 2 23 (F. B.)

(2) Village Magistrates—were abolished with effect from 1-1-1900. See 1900 No 2003 2 dated 15th December 1897 as amended by G. O. No 1581 dated 1st Nov 1900.

(3) Under the Code of 1872, the Magistrate who was to call the enquiry or to try the case was precluded from receiving confessions. See 5 C 161; 10 B 166 5 A 233. But these rulings are now obsolete. There is no such restriction under the present law. 37 C. 467 5 S 31

24. Magistrates not having jurisdiction.—In the corresponding section in the Code of 1861 (S. 149) any Magistrate and not merely the Magistrate having jurisdiction could record confessions [7 B 156]. These principles were adopted in Cr. P. C. 1872. See ss. 22, 122 and 45 [10 B 11, 169]. The procedure was disapproved in Pat 231. In Pat 467 it has been held that "there is no provision in Cr. P. C. empowering a police officer to require a witness to go to a Magistrate not having jurisdiction over the offence, to have his statement taken under s. 161. Such a statement cannot be used as evidence at the trial. The point has however been definitely settled by the explanation added to the Section. A Magistrate recording a confession need not now be one

having jurisdiction in the case.—[3 Pat. J. 201 (F. B.)]

25. Magistrate having jurisdiction to deal with the offence.—If the confession is made before a Magistrate who has jurisdiction to deal with the matter to which they relate, it is sufficient if the provisions of S. 361 are complied with. 6 C L 289 3 C 631 5 A 233

[Note. These rulings are now obsolete. See 37 C 467.]

26. Inducement to confess.—A Magistrate acts without due discretion when as a prosecutor, he holds out promises to prisoners as an inducement to confess. 1 W B 21.

27. Conflict of rulings under the former Codes

(a) There is a conflict of decisions as to whether the words "a Magistrate" in S. 149 Cr. P. C. 1861 means "any Magistrate having jurisdiction". The former procedure seems to have been to have the confession recorded by a Magistrate not having jurisdiction to try the matter.—See 5 C. L. 278 7 B 11 69 23 W B 16.

(c) Confession recorded by the Magistrate who also enquires into or tries the case is not a confession as contemplated by S. 123 Cr. P. C. = S. 161 Cr. P. C., 1899. 5 C 931. See 5 A 233.

[These rulings and the ruling in 10 B. 11, 169 are obsolete.—See 37 C 467 at p 495]

28. Statements recorded by third class Magistrates.—See (13) Miscellaneous

III. WHO CAN RECORD CONFESSION.

29. Duty of Magistrates.—It is the duty of the Magistrate who directs a police investigation or who holds a preliminary enquiry to record statements under s. 161. It is his duty to see that the accused confessed voluntarily and to record the confession truly.—5 S 31

30. Magistrates taking active part in the police investigation are precluded by S. 575 Cr. P. C. from trying the case.—See 23 C 324

31. The Section applies to confession made to a Magistrate other than the Magistrate by whom the case has to be enquired into or tried.—5 C. L. 238 5 C 931 (F. B.). 23 W B 16 5 A. 253 10 B. 166. Contra Pat 121 7 B 11 56 37 C 467

Note.—It cannot be contended that a confession recorded by a Magistrate who afterwards conducts the enquiry is outside the provisions of S. 161 Cr. P. C. [3 C N 387 (191)].—A Magistrate is not debarred from recording the confession of an accused person by the circumstance that it may afterwards be his duty to hold a preliminary enquiry.—[Pat 121 5 S 31]

32. Subdivisional Magistrate.—can record

confession of an accused person outside the limits of his subdivision, but within the limits of his district.—(97) U B 16

33. Record by Magistrate having jurisdiction.—See 2 Magistrates (23)

34. Confessions recorded by Magistrate not empowered.—Admissible in evidence. See 13 W B 69 [161 (1) as it stands at present empowers all Magistrates who are not police officers to record confessions.] See 1 C 207. 17 B 493

35. Private individuals.—A confession made to a private individual may be evidence against the prisoner, if proved by the person before whom such confession was made.—13 W B 69

36. Magistrate who took part in the police investigation.—The fact that the Magistrate took part in the police investigation does not disqualify him for performing these duties.—

5 S. 31.

37. Police officers holding Magisterial powers.—See (12) Police officer.

37A. Magistrates who can and who cannot record confession.—See (4) Magistrates.

IV. WHEN CAN CONFESSIONS BE RECORDED.

38. At commencement of the trial.—Confession may be made at the commencement of a

trial or inquiry before a Magistrate who has jurisdiction to deal with the matter to which it

relates, whether or not the case be still under the investigation of the police [O O L 294] the confession may be made during or before the commencement of an investigation by the police—
5 C. L. 238

39. A confession to come within the scope of S. 164, Cr P O must be made either (1) in the course of an investigation under Ch XIV

V. PERSONS MAKING CONFESSION OR STATEMENT.

41. Person making statement under S. 161. before a magistrate is a witness within the meaning of S 5 of the Oaths Act, and can be charged with perjury with respect to such statement
16 M 121
42. Accused person making statement or confession under S. 161, commits no offence under S. 180 P. C. by refusing to sign it when required—4 B 15 8 C 3 f, B 199

[Note.—The signature is unnecessary when the confession is made at a trying court—3 O 756.]

VI. PROCEDURE IN RECORDING CONFESSIONS.

45. Recording impotative.—Under S. 164 Cr P C a confession, shall be recorded, and if not recorded, no evidence of it can be received,
2 L B 19 21 Cr 65 (B) [Per Shah J]
46. Procedure must be strictly followed.—The provisions of this section are imperative and S 533, will not render a confession admissible where nonattempt at all is made to conform to its provisions—O M 224 1 C, 606; 5 C L 203 Contra—(83) A N 238.
47. Voluntary character.—The circumstance that a confessional statement is made voluntarily shall be ascertained before and not after recording the confession—2 Weir 136 1 B B 357.

Note.—But the fact that instead of asking the accused about the voluntary nature of the confessional statement, the Magistrate asked him at the end, is merely a defect of form, that does not alter the character of the confession—40 C. 873.

48. Difference in procedure in respect of statements of witnesses and confession of the accused.—Under S 161, the statement of witnesses as well as the confession of an accused person can be recorded—[2 B 64] The difference of procedure however is as follows—
- (1) The statements of witnesses are recorded on oath. But as the accused cannot be put on oath, no oath can be administered to him—See 29 M. 89—Cr R. 8 of 10 2-06.
 - (2) The statement of witnesses can be taken down in the narrative form. But in the case of confessions it must be taken in the form of question and answer—[S 344] See 5 S. 174; 20 M T 21 23 B. 613
49. Record of all questions put to accused not absolutely necessary.—It is not absolutely necessary for a Magistrate recording the

or (2) at any time afterwards before the commencement of the inquiry or trial—37 C 407

40. Confession to be recorded only if voluntary.—The indiscriminate use of the provisions of S. 164 Cr P. C. is to be deprecated. No statement should be recorded under that section unless the person making it is a free agent and voluntarily agrees to have his statement taken down.—16 P. B 1918; 2 P B 189

43. Cannot be examined or cross-examined in respect of facts of the case.
5 C. N. 461; See 1 L B. 312.
44. Statement of a person undergoing imprisonment respecting the offence for which he was convicted.—A statement made by a prisoner undergoing a sentence of imprisonment implicating another person in the commission of the offence for which he was convicted cannot be recorded under S. 164 Cr P. C. and is inadmissible in evidence—21 Cr. 193 (1).

45. Record only of the substance of the confession.—Where the confession is not recorded in the manner prescribed by S 164 and 363, but is only a summary record of what the accused said as to their defence after pleading not guilty, and where moreover it is subsequently retracted, it cannot be admitted in evidence—(90) U. B 1—q 3
51. C. under

- times under which he records the . . . both in order to show that the confession is voluntarily made and also that he has as far as possible divested himself of his police authority and surroundings—7 Bar 100
52. Magistrate standing by while police recording confession.—The mere fact that the Magistrate stood by while the confession was being made to the police is not sufficient—12 W. R. 82.
53. The word "record"—meaning.—The word "record" in S. 164 Cl. (3) Cr P O must necessarily mean "making a part of judicial record" and not merely writing out—8 B R. 950.
54. Proceeding is judicial.—A proceeding under S 164 Cr P. C. is a judicial proceeding and an oath can be administered—29 M. 89
55. Form of the record.—A confession is not rendered inadmissible if the accused has not been prejudiced, merely because it is taken down in the narrative form—9 C J. 65; 14 C. 539; 8 C 616 1-C. L 1 (F. B.); 12 C. L 121;

S.A. 253; 4 B R 745; 23 B 221; (1901) 1 P R 47
 Crim.—10 B R 497; 10 B R 164; See (190)
 U. B. I. (1) 3.

Note—The terms of the law require that the record should be signed not only by the person who make the confession or statement but also by the Magistrate, and that in addition thereto, there should be a certificate in the terms prescribed. Such a confession or statement to be admissible as evidence must strictly comply with the terms of the law.—3 C N, 387

56. Confessions during trial (i) Need not be recorded as Magistrate is competent to do so on the admission of the prisoner. 3 C 756; 2 O. L. 317.

(ii) Need not be attested. [H. C.]

57. Signature of the accused. No obligation is cast by S. 164 and S. 761 Cr. P. C. on the accused to sign the record [3 C 756]. But where the accused can write and only his thumb impression is taken the confession is invalid [See 3 (12) General clauses Act] 32 C 540. See also 10 B. R. 164.

Note—It is not absolutely illegal to take the signature of the accused to his confession immediately after it is recorded.—9 C J, 55.

58. Object of the Signature. The signature of the accused to the confession recorded by the Magistrate, is taken as a voucher of the authenticity of the statement and not as an admission of its contents.—9 C J 55 (65). The signature is strong test whether the confession was free and voluntary and is intended to afford the confessor a *locus penitentiae* before the completion of the record.—10 B R 166.

59. Duration of police custody. Magistrates when recording confessions, should always record whether the accused has been brought from police custody or the jail (1 C P 115). He should ascertain and record (in the case of a person who has been in police custody), the period during which the accused was in custody in order to satisfy himself whether the confession was voluntary or not (25 B 533). A person does not cease to be in police custody merely because at the time of recording the confession there is no police officer in the room (11 B 555; 11 C Cr R. 29-5 1894). But a confession duly recorded does not become invalid by reason of the omission to state that the accused was not in police custody at the time. Rat 531. See also 5 C 939; 6 C L 333.

60. Power of the Magistrate to question the accused.—The law does not contemplate or authorise inquisitorial procedure by a Magistrate who is called upon to record a confession under S. 164 Cr. P. C., but it cannot be argued that a Magistrate is forbidden to ask questions, for in the first place, he must satisfy himself that the statement proposed to be made is voluntary, and he can only do so by addressing questions to the person who is to make the statement. In the next place we do not see why a Magistrate should not ask questions for the purpose of making clear and intelligible any particular passage

of the statement made to him. At the same time it is not permissible for a Magistrate to question an accused person as to facts which had previously come to the Magistrate's knowledge for the purpose of extracting statements to be afterwards used as evidence.—*Per Lordship J. C. and Krishna Rao A. J. C.* 20, O C 136. See 37 C 167; 17 W. R. 71.

61. Procedure as laid down in Circular orders etc.—The following rules may be taken as well established and ought to be followed by all Magistrates recording confessions. They have been constructed out of the Provincial Government Circulars and General Letters of the High Courts as well as the decisions of the various High and Chief Courts in India.

62. Rule No. 1.—Police officers must first be rigorously excluded before the Magistrate even warns the accused. [Mad G O No 2883 J of 17-12-87, as amended by G O No 1141 J dated 1st Nov 1909. See also Bomb. H C Cr Cir p 2 17 B R 893; 11 C J 273.]

Note.—That this has been done should be recorded. 1 C P. 113. See 7 Bar 100.

63. Rule No. 1A.—An accused person should ordinarily be warned that he was before a Magistrate. But the warning would be unnecessary if the accused is already cognisant of the fact.—9 C J 55.

64. Rule No. 2.—He should be asked with what object he was confessing. [1 B R 357 18 Cr 721 (Pat)]. He should be asked some such question as—“Why are you confessing? Are you sorry for your crime? Or is it that some one has told you that you will gain something by a confession?” [18 Cr 721 (Pat). See also 5 C P 13.]

65. Rule No. 3.—He should then be told that whatever he might say will be used against him. [Mad G O abuse and Cal H C Gen L No 1 of 30-1-17. See also 15 Cr 633 (1). But See M. H. (sp) 21 10 C 775.]

Note.—The Magistrate should state how the accused was warned. 14 W R 81.

66. Rule No. 4.—The accused must be warned that it is not intended to make him an approver. [Mad G O. No 2883 J of 17-12-87. See 2 Weir 137.]

67.

68. Rule No. 6.—The confessing prisoner should be told that after the confession has been recorded he will not have to go back to police custody.—15 Cr. 33 (O).

69. Rule No. 7.—The duration of the police custody should then be carefully ascertained and recorded.—[See Note No 59 above.] 25 B 513 Rat 855; 9 C J. 603 9 A 528 (Cal). 1 C P 115 [But omission to do so will not be necessarily fatal in the absence of prejudice.—Rat 531, 5 C 935.]

70. Rule No. 8.—The prisoner should be asked whether the police or any other person had subjected him to ill treatment [15 Cr. 633 (O)].

71. **Rule No. 9.**—*The body must be examined to see if there are any marks of violence, and the record of confession must show it.*—Bomb. G.O. (for 1900 Pt. 1, p. 919; See 1 R.R. 357)
72. **Rule No. 10.**—*A Magistrate should not before recording a confession look into a Police Report to see what the accused had stated to the police.*—9 C J 663; 13 O N. 861; 8 C 7 G N. 220
73. **Rule No. 11.**—*The Magistrate must satisfy himself that the confession is voluntary, not merely from the declaration of the accused but from an attentive observation of his demeanour.*—[Cal H C Gen L No 1 of 30-1-17, Wensell's Reports (American) p. 1]
74. **Rule No. 12.**—*If the Magistrate has a doubt as to whether the accused is going to speak voluntarily, he should be remanded to jail before recording the confession.*—[Mail, G. O No 2541 J of 17-12-87]
75. **Rule No. 13.**—*A Magistrate should refuse to record any confession, if he has any reason to doubt that it is voluntary.*—18 Cr. 721 (Pat); 25 B 169; 1 R R. 357; 5 O P. 13; 16 P. R. 1918; 2 P R 1893; See S 164 (3)
76. **Rule No. 14.**—*Reason for believing that the accused was going to make a confession voluntarily must first be recorded.*—[Mail G. O. No 2583 J. of 17-12-87, 2 Weir 136; 2 L B 213; 3 L B 1; 1 B R 337; 5 A. 233; 3 O N. e in. Con. 10 C 873]
77. **Rule No. 15.**—*The Magistrate should write out in full every question put by him and every answer given by the accused.* [S 361 Cr. P. C.; 1 B R 357; 4 A 46] It should be written in the language in which the accused answers.—See 21 B 495 See however 9 O J 55 [No P above]
78. **Rule No. 16.**—*The Magistrate should put all questions himself. No third party should be allowed to intervene directly or indirectly as a questioner of the confessing prisoner.* [9 C. J. 663; 17 B R 894]
79. **Rule No. 17.**—*The Magistrate should ask such questions as may be necessary to show clearly or ascertain clearly what the accused's meaning is.*—5 C P 13; 20 O C. 136
80. **Rule No. 18.**—*The Magistrate should not write an memorandum.*—Bomb. 219; 23 B 169, but See 14 C. 639; 2 M. 5; 23 B 221.
81. **Rule No. 19.**—*The signature or mark (if he cannot write) of the accused must be fixed.*—S 364 Cr. P. C.; 32 C 550; 10 B H. 166
82. **Rule No. 20.**—*The record of the confession as well as the memorandum must be signed by the Magistrate.*—3 O N 387
83. **Procedure as laid down by the Calcutta High Court** by its General Letter No 1: Dated the 30th Jan'y. 1917, superseding the High Court's Circular, Memorandum No 7 dated the 30th July 1873 and Circular Order No 3, dated the 24th March 1880 (embodied in Rules 23 and 21, chapter I, page 8, Vol. I. of the General Rules and Circular orders, Criminal):—
- (1) Where at any place or station there are present more Magistrates than one, confessions should in general be recorded by the Magistrate specially selected for this purpose by the District Magistrate or failing such selection by the Magistrate senior in rank or class.
- (2) Confessions should voluntarily be recorded in open Court and during Court hours.
- (3) During the examination of the accused and the record of his statement, unless in the opinion of the Magistrate the safe custody of the prisoner cannot otherwise be secured, police officers should not be present. In particular, the police officers concerned in the investigation of the case or in the arrest or production of the accused should be excluded.
- (4) When the accused is produced the Magistrate should ascertain when and where the alleged offence was committed and by questioning the accused should further ascertain, when and where the accused was first placed under police observation, control or arrest.
- (5) The Magistrate should next question the accused in order to ascertain whether he is about to speak voluntarily. It should be made clear to the prisoner that he is free to speak or to refrain from speaking as he pleases and he should be warned that if he chooses to speak, anything he says will be used in evidence against him.
- (6) When upon questioning the prisoner and from observation of the demeanour, the Magistrate has reason to believe that the prisoner is speaking or is about to speak voluntarily the Magistrate should then proceed to record his statement. While carefully avoiding anything in the nature of cross-examination the Magistrate should endeavour to record his statement in the fullest detail and to this end may properly put such questions, not being leading questions, as may be necessary to enable the prisoner to state all that he desires to state and to enable the Magistrate clearly to understand his meaning.
2. The form in use for the record of confessions under S. 161 of the Code of Criminal Procedure (Form No (M) 64) reproduced at page 135 Vol II. of the High Court's General Rules and Circular Orders (Criminal) is cancelled and in lieu thereof the following form shall be used by the Court.
3. The High Court at the same time desire to draw the attention of the Magistrate to the provisions of S 167 of the Code of Criminal Procedure and to the importance of exercising a sound judicial discretion in the matter of granting or refusing remands thereunder.
- (1) Orders, under the section, it is to be observed should be made in the presence of the prisoner, and after hearing any objection he may have to make to the proposed order.

(2) When further detention is considered necessary, the remand should be for the shortest possible period.

(3) Application for remand to police custody should be carefully scrutinised and in general should be granted only when it is shown that the presence of the accused with police is necessary for the identification of persons, the discovery or identification of property, or the like special reason.

(4) In particular the Court is of opinion, that applications, if ever made for the remand to police custody of a prisoner who has failed to make an expected confession or statement, should not be granted.

83.1 Prisoner fresh from police custody.—A Magistrate recording a confession of a prisoner fresh from the hands of the police would exercise a sound discretion, if before recording the confession he takes the evidence of the witnesses for prosecution.—(82) A N 166.

VII. LANGUAGE IN WHICH CONFESSION IS TO BE RECORDED.

84. Language in which the confession is made, unless impracticable.—It is clear from S 164 and 364 Cr P C that the confession is to be recorded in the language in which it was made or if that is not practicable, in the language of the Court or English. It would be for the prosecution to establish the impracticability, if any existed. 17 C 562 (470). See 15 C 549, 10 O C 112 (103-00) L R 70 2 L R 19 (03) U. B. 13.

89. The General Rule.—A confession should be recorded in the language in which it is made.—1 N P 16

80. Confession made in Hindi recorded in English.—Confession recorded in English, though made in Hindi, which the Sub-Deputy Magistrate understood and could write is inadmissible in evidence.—17 C 562

90. Statement in Marathi recorded in English.—Where in spite of the fact, that an interpreter was present and subordinate officials who could have recorded the statement in Marathi were at hand, the Magistrate recorded, the statement made in Marathi in English, held—the irregularity not having injured the accused in his defence on the merits, the case was covered by S 533 Cr P C—21 D 405. 4 D R 785. See O S 277

91. Confession made in foreign language.—A confession made by an accused person in a foreign language need not be recorded in that language. It should be recorded in the language in which the statement is interpreted to the Court. 5 C 826

93. Admissibility of confession not recorded in the language in which it was made.—Evidence should be taken that the statement recorded is that of the person who made it, and when this is proved, the confession is admissible in evidence, provided, the error has not in any way injured the accused. 10 O C 122. 2 M 5 18 C 549 21 B 495. 23 B 221.

85. English record of confession made in Bengali.—Where the Magistrate recorded in English, a confession given in Bengali, and it was stated in evidence that the Magistrate could not write Bengali well and there was no *Johur* with him at the time, held—that the provisions of S. 364 had been sufficiently complied with. 32 C 817

86. Hindustani confession recorded in Bengali.—Where a Mahomedan Magistrate recorded a confession given in Hindustani in the language of the Court (Bengalce) *Hela*—in the absence of the evidence to the contrary that the Magistrate adopted of necessity the alternative of having the confession recorded in the Court language and it was admissible.—18 C 549

87. 87. Where a statement made in one language is recorded in a different language, it is highly doubtful, whether the defect can be cured by S. 533 Cr. P. C. 15 C 695. See (82) A N 60

VIII. VOLUNTARY—MEANING AND CASES.

98. No form of questions is prescribed by S. 164 (3) Cr. P. C.—from which a Magistrate that recording a confession must satisfy himself that he believes the confession was made voluntarily.—

3 Pat J 291 (F. B.).

94. Statement in which a Police Officer interfered.—A statement cannot be said to be properly recorded under S 164 Cr P C, if a Police Officer is present at the time it is made and is allowed to put questions to the deponent. 21 Cr 418 (F)

95. Distinction between 'voluntary' and 'spontaneous'.—A statement may be voluntary, though it is not spontaneous to the extent that the idea of making it has been suggested by some other person, as for instance by a Police officer.—Per Flouren J, in 2 F. R. 1899.

96. Confession elicited by questions.—Confessional statements elicited by improper questions on the part of a Magistrate is inadmissible, on the ground that it was impossible to treat the statements so elicited as voluntarily made.—2 Weir 137. See 1 L B 342. Con 37 C 467

97. What amounts to illegal inducement. A confession caused by illegal inducement or by illegal detention of the accused's relatives is irrelevant and the question of its truth is immaterial. (79) U B 1 (Ev) 3 2 L B, 168. (192-96) U B 1 83

98. Promise of pardon, highly improper.—The inducement that in case the accused made a further confession, he would be made an approver is most improper.—2 Weir 137.

99. Confession made some days after arrest, even if true, is not voluntary and is in almost

every instance, extorted by maltreatment or induced by promise of pardon—9 A. 525 (566)

100. **Circumstances justifying inference that confession is not voluntary.**—"The unjustifiable violence used to the accused before arrest, his illegal detention in police custody for more than 24 hours after arrest, and the marks of violence on his person, unexplained, are sufficient to vitiate the voluntary character of the confession and to make it inadmissible in evidence"—1 B R. 357

Enquiry into the voluntary character or otherwise.

101. **When to be made.**—The circumstance that a confessional statement is voluntarily made should be ascertained by a Magistrate before and not after recording it. 2 Wair 136. 5 A. 253. 3 O N. em. 1 B R. 357. 2 L. R. 213. 3 L. B. 1. Com. 40 C. 87.
102. **Enquiry not merely a matter of form.**—The questioning of the accused before recording a confession is a matter of substance and not of mere form and if it has been omitted, the omission cannot be cured by any evidence under S. 533 Cr. P. C.—3 L. R. 173.
103. **Magistrate must be affirmatively satisfied.**—Magistrates acting under this Section, must be affirmatively satisfied of the voluntariness of the confession, and in case of doubt, they ought not to record or give the certificate. 25 R. 164. 5 S. 1. Cr. R. 5 of 20-2-07.
104. **Precautions to be taken in recording confessions.**—Great care and circumspection are necessary in recording a confession under S. 164 Cr. P. C. It is necessary to record the

ensure if he falsely implicates himself, in the hope of release, and to ask him whether the Police or any other person has subjected him to any ill treatment. A Magistrate ought by putting questions which occur to him, to make himself conscientiously satisfied that the man is a free agent and the confession is voluntary and has not been procured by threats or inducements.—1 O. J. 407. See S. B. R. 126.

105. **Duty of the Magistrate.**—A Magistrate, in order to ascertain whether a confession is voluntary, should try to find out the object of it. He should not be content with a few formal questions. The section contemplates that the Magistrate shall hear the confession first, without making any record, and shall then put questions to ascertain whether the confession is voluntary, and then if he has reason to believe it to be voluntary, he may record the confession, writing out in full, every question put by him and every answer given by the accused and following the provisions of S. 164 Cr. P. C.—3 L. B. 173.

106. **Statement of the accused.**

Magistrate shall record any such confession, unless upon questioning the person making it, he has reason to believe that it was made voluntarily. It is the invariable practice of the Deputy Magistrates in the Province to ignore entirely this provision of the Code. It is considered sufficient to make use of a stock phrase which in this instance runs: "I am a Magistrate; if you want to make any statement of your own accord, you may do so, do not make any statement which you have been tutored by others to make" and then follows the story of the crime without any answer whatever to the Magistrate's formalities. To my mind, a Magistrate might just as well say to the accused "*accus peccat*" or "*abba cu d'ni*." Such phrases would be as much a compliance with the terms of S. 164(3) as any formula now in vogue. What is meant by the Code, is that the Magistrate should ask the accused some such question as "why are you confessing? Are you sorry for your crime or is that some one has told you that you will gain something by a confession," and to refuse to proceed with the recording of the confession until he has had a satisfactory answer to his question. The attention of the Magistrates has been drawn several times to this defect in the procedure, but the comments of the Court have invariably been completely ignored. In my view, the Local Government should take steps to see that Magistrates understand the requirements of S. 164 (3) and that if Magistrates fail to observe them, they are severely reprimanded." *Re J* in 18 Cr. 721 (Pat).

107. **Motive of confession.**—Under S. 164 (3) a Magistrate is bound, to question the accused closely as to his motive in making a confession and if he fails to do so, he has no jurisdiction to say that he is satisfied that the confession is voluntarily made.—1 Pat. W. 388. 18 Cr. 721 (Pat).
108. **How to lay a foundation for the belief that a confession is voluntary.**—When a prisoner is brought before a Magistrate to make a confession, the Magistrate must question him with a view to discovering whether the prisoner confesses voluntarily, and this question must be made in pursuance of a real endeavour to find out the object of it, the requirements not being satisfied by a few formal questions. In fact the working of the subsection contemplates that the Magistrate shall hear the confession first without making a record, that he shall then put questions

made as to whether the confession is voluntary it is inadmissible in evidence and cannot be taken into consideration at all

3 L. B. 173

109. **Omission to enquire into voluntary character, a fatal defect and why.**—A Magistrate, before recording a confession is bound to carefully examine the accused and ascertain that he is not willing to make a statement owing to any inducement, threat or promise, but that his confession is purely voluntary. This is specially necessary in this country, where the police

123. **Confession after long police custody.**—A confession cannot be rejected solely on the ground that the accused had a long time been in the hands of the Police.—*Rat 720* Confession induced by illegal detention of the accused's relatives is inadmissible. See (8) Voluntary etc. (97) above.
124. **Confession held not to be inadmissible.** (a) elicited by questions See (5) Voluntary etc (94) above,
(b) recorded in a language different from that in which it was made
See (7) Language in which etc. (84) above.
125. **Effect of omission to record in vernacular the questions asked.**—The omission of a Magistrate to record in vernacular the questions asked in the examination of the accused person does not necessarily render that examination inadmissible in evidence.—8 C 618 (Foot note) 8 C 616 11 C 539 12 C L 210 15 A 233 (Con 10 B 11 197).
126. **Proceduro before admitting a confession in evidence.**—Before admitting a record of confession in evidence, the Court should enquire very carefully into all the circumstances, under which the confession was made, and particularly the length of time the accused was in police custody before the confession.—25 B 543.
127. **Jury not to decide the question of admissibility.**—It is a misdirection for a Judge to leave it to the Jury to decide whether certain statements or confessions made by the accused and how much thereof are admissible in evidence.—45 C 537.
128. **Confessions recorded after commencement of the trial.**—The argument that the

confessions if recorded after the commencement of the trial, would be inadmissible in evidence cannot be sustained, because the argument seeks to derive from the provisions of the Code, a limitation on the law of Confessions as defined by the Evidence Act for which there is no sufficient warrant. Ss. 161, 342 and 361 Cr. P. C. are not exhaustive and do not limit the generality of S. 21 of the Evidence Act as to the relevancy of admissions.—37 C. 467; *Rat 653* Con.—2 C. N. 702 (714); 8 C. N. 22

129. **Confession irrelevant under S. 24 of the Evidence Act.**—A confession recorded in due conformity with this section, is liable to be excluded if it appears to be irrelevant under S. 24 of the Evidence Act and a portion of it irregularly recorded should also be so held.—51 P. R. 1847; 52 P. R. 1847; 21 P. R. 1541; 23 M. 413; 25 B. 168.
130. **Applicability of S. 80 Evidence Act.**—When a confession is recorded without complying with the provisions of Ss. 161 and 361 Cr. P. C., no presumption would arise under S. 80 of the Evidence Act, as to the genuineness of the document or as to the truth of the circumstances under which it was taken.—10 O. C. 112.
131. **288 Cr. P. C. does not apply to statements of witnesses recorded under S. 164 Cr. P. C.**—Statements of witnesses recorded under S. 164 Cr. P. C. are admissible under the provisions of Ss. 145 and 155 of the Indian Evidence Act for the purpose of contradicting the statements made by them in Court, but they are not admissible for any other purpose. They are not statements to which the provisions of S. 284 Cr. P. C. apply.—16 Cr. 132 (O). 18 Cr. 612 (P.).

X. RECTIFICATION OF ERRORS.

132. **Scope of S. 533 Cr. P. C.**—Errors of procedure in recording confessions may be remedied under S. 533 Cr. P. C. by examining the Magistrate who recorded the confessions.—3 C. N. 387; 8 C. N. 22; 3 Pat J. 291 (F.B.) 20 P. R. 1881. Con 10 B 11 166 (F.B.) 24 W. R. 29.

Note.—The defect which S. 533 Cr. P. C. is intended to cure is not one of substance but of form only.—2 C. N. 702

133. **Confession** age
161
as
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any defect in this respect.—17 C. 862.

134. **Defect or want of signature.**—Where the confession is defective for want of the signature or mark
confession
—10 B
1881; Con 10 B 11 21 11 B. H. 237,

135. **No oral evidence can be given to prove the fact if the confession itself is inadmissible.** See (9) Admissibility in evidence (116).

136. **Defect in memorandum**—can be remedied only by the examination under S. 533 Cr. P. C. of the Magistrate, who recorded the confession. It cannot be cured by the examination of a witness to prove that the statement was taken down in the handwriting of the Magistrate.—8 C. P. 6

137. **Inadvertent omission of memorandum**—Where a Magistrate has inadvertently omitted to certify the voluntariness of a confession recorded by him under S. 161 Cr. P. C., the defect may be cured by the evidence of the Magistrate.—12 Cr. 15 (A). See (9) Admissibility in evidence (118).

138. **Defect in confession cannot be remedied by evidence taken at the Sessions**—5 C. L. 209; But See S. 533 Cr. P. C.

XI. IRREGULARITIES IN RECORDING.

A. Fatal.

- 138 (a) Omission to ask the accused if he made the confession voluntarily.—[S. 161 (3)] (C) U. R. 13
- 140 (b) Omission to record the certificate required by S. 164 (3) Cr. P. C. 1472
- 141 (c) Taking of thumb impression of the confessor (who was able to write) instead of his signature.—32 C. 720

B. Not fatal.

142. (a) Omission to record that the accused was not, at the time the confession was made, in police custody.—Rat 534.
143. (b) Memorandum not being in the exact form proscribed.—3 A. 335.
- 144 (c) Absence of the Magistrate's full signature.—8 W. R. 53 15 W. R. 63.
- 145 (d) Recording in English, confession made in the vernacular.—21 B. 497.

XII. RETRACTED CONFESSIONS.

146. Reason for frequent retraction of confessions in India.—"My experience in this Court has conclusively satisfied my mind of two things: first, that in almost every case of serious gravity or difficulty, the primary object towards which the police direct their attention and energies is, if possible, to secure a confession, and secondly that such confessions, if subsequently retracted, is, as an item of judicial proof, unless corroborated by strong and independent evidence, positively worthless. Instead of working up to the confession they work down from it, with the result that we frequently find ourselves compelled to reverse convictions."

merely because the accused has stated in his subsequent examination that some of the statements in it are untrue, especially when these statements have no bearing on the guilt of the accused.—2 O J 65.

149. When a retracted confession should not be acted on.

- (a) Confession made under police coercion but subsequently withdrawn is inadmissible in evidence.—6 C. N. 390.—But See 11 B. R. 137
- (b) In capital cases, the Jury should refrain from convicting on retracted confessions.—Rat 245; See 3 B. R. 441.

150. Where no coercion is proved.—In the absence of anything to show that the retracted confession was not made voluntarily or was made under coercion, it is evidence not only against the accused but may also be treated as evidence against his whole case.—2 Pat J 80

151. Judicial duty.

"... influence as represented. In this country the retraction follows almost invariably as a matter of course, and though I am well aware how this is sought to be explained by a suggestion of the influence brought to bear upon the confessor by other prisoners in *hatalat*, the fact remains—an endless source of anxiety and difficulty to those who have to see that justice is properly administered"—per *Straight J.* in *G A 609 (F.B.)* at p 542

147. Duty of the Court.—It is unsafe to act upon a retracted confession, unless on consideration of the whole evidence in the case, the Court comes to the unhesitating conclusion that it is true. It is very difficult, if not impossible, to come to such conclusion unless the confession is corroborated by credible independent evidence.—18 A 78 Cr R 5 of 29-3 '07 Con.—19 B. 728

148. Retraction by itself not sufficient.—
See 19 B

Note.—Retraction in part.—A confession does not become wholly inadmissible in evidence

improperly induced. This is a question for the Court to answer in *limine* 8 B. R. 697 3 B. R. 441 1 B. R. 423.

152. The use of retracted confession is matter of procedure rather than of law.—A retracted confession, if proved to be voluntarily made, can be acted upon along with other evidence in the case. There is no rule of law that a retracted confession must be supported by independent reliable evidence, corroborating it, in material particulars. The use to be made of such a confession is a matter of procedure, rather than of law.—19 B 728 23 B 316 Con Rat. 932 28 34

XIII. MEMORANDUM.

153. The making of a memorandum is a judicial or at least quasi-judicial act.—6 B. 288

154. S. 364 para 3 does not apply.—The memorandum required by S. 364 para 3 is not necessary

in respect of a confession recorded under S 164 Cr P. C. [14 C 539]. The certificate need not be in the handwriting of the presiding officer of the Court in which the statement is made. It is sufficient if it is signed by him—(20) A. N. 204; 8 W. R. 65.

memorandum and certificate has not been recorded is inadmissible in evidence by itself [1 B 219; 6 B. 284; 2 C. N. 702; 2 Weir 140], the defect is curable on evidence being taken during trial that the accused made the statement voluntarily etc. (7 C. N. 220; 8 C. N. 22; 5 C. 458; 12 Cr. 16 (4); 2 P. R. 1109; 8 O. C. 395].

155. Memorandum not in the prescribed form.—A confession does not necessarily become inadmissible, because the memorandum is not in the form prescribed by this section [3 A. 374]. But words to the following effect: "The statement made by this prisoner in my presence and hearing is taken down fully. It is read over to him and acknowledged to be correct" were held not to be sufficient compliance with the requirements of S 164 Cr. P. C.—[2 Weir 140].

158. Memorandum not conclusive proof.—The memorandum annexed to the record of a confession is not conclusive evidence of the fact that the confession was made voluntarily, so as to preclude the court of appeal from enquiring whether it was spontaneously or voluntarily made.

10 C. J. 663.

156. Memorandum unnecessary when—No certificate is necessary in the case of a witness.

27 C. 215.

157. A confession without memorandum—Although a confession upon which, the necessary

159. Where a Magistrate refused to make a memorandum—on the ground that he thought that the confession was not made voluntarily, *held* that the Judge should have enquired at the trial under S. 533 Cr. P. C. whether the confession was duly made or not—22 M. 15; 8 O. C. 395; 17 B. R. 598.

XIV. PROSECUTION FOR MAKING FALSE STATEMENT.

160. S. 5 of the Oaths Act applies.—A statement recorded under this section is evidence within the meaning of S. 3, Evidence Act, and the person making it, is a witness within the meaning of S. 5 of the Oaths Act and therefore one to whom an oath might be lawfully administered. Therefore a charge under S. 193 I. P. C., can be brought against a person making a false statement (on oath) under this section.—10 M. 121; 20 M. 89; Cr. R. 8 of 10-2 '00.

161. Statement made to a Magistrate not having authority to carry on a preliminary enquiry,—is not evidence in a stage of

Act V. of 1854.—Cr. R. 10 of 24-11-02; see also 22 A. 115; ('04) A. N. 73.]

XV. POLICE OFFICER.

162. Police officers having Magistral powers—are not competent to record statements or confessions under S 164 Cr. P. C. [1 C. 207; 17 B. 845]. In Burma however, it has been held that a police officer exercising the powers of a

164. (b) should not be allowed to put questions to the witnesses.—21 Cr. 415 (P).

165. (c) should not be employed, even as a scribe, in recording a confession.—10 C. J. 65.

166. (d) cannot require a witness to go before a Magistrate not having jurisdiction over the offence to have his statement taken under S. 164 Cr. P. C. Rat. 468; But see the explanation.

167. (e) ... in the presence of a ... re a group ... patrol was ... informal ... —17 B. R. 598.

Police officers.

163. (d) had no authority to place witnesses who do not volunteer to make statements, before a Magistrate, only on the ground that there is every chance of their being gained over.—20 C. 483.

XVI. MISCELLANEOUS.

168. Magistrate acting under S 164 Cr. P. C. not subordinate to Sessions Judge within S 145 (7) Cr. P. C.—A Sessions Judge has no power to grant sanction in respect of two contradictory statements made under S 164 Cr. P. C. before a Subordinate Magistrate in the course of an enquiry under Ch. XIV.—(11) M. N. 793.

169. Statements recorded by third class Magistrate.—Statements recorded by a third

class Magistrate under S. 164 Cr. P. C., such as the Magistrate not having authority to carry on the preliminary enquiry in the case, is not evidence in a stage of judicial proceeding within the meaning of Ss 191 and 193 I. P. C. 11 B. 702 (F. B.); 14 B. R. 753. Rat 468; ('09) A. N. 33 ('99) A. N. 40; Con. 22 A. 115; 3 Pat J 21 (F. B.).

170. Statements on oath by accused persons.—Where certain persons were called upon to make statements on oath, as to a matter in respect of which they occupied the position of accused persons, *held* that the statements were not such as could have been recorded under S. 161 Cr. P. C. hence no prosecution lay even if such statements were false.—7 S. 75

171. Onus of proving that confession is voluntary, is in England on the prosecution [See *R. v. Thompson* 2 Q. B. 112; *R. v. Eve* L. J. Q. R. 284; Russell on Crimes p. 477 note 2 R. R. 157 (Journal)]. But in India a confession duly recorded, would be *prima facie* admissible as voluntary unless the contrary is established by the accused.—23 R. 168; *Con* 2 C. N. EXT. R. 952

172. Accused not entitled to get copies.—Neither under the Criminal Procedure Code nor under the general principles of common law, is an accused person under remand entitled to copies of statements recorded by a Magistrate under this Section. 30 M. 166.

173. Confession in a previous case.—A confession by an accused person in a previous proceeding is inadmissible in evidence without proof of the accused's identity. 11 C. 580; ('93-'00) L. R. 70.

174. Refusal to sign a statement or confession no offence. See (3) Person making confession etc. (12)

165. (1) Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or thing according to the directions of the summons or order, or when such document or thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

(2) Such officer shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or thing for which search is to be made, and the place to be searched, and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

Proposed amendments to the Section—In section 165 of the said Code—

(1) For sub-sections (1) and (2), the following sub-sections shall be substituted, namely—

(1) Whenever an officer in charge of police-station, or a police-officer making an investigation, has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may search, or cause search to be made, for the same in any place within the limits of such station.

"(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person"

(iii) In sub-section (3), for the words "specifying the document or thing for which search is to be made and the place to be searched" the words "specifying the place to be searched and, so far as possible, the thing for which search is to be made" shall be substituted

(iv) In sub-section (4), after the words "search warrants," the words "and the general provisions as to searches contained in section 102 and section 103" shall be inserted

Notes.

1. Scheme of the Code as regards searches.—The scheme as regards searches under the Code of Criminal Procedure is as follows—(1) The

Court can issue a search warrant under S. 102, or (2) in lieu of that the Magistrate may himself search under S. 103; and (3) S. 165 deals with

searches by a Police officer and not by a Magistrate 36 C. 433

2. **Searches outside the limits of the Police Station.**—An officer in charge of a Police Station has no authority to search beyond the limits of his station. If he does so in company of a Police Constable belonging to the Police Station within

13 A J 1891, 8 C. 1, 24 M. 1, 189

3. **Authority to look up the door of the suspect's house.**—Reading S. 165 Cr. P. C. with S 157 Cr. P. C., it follows that the police have authority to lock up the doors of the house they intend to search and to keep guard over the house as part of their ordinary duties. 12 P. II. 1915
4. **The powers under the Section extend to the search of an accused person's house.**—41 C 261 See 16 C N. 1078.
5. **Search must be for specific articles and not a general search.**—The law does not empower a Police Officer to search an accused person's house for anything but the specific articles which have been or can be made the subject of summons or warrant to produce. A general search for stolen property is not authorised and the law cannot be got over by using such an expression as "stolen property relevant to the case," as the law requires the mention of specific things—10 O N 1078 15 C 109, 41 C 261, 38 C 304 12 O N 1016 35 M J 127; See also 12 C N 973, 13 A J 679; C P. Pol. Man p. 104.

[Note.—Sec. 165 does not authorise a search for stolen property in the house of an absconding offender—38 C 301, Con 41 C. 261]

6. Search for arms—

Magistrate—24 C 681

7. Search for arms—

Sec. 165 does not override S. 165 Cr. P. C. [114 P. I. 1903] A search for arms, without the previous sanction required by S. 29 of the Act, and without a search warrant is improper as not being covered by the provisions of S. 25 of the Arms Act or S. 165 Cr. P. C. [27 C. 692]

Note.—Rules in Bengal.—Searches under S. 30 of the Indian Arms Act XI, of 1878 may in Bengal be conducted only in the presence of a Magistrate or a police officer not below the grade of Inspector.—Cal. Gaz 1878 Pt. II. 850. In the Chittagong Division the power has however been extended to police officers not below the grade of Sub-Inspector.—Cal. Gaz 1889 Pt. I. p. 73

8. **Persons empowered to search.**—Under S. 12 of Act V. of 1861 it has been declared that the Extra-Assistant Superintendents of Police attached to a detective department shall have the powers of officers in charge of police station for

the purposes of searching houses in each District where they may be employed. The Extra-Assistants while exercising these powers, can, under the terms of this section, by written order in any particular case, direct the Head-constables in the detective department who are subordinate to them to make search in any house or place—Beng. Pol. Man 2nd Ed. p. 102.

9. **Need the police officer conduct the search.**

a general supervision over the search

10. **Rules for conducting searches.**

(1) Although house searches may be made at any time, as a general rule, where the search, can be delayed without danger to the chance of recovering the object of the search, it ought to be made between sunrise and sunset [See R. & O. N. W. P. § 10 P. 273; Beng. Pol. Man 2nd Ed. p. 222 and 472, Mad. Pol. Man. Vol. I. p. 114].

(2) Steps to be taken to prevent introduction of articles from outside.—Before entering the premises the exterior of the place to be search will be examined, and it will be ascertained whether there is easy access or opportunity of introducing articles without the knowledge of the inmates. Precautions will be taken to prevent this being done while the search is in progress.—C. P. Pol. Man p. 161.

(3) Search should be made in the presence of two or more respectable persons.—See, Mad. Pol. Man. Vol. I. 113; M. P. O. No 23 of 1900

(4) List to be prepared.—A List of all things seized in the course of a search, and of the places in

(5) Search for arms—

Pol. Man. I. 114].

(6) Reasons for search to be recorded in the Station Register.—In every case in which an officer in charge of a Police Station exercises the powers vested in him under this section, he will record concisely but explicitly in the Station House Register his reasons for deciding to search or cause search to be made in any house. This should as a rule be done before the S. I. O. proceeds himself to search or issues his order in writing to his subordinates.—Mad. Pol. Man I. 114

11. **Search by constable without written order.**—A constable making a search without the written order required by Cl. 3 does not lawfully exercise the power of a public servant. Resistance offered to him in the course of such search, by way of private defence will not be an offence under S.

353 1. P. C.—Sec 7 N. P. 209 (211); 17 M. J. 323;
 6 C. J. 753; 13 A. J. 691; 8 S. 1. But See 23 M. J.
 445; 9 M. T. 168; 7 B. H. 60; (92) A. N. 41.

12. Action for damages on account of illegal search.—See 24 C. 691; 39 O. 133.

166. (1) An officer in charge of a police-station may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found if any, to the officer at whose request the search was made.

Proposed amendments to the section.—(3) In sub-section (1) of section 166 of the said Code, after the words "an officer in charge of a police-station" the words "or a police-officer making an investigation" shall be inserted,

(4) After sub-section (2) of the same section, the following sub-sections shall be added, namely:—

"(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station."

"(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103."

Notes.—See Note No. 2 under S. 165 for procedure relating to searches outside police stations.

167. (1) Whenever it appears that any investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused (if any) to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Proposed amendments to the Section—In sub-section (1) of section 167 of the said Code—

(i) for the words "it appears that any" the words "any person is arrested and detained in custody and it appears that the" shall be substituted, and the words "under this Chapter" shall be omitted;

(iv) for the words "officer in charge of the police-station" the words "police-officer making the investigation" shall be substituted; and

(v) the words and signs "(if any)" shall be omitted.

Notes.

1. **Application of the Section.**—Sec. 167 Cr. P. C. applies to proceedings under Chapter XIV. and not to those under S. 110 Cr. P. C. and therefore a Second Class Magistrate has no power to remand the accused to custody and to keep him in subjud as a prisoner with a view to proceedings being taken against him under S. 110 Cr. P. C.—39 M. 925; 5 B. R. 27 (24) See also S. O. N. 579 12 A. J. 365

2. **Scheme of the Code with regard to remands.**—The power of remand under S. 167 is given to detain prisoners in custody while the Police make the investigation and in a proper case, to commence the inquiry. But the custody mentioned in S. 311 is quite different and is intended for under-trial prisoners. S. 167 gives the Magistrate discretion (recording his reasons) to remand, from time to time, but limits the period for the exercise of the discretion to fifteen days in all. S. 170 Cr. P. C. authorises the police officer, if there is evidence or reasonable ground for suspicion, to forward the accused to a Magistrate empowered to take cognizance of an offence on Police report. Then, under S. 311, an application might be made for cause shown as specified there to the proper Magistrate to postpone the commencement of the enquiry and remand the prisoner. The intention of the Legislature, having regard to Ss. 61 and 167 and to the requirements of person should be competent to as possible—

3. **Maximum period of remand.**—The period for which a Magistrate, can authorise under S. 167 Cr. P. C., the detention of an accused person in Police Custody is fifteen days on the whole 23 B. 32 (34); 11 M. 98; 13 C. N. 51; 1 W. R. 5 19 W. R. 30 5 B. H. (C. C.) 31 24 P. R. 1902.

(Note.—Thereafter he can under S. 311 Cr. P. C. by a warrant remand the accused for any term not exceeding 15 days at a time.—13 C. N. 61)

4.

. application of the Police an accused not produced in Court [39 P. R. 1867]

5. **Who can grant a remand.**—If the detention of an accused person is necessary during investigation he should be taken to the nearest Magistrate who, whether he has or has not jurisdiction to try the case, can authorise detention of the accused in such custody as he thinks fit—12 Cr. 15 (A) 16 C. N. 145.

6. **Distinction between 'detention' and 'remand.'**—For the purpose of Police rules 'detention' means detention in police custody in a police lock up or otherwise, and "remand"

means remand to custody in a Magisterial lock up or to a Magistrate's camp guard or sub-jail or recognizance during a postponement or adjournment of an enquiry or trial.—R. & O. Panj. p. 387.

7. **Only real necessity will justify a remand.**—A remand to Police custody can only be granted in cases of real necessity, and when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the Police in elucidating the case.—[Panj. Cr. p. 174; See 23 B. 32; 11 C. N. 554 S. 3 W. P. 275] Frequent remands should be avoided [Jud. Cr. No. 4 J. of 15.10.91 and No 312 J. of 19.5.91] As a rule, remands should be rarely ordered.—[Jud. Cr. No. 509 J. D. of 4.5.91 or Jud. Cr. No 1114 of 8.11.05]. Records of every case remanded more than 3 times should be examined by the District Magistrate [Hort. Cr. of 5.8.91].

[Note.—That the accused will have to be taken to the place of occurrence for individual pointing out the places through which they passed to their way to commit a felony and also for their identification is not a sufficient reason for their remand.—[7 C. N. 457]. A person cannot be detained on a mere expectation that he would show his guilt [17 P. R. 1872]. A Magistrate would not be justified in ordering detention in order that the accused may be forced to give a clue to the stolen property [3 S. P. 275] or on account of the delay in preparing the diary or copy thereof [B. H. C. Cr. Cir. p. 3] or simply for the purpose of verifying confession of the accused [7 C. N. 220]. Recording of reasons for remand is compulsory. A Magistrate should not sanction the detention of an accused person without recording sufficient reasons as required by law 7 C. N. 451. 23 B. 32; 16 C. N. 145; See (85) A. N. 59.

8. **Magistrate bound to consider the reasons.**—Before a Magistrate orders the detention of the accused person, he should ascertain how long he had been under Police surveillance or influence, and in recording the reasons for detention, he should note all the information that he is able to obtain on the subject. [(33) A. N. 59. See also C. P. Cr. Cir. Pt. II. No. 12] The law contemplates that the Magistrate should consider, whether on the facts placed before him, there are good grounds for allowing such detention [12 C. N. 554]

9. **Remand to be for a short period.**—In ordering further detention of an accused person in Police custody, the Magistrate should invariably limit the terms as much as possible to what may be necessary, for the object in view.—11 C. N. 554.

10. Procedure for obtaining remands.—

- (a) In N. W. P.—See R and O. N. W. P., 8, 18 p. 362
 (b) In Bengal—See Ben. Pol. Code pp. 379-384
 Bengal Pol. Cir. 3 of 27-6-01.
 (c) In Burma—See Burma Cir. Or. Ed. 1902 S. 3
 pp. 4 and 5.

11. Place of confinement.—As to the place of confinement, where a police-officer has arrested a person, the prisoner should not be kept in confinement in any place, which the subordinate officer might select, but should, if possible, be sent immediately to the Police and placed in custody of the officer in charge of the Station, who is the person entrusted by the Act to conduct the enquiry.—*Per Markby J.* in 7 W. R. 3 (C)

12. Allowing person in detention to escape. A police officer who is placed in charge of a person remanded under S. 167 Cr. P. C. and

negligently allows him to escape, is punishable under R. 222 I. P. C.—O. A. 120.

13. Action for illegal detention.—In a charge against a Police Officer for having detained illegally an accused person for more than 24 hours, without the special order of a Magistrate, it is not necessary to prove that the detention was made with a guilty knowledge.—10 W. R. 30.

14. Submission of papers to the District or Divisional Magistrate.—Copies of all orders of remand together with reasons for such orders shall be transmitted by subordinate Magistrates to the Divisional and District Magistrates within 24 hours from the date of the same.—Weir (ap) 21.

Application for remands.—Application for remand under S. 167 shall be made personally by the chief police officer present to the chief Magisterial officer present, Jud. Cir. No 2922 J of 21-7-01

168. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.

Report of investigation by subordinate police-officer.

Notes.

1. Note.—Accused not entitled to copy of report of investigation.—Report made by a subordinate police officer under this section is not a public document within the meaning of S. 71 of the Evidence Act and an accused person is not entitled to a copy of such report before trial [20 M. 189 (F. B.); *Subramania Ayyar J. Diss.*].

2. ~~Nothing shall be done by a police officer~~

until they have made it all complete—5 W. R. 6.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Notes.

1. Ss. 169, 170 and 173 to be read together

to cases in which some person is accused, and S. 173 contains general directions relating to both—4 L. B. 137 (188)

drawing of a complaint. The permission to withdraw is a judicial act, the exercise of which is vested in Courts of law. A police officer has no authority to interfere in such matters.—Rat 94

2. Release of accused is only provisional. A Police officer's power to admit to bail under S. 169 Cr. P. C. is only provisional. If there is a charge against the accused, the offence the accused is charged with, and the Magistrate in custody—Rat 121.

3. Police Officer cannot permit withdrawal of complaint.—This Section does not authorise withdrawal of the bond. The first is taken under

5. Prosecution for false complaints.—A Magistrate does not exercise proper discretion, in ordering forthwith the prosecution of the complainant under S. 211 I. P. C. upon receipt of

a police report that the complaint is false. The complainant should be given a full opportunity to substantiate his case before sanction is accorded.—5 C. N. 100.

170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complaint (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Proposed amendments to the section.—In sections 169 and 170 of the said Code, after the words "If, upon" the words "the completion of" shall be inserted; and for the words "officer in charge of the police-station" wherever they occur, the words "police-officer making the investigation" shall be substituted.

Notes.

1. On a day fixed.—A recognizance taken from a prisoner and binding him to attend the Court should specify a particular day for his attendance. [11 W. R. 47] The police should not bind over witnesses to appear and give evidence long after the prisoner is brought before the Magistrate [6 W. R. 52] The day fixed for the attendance of witnesses should as a rule be the day on which the accused person is to appear, or the date on which he will probably reach the Magistrate's Court.—[('93-'00) L. B. 478 (479)]
2. Dilatory procedure.—A Police Officer should take action as soon as a *prima facie* case has been worked out. He should not wait till he has made it all complete.—See 5 W. R. 6
3. When bond should be taken from witnesses.—A bond under this section can only be

taken from a witness when the accused has been arrested, and is either being forwarded to Magistrate or is released on security given for his appearance.—('93-'00) L. B. 478 (479).

4. Payment to witnesses.—For Rules in Bengal.—See Cal. Gaz. 1895 Pt. I. p. 621.

5. When a witness bond may be estreated. Recognizance, given by witnesses can be estreated only when they have failed without just excuse to attend and give evidence and only after an opportunity of justifying the default.—[11 W. R. 39]. A bond can be estreated only when it fails the requirements of the section [('93-'00) L. B. 478.]

6. Defence witnesses.—It is not the duty of the Police to bind over and produce before the Magistrate the witnesses for the defence. This

section and S. 173 refer to witnesses in support of the complaint and it cannot be supposed that the power of detaining witnesses in custody which is given by S. 171 was intended to apply to prisoner's witnesses.—Mad. Pol. Man 1. 90.

7. *Officer under the Indian Airways Act.*
the Indian
reason to
and addresses

are unknown and he refuses to give them, or when given, are reasonably believed to be incorrect, the case should be sent to the Magistrate in accordance with this section as a cognizable offence.—Bomb. H. C. Cir. para 10-a p 4

8. Copy of charge-sheet.—A Magistrate is entitled to refuse to give the accused a copy of the police charge-sheet at the commencement of the trial, as such charge-sheets contain a good deal of information for the use of the Magistrate and are extracts from, if not copies of the police diary [19 M. 14]. In this connection the following remarks made by their Lordships in 6 M. J. 154 will be read with interest. "We think this decision (meaning 19 M. 14) is likely to work considerable mischief. The learned Judges no doubt expressed themselves somewhat guardedly that at the stage of the proceedings, they would not in revision set-

aside the order of the Magistrate refusing a copy of the charge-sheet. The subordinate Magistrate is apt to extend the scope of this decision to all cases. It seems to us that the Police charge-sheet corresponds to the complaint of the private are initialed notes the com

sheet. The fact that the charge-sheet may contain matters which are also in the diary is no argument in favour of refusing a copy. For as we have more than once pointed out S. 161 places the result of the Police investigation on a footing entirely different from the diary under S. 172."

9. Procedure when the complainant or accused is a soldier.—If the complainant or the accused person is a soldier, in His Majesty's Army, the officer in charge of the Police Station should, immediately after taking such bond, send a copy thereof to the Commanding Officer of the Regiment in which he is serving.—Bomb. Pol. Man p. 90.

Complainants and witnesses not to be accompanied by police-officer.

Complainants and witnesses not to be subjected to restraint
than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170 the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Proposed amendments to the section.—In sections 171 of the said Code, for the words "officer in charge of the police-station," the words "police-officer making the investigation" shall be substituted.

Notes.

1. Unnecessary restraint.—There is no warrant in law for the police to keep a witness under surveillance for 4 days. Statements obtained from the witness under such circumstances, cannot be regarded as voluntary.—4 C. N. 49 (54)
2. Change in the Law.—Under the Code of

1872, the Police Officers were forbidden to accompany the complainant and witnesses. The words "shall be required" leave an option to the complainant or the witness to avail himself of a police escort if he so desires.

172. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and close his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

Notes.

1. **Object of the special Diary.**—The early stages of investigation which follows on the commission of a crime must necessarily in the vast majority of cases be left to the Police and until the honesty, the capacity, the discretion and judgment of the police can thoroughly be trusted, it is necessary for the protection of the public against criminals, for the vindication of the law and for the protection of those who are charged with having committed a criminal offence, that the Magistrate or Judge before whom the case is for investigation or for trial, should have the means of ascertaining what was the information, true, false or misleading, which was obtained from day to day by the police-officer who was investigating the case and what were the lines of investigation upon which the police officer acted.—*Per Edge C. J.*—in 19 A 390 (F.B.). See 16 C. N. 145. 1 Log Rom 26

2. **Use of the diary by Courts.**—It is inconsistent with the provisions of S. 172 Cr. P. O., to use the earlier statements of the witnesses made to the Police and entered in the Police Diary as evidence. Those statements can be used only for the purpose of discrediting the witnesses, during their examination and not for the purpose of testing their credibility by a comparison of their statements before the Police and their statements as recorded by the trial Judge in the stage of appeal or on submission of sentences for confirmation under S. 374 Cr. P. C. To use the diary for such a purpose is to contravene the rule laid down in 19 A 390 (F.B.). Where a Full Court pointed out that such a diary may be used to assist the Court which tries the case by suggesting means of further elucidating points which need clearing up, and which are material for the purpose of doing justice between the Crown and the accused, but not as containing entries which can by themselves be taken to be evidence of any date, fact or statement contained in the diary. The Police Officer who made the entry may be confronted with it but not any other witness.
44 C 876 (P.C.)=33 M. J. 555=19 B R 510=15 A. J. 475=1 Pat W 661 See (74) A. N. 165; 10 C. N. 600; 27 C 295. 9 C 455; 23 C. 361; 8 W. R. 35 13 W. R. 22 21 A 159 (161). (78) A. N. 22; 16 C P 122.

3. **Statements of witnesses should not be entered in the Special Diary.**—Statements of witnesses for the prosecution recorded by the investigating Police Officer shall not be entered in the Special Police Diary but shall

be separately recorded.—[Reg. and Ord. N. W. P. S. 10 p 204]. So far as Burma is concerned, the Executive Government, have forbidden the incorporation in special diaries of witnesses' statements in *extenso* [Bur. Pol. Man. p. 611—See 14 Cr 1022 (L.B.)]. No oral statement of witnesses made to Police Officers should be recorded in the Special Diary under S. 172 Cr. P. O.—[13 C. 1023] It is not necessary to enter in the Diary the statements made by witnesses on an examination made by a Police Officer [19 A 390 (F.B.)]. See also 16 C. 610; 16 C. 612 (N); 20 C. 612; 10 C. N. 70; 8 C 739; (79) A. N. 103; (19700) L. B. 47; (19701) U. B. 20; But see 17 P. R. 1491

[Note.—The provisions as to cross-examination of the Police Officers under Ss. 161 and 145 of the Evidence Act which refer to his own statements do not apply to the statements of witnesses entered in the Special diary. Such statements fall under S. 162 and are liable to be produced under the conditions laid down in that section and are admissible under that section only.—10 C. N. 70]

4. **Entries cannot be treated as corroborative evidence.**—A magistrate ought not to refer to an entry in the police diary (which has not been used to refresh his memory by the witness) as corroborative of prosecution evidence.—15 Cr 236 (U).

5. **Diary in non-cognizable case.**—It is incumbent on a Police officer who investigates a non-cognizable case under the orders of a Magistrate, to keep the diary for which provision is made in S. 172 Cr. P. O., and the omission to keep such diary deprives the Court of the very valuable assistance which such diaries can give, if legitimately used.—16 P. R 1918.

5. **S. 91 of the Evidence Act does not apply to entries in the diary.**—S. 91 of the Evidence Act has no application to matters embodied in a special diary under S. 172 Cr. P. O. (for if it had, no proof at all could be given of such matter in as much as S. 172 forbids a special Diary being used as evidence except for certain limited purposes.—18 Cr. 1022 (L. B.)

[Note.—The facts stated therein must be proved by examining the writer as a witness.—2 Weir 143. 2 Weir 142; (83) A. N. 145; 15 C. N. 214]

6. **Rules for sending for diaries.**—Although these diaries are not sent to the Magistrates, they

are entitled to call for and inspect them whenever they may consider necessary. They should make it a uniform rule to do so in cases where the Police investigation has extended over several days, and the credibility of any of the witnesses is doubtful, and their calling for them occasionally at other times would have the best possible effect, in that the accused would be enabled to refresh his memory from any document, unless the document is either in the possession of the

see that each day's diary has been forwarded to and has regularly reached the District Superintendent in course of post; this being the only security against the contents being antedated.—Panj. Chief Court Cir. N. of 21-5-09.

7. Sections of Evidence Act referred to in the Section.—*Refreshing memory*—See Ss 159, 160 and 161 of the Evidence Act. "contradicting such police officer"—vide S. 145 of the Evidence Act.

8. Sessions Court cannot pass general order for production of diary.—A Sessions Court has no power to make a general order for production of Police diaries in all criminal appeals before it, but has authority only to summon the diaries when and as required in each particular case—(194) A N. 181. See 19 A 390 (F. B.).

9. Access to the diary.—The accused cannot, as a matter of right look at or inspect any entry in the diary. Only when the Police officer does look at an entry in the diary for the purpose of refreshing his memory, that the provisions of

his memory and thus obtain no access to the diary in an indirect manner. The privilege of using the diary to contradict the police officer belongs exclusively to the Court [5 C 154]. As Wilson J has remarked in 5 C 154. "I know of no authority for saying that a witness can be compelled to refresh his memory from any document, unless the document is either in the possession of the

party who desires to put it to the witness or is at least such as we can insist on having produced" [See 13 C. 7]. The accused may look at the particular entry before or at the time the witness goes it to refresh his memory [8 C 739].

10. Notes of speeches in trials for sedition.—Notes of seditious speeches made by a Police Officer may be on being used for the purpose of refreshing his memory by the Police Officer, allowed to become a part of the record in a trial for an offence under S 121 I. P. C.: 32 M. 3 (13).

11. Jury cannot inspect diaries.—Police diaries cannot be placed before the jury, as provided by S 172, they are useful, not as evidence but to aid the Court in the trial, so as to enable it to make a thorough enquiry on all material points, and to elicit in the examination of the witnesses, and especially of Police witnesses the real facts of the case—27 C. 205.

12. Copies.—In no case is an accused person or his agent entitled to a copy of the special diary or any part of it. His right is limited to that of inspection in certain cases: [19 A 390 (F. B.)]. No document, precept or official paper of any kind or any copy of such paper, belonging to or in the custody of the Police, will be furnished to any private individual or other person, not authorised by law to require it, unless a precept of a competent Court, or order of a competent authority requiring him to give it, be presented to the Superintendent of Police—Mad Pol Man. Vol I p 118 See also (193-00) L B 42 (43); 16 A 207.

13. What the accused may do.—The proper procedure for the accused is, to ask the Court, at the time the witness whose statement is recorded in the special diary to refer to such writing and if necessary, to furnish the accused with copies. The police-officer may also be asked whether the witness made certain statements to him—33 C 1023.

14. Prosecution for false entry.—A Police Officer making a false entry in the Special Diary to be kept under this Section and submitted to his official superior in pursuance of a departmental order is guilty of an offence under S 177 I. P. C.—See 4 M. 144.

173. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge

Report of police-officer of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties,

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge such bond or otherwise as he thinks fit.

Proposed amendments to the sections.—For sub-section (1) of sections 173 of the said Code, the following sub-section shall be substituted, namely:—

"(1) Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed, the police-officer making the investigation shall—

(a) forward to a Magistrate empowered to take cognizance of the offence on a police report a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate in such manner as may be prescribed by the Local Government, the action taken by him to the person by whom the information relating to the commission of the offence was first given."

Notes.

1. **Contents of the report.**—The police report under S 173 Cr. P. C. in order that it may be acted upon must set forth the nature of the information against the accused. Where no such information is forthcoming, a Magistrate cannot proceed under S 190 (b)—37 C. 19

2. **-----**

that is to say a report in the course of an investigation of a cognizable offence—21 Cr. 269 (Nat) Sec 40 C 851 26 B. 100. 6 S. 82; 6 S. 1.

Note.—The term Police report in S 190 is not limited to the report mentioned in S. 170 but includes the report submitted under S 173 by police-officers who have investigated a non-cognizable case under S. 163 Cr. P. C., under the orders of a Magistrate having power to try such a case: 11 A. J. 331.

3. **Accused not entitled to copy of the report before trial.**—The charge sheet referred to in S 173 Cr. P. C. is not a "public document" within the meaning of S 74 of the Evidence Act and an accused person is not entitled to a copy of the Charge Sheet before trial [20 M. 189 Shephard and Subramania Ayyar J. J. dissenting].

4. **Chapter XIV deals with three kinds of reports—viz.**

(1) preliminary report under S. 157 Cr. P. C. from the S. H. O. to the Magistrate

(2) report under S. 168 Cr. P. C. by a Subordinate Police Officer to the Station House Officer [See 20 M. 189 (F. B.)].

(3) Final report or charge-sheet under S. 173 Cr. P. C. See Mad. Pol. Man I 84

Note.—The superior Police Officer making an investigation is the proper person to prepare and submit the Charge Sheet. *Ibid* p 83].

5. **The words "or otherwise as he thinks fit."**—Clearly show that the Magistrate may

order the prosecution of the accused. His power to do so does not depend on the question whether the police have dealt with the case under S 16 Cr. P. C. and released the accused. If he is of opinion, that there is a *prima facie* case he may proceed under S 190 (b) notwithstanding that the Police Officer has reported that "there is no sufficient evidence or reasonable ground of suspicion to justify the issue of a warrant."—See 4 L. B. 137 (134).

6. **Magistrate is bound to act on the report. He cannot act as if there was no report.**—A Magistrate may either release the accused or take cognizance of the case on receipt of the Police report under S 190 (b). He cannot treat the report as a complaint and proceed to make over the case to a subordinate Magistrate for enquiry under S 202 Cr. P. C.—17 C. N. 1001

7. **Order to strike off a case reported under S. 173, not a judicial order.**—The order of a Magistrate to strike off a case reported to him under this section is not a judicial order corresponding to the dismissal of a complaint under S. 203 Cr. P. C., and is therefore not subject to review by the Sessions Judge under S. 437 Cr. P. C.—Rat. 521. See also Rat. 121 and 91.

8. **----- cannot under deal authority under report**

as required by S 173 Cr. P. C., instituted proceedings against the informant under S 211 I. P. C.—*Heid*—that the case had not come to an end in the absence of an order of the Magistrate under S 173 Cr. P. C. Sec. 211 I. P. C. therefore did not apply—17 B. R. 69.

[**Note.**—Where the report has not been followed by a judicial investigation, [upon the complainant impugning the Police report and insisting on a judicial investigation, no sanction would be necessary.—43 C. 1152; 14 C. 707 (F. B.)] 33

C. 1: 5 C. 184; 21 W. R. 41; 11 R. R. 1169; 3 A. 352; 10 M. 232; 7 M. 292; 12 P. R. 1905; 5 Bur. T. 129.]

D. Further investigation after submission

of report.—The number of investigation into a crime is not limited by law and that when one has been completed, another may be begun on further information being received.—35 M. J. 127.

Police to inquire and report on suicide, etc.

174. (1) The officer in charge of a police-station or some other police-officer specially empowered by the Local Govern-

ment in that behalf, on receiving information that a person—

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concern therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate especially empowered in this behalf by the Local Government or the District Magistrate.

Proposed amendments to the section.—In sub-section (3) of section 174 of the said Code, for the words "or Sub-divisional Magistrate," the words "Sub divisional Magistrate or Magistrate of the first class," shall be substituted.

Notes.

1. **Section applies only when the corpus is available**—When the body cannot be found or has been buried, there can be no investigation under this Section. S. 174 Cr. P. C. is intended to be applied in cases in which an inquest is necessary.—27 P. R. 1908

2. **"Some other Police-officer."**

(i) Police patels in Bombay—In Bombay Police

patels are authorised to hold inquests—See Bombay Village Police Act (VIII of 1867) S. 11. Rat 740.

- (b) **Village Headmen**—An inquest may be held by Village headmen—See S. 161 of the Code of 1861 S. 13 of Mad Reg. XI of 1810. The Village head acting under Ss 174 and 175 Cr. P. C. has only the powers of a Police officer specified in S. 175 Cr. P. C.—3 M. T. 199.

3. Magistrates empowered to hold inquests

- (a) **In the Punjab**—all Magistrates of the first and second class have been specially empowered to hold inquests under this Section—*See Punjab Gaz.* 1883 p. 23 also p. 52.
- (b) **In Bombay**—all Magistrates (except Honorary Magistrates), all District Superintendents and Assistant Superintendents of Police are empowered to act under S. 174 Cr. P. C.—*See Bomb. Govt. Gaz.* 1872 p. 1325. 1873 p. 10.

4. Duty of District Magistrate to inform District Superintendents as to which Magistrates are empowered.

The District Magistrate should inform District Superintendents of Police which of the Subordinate Magistrates have been authorized under S. 37 read with this Section to hold inquests—*C. P. Cr. Cr. Pt. II.* No. 10.

5. Courts of Coroners.

Inquests in Calcutta and Bombay are to be held under the Coroners' Act IV of 1871. (Ss 8-30) by Coroners. The office of the Coroner has been abolished in the Presidency town of Madras by Act V. of 1889. Ss 174 to 176 Cr. P. C. apply to the town in a modified form *See Mad. Act V. of 1898.*

6. Coroner's Courts are not open Courts.

The Coroner's Court is not an open Court and the Coroner has a discretion as to admitting persons not interested or not closely connected with the enquiry Cases may occur in which privacy may be requisite for the sake of decency, others in which it may be due to the family of the deceased.—*Gornett 6 D. & O. 611.*

7. Powers of Coroners.

A Coroner in the interests of justice to hear witnesses on both sides for the purpose of arriving at the truth, though there is no express provision of the law requiring him to do so [2 Hale P. C. 60. *R v. Ingham* 5 B & S. 257]. A Coroner's enquiry is similar to an inquiry by a Magistrate. He can examine witnesses on oath, record confessions (which will be considered as confessions made to a Magistrate), arrest the accused after the verdict of the jury and commit the accused for trial [vide S. 25 Act IV of 1871]—16 B 159 (160). But a Presidency Magistrate is not ousted of his jurisdiction to hold a preliminary enquiry into a charge, because the Coroner has already held an enquiry and committed the accused to the High Court [16 B 159 : 31 C. 1 : Rat. 540]

8. Procedure at the enquiry—

- (a) **Inquest to be held forthwith.** The inquest must be held forthwith, so that all the circumstances of the murder, may be reported to the District Police—*Rat. 740*
- (b) **Evidence may be recorded.**—Similarly the Coroner's inquest, evidence and circumstances justifying the accusation of the person denounced may be recorded—[*Ibid* See (11) M. N. 138] There is however no analogy between such an enquiry and a Coroner's inquest—*Per. Markby J.* in 3 O 742.
- (c) **Refusal to serve on an inquest.**—Refusal to serve on an inquest, when called on by a Police

patel, specially empowered under S. 15 of the Bombay Village Police Act VIII of 1867, is not a refusal to obey a lawful order; punishable by the patel himself under that Section—*Rat. 614.*

9. The Report.—

(a) **Nature of the Report.**—The report is what is known as *Mahazar*, and will differ from the final or complete report mentioned in S. 173 Cr. P. C. *Inquest reports must be written up and completed on the spot, where the inquest over corpse is being held. Immediately the inquest is closed, the report thereof will be put into a cover and handed over in the presence of the Panchayat to the constable about to take the corpse to the Medical Officer's station for examination—Mad. Pol. Man. I. p. 65*

(b) **Special diary not necessary in all cases.**—The Lieutenant-Governor does not think that special diaries are intended or necessary in all cases of enquiry into unnatural deaths. The report described in S. 174 Cr. P. Code, is very much the same in character as the special diary of S. 177. If the Police officer investigating, see reason to suspect crime, the enquiry becomes one under S. 172 and special diaries become as a matter of course necessary, but in ordinary cases in which the enquiring is made and completed in a few hours, there seems to be no necessity of reporting the facts first in a special diary and then in the report prescribed by S. 174. When however the inquiry is prolonged or lasts for more than one day, the diary should be sent to inform, the District Superintendent and Magistrate of what is going on. *Beng. Pol. Cr. 1872 p. 107.*

(c) *the persons Police—as to cases, may be entered in the special diary—N. W. & W. and Ord.—p. 275*

10. **Procedure with regard to the corpse.**—He (the police officer) must proceed under sub (3) in all cases, evidence of the condition of the body, when first discovered and of the surrounding circumstances should be recorded—[*Oadh. Cr. Dig. p. 9*] But where there is no reason to doubt the cause of death, despatch of the body to the nearest Medical Officer—is uncalled for. [*Mad. Pol. Man. I p. 85*] Bodies for medical examination shall be sent to the nearest civil surgeon [See *Fort St. G. Gaz. Not dated 11-12-74 p. 1834*]
11. **Steps to be taken for preserving the body.**—In order that the body may be in as good a state of preservation as possible, when sent to Medical Officers, powdered charcoal must be thickly sprinkled over it—[*Mad. Pol. Man. I p. 85*] When it is necessary to keep a body for the purposes of identification, it shall be placed in the coolest room available, and the doors and windows shall be closed and watched, carbolic acid powder shall (if available) be freely used in such room [ibid]
12. **Death in Jail.**—As to the course to be pursued in the case of death of any prisoner in Jail, *See* Ss 15 and 17 of the Prison's Act IX of 1894.

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| <p>4. Refusal to answer truly—is punishable under S 179 I. P. C.</p> <p>5. This Section is not applicable to the area comprised within the ordinary Civil Jurisdiction of the Madras High Court. See S. 4, Act V, of 1889.</p> | <p>6. Record of statements of witnesses—There is nothing in the Code to prevent the statement of the witnesses examined at an inquest being recorded verbatim—3 M. T. 321.</p> |
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176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Notes.

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| <p>1. Analogous Law.—Of the Coroner's Act IV of 1871.</p> <p>2. The Section does not apply to the Madras City.—Fide S 4 of the Madras Act V of 1889.</p> <p>3. Jurisdiction of Presidency Magistrates not ousted by Coroner's Inquest.—See Note no 7 under S 174 <i>supra</i>.</p> <p>4. Nature of the Enquiry.—The Section does not require that the Magistrate holding the inquest should report to his official superior, or publish the result of the inquiry. Nor is the Magistrate bound to come to a finding. There is no analogy between a Coroner's Inquest and an</p> | <p>inquiry under this Section—See, the remarks of Markby J. in 3 C. 742.</p> <p>5. Police have no power to disinter.—A Police Officer making an investigation under this Section, has no power to cause a deadbody that has been buried, to be disinterred in order to examine it. Such power is conferred on a Coroner by S. 11 of Act IV of 1871; and on a Magistrate holding an inquest under S 176 Cr. P. C.</p> <p>6. Proceedings of a Magistrate not empowered.—If any Magistrate not empowered, holds an inquest, under this Section, erroneously in good faith, his proceedings are not on that account to be set aside.—Fide S 523 (c) <i>infra</i>.</p> |
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PART VI. PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial

Ordinary place of inquiry and trial.
it was committed.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction

Arrangement of Notes.

S 177 = S 63 para 1 (1872) = S 26 (minus proviso) [1861].

1. Principles and Application of the Section.
2. Jurisdiction over offences committed out of British India or by Foreign Subjects.
3. Offences committed on the High Seas.

4. Offences committed by Soldiers.
5. Miscellaneous Proceedings.
6. Exceptions to the General Rule.
7. Effect of trial by the Wrong Court.
6. Miscellaneous.

I. PRINCIPLES AND APPLICATION OF THE SECTION.

1. Analysis of the Chapter.—Section 188.

conferred by Ss. 178 to 181 on Courts which according to the ordinary rule of S 177 would not have had jurisdiction. The proviso to Section 188 will come into operation only when the British Indian Court, cannot get jurisdiction under Ss 179 to 184 and has to depend on the first part of S 188 to get jurisdiction. Surely it could not have been intended to restrict the enlarged liberties and privileges as regards jurisdiction given to the Courts by the previous sections—26 M. J. 235.

2. "Crimes in their nature are local."—The rule enacted by S 177 is in accordance with the dictum of *De Grey C J* in *Rafael 2 W. Blackstone p 1058*, "Crimes in the nature are local, and the jurisdiction of crimes is local." "The jurisdiction over the crime belongs to the country where the crime is committed" [17 B 369. See *McLeod L. R. (91) A. C. at p 458*] The accused is to be tried according to the law of the place in which the crime is committed and not according to his nationality [Sirdar Gurdoyal (94) A C 670]. On this principle, aliens are amenable to the English Criminal Law, in respect of crimes committed in England [Barronet's Case] E. A B 1. See 9 B. II. 356] See Russell on Crimes Vol I, p. 19

3 Offence committed by foreigner beyond

jurisdiction.—A British Magistrate has no jurisdiction to try a person who is a resident of a Native State for an offence committed in that state [2 B R 337, 16 O 667, 28 A. 372, 2 Weir 145 6 M H (ap) 3 3 M H 384 20 P. R. 1878, 16 P R 1880 37 P R 1881, 7 P R, 1894. 1 P. R 1901 See 29 P R 1867 5 B R 873]. Chapter XV cannot vary or abrogate the ordinary rule that no foreign subject can be tried in British India for an offence committed outside British India [see 28 A 372] The principle is incontestable and is universally admitted and recognised by the general law of nations [See *Franconia Case* (76) 2 Ex D 63 *Jameon* (96) 2 Q B 439] The Sessions Court of Bellary has no

try a resident of Mysore for criminal acts done in Mysore [6 M H. (ap) 3] British Courts cannot try accused persons for default committed in foreign territory although the accused had resided for 3 years in British territory but were actually natives of a Foreign State [37 P R. 1881] Where a foreign subject coming away a girl from the

4. Offence commenced outside but completed inside British territory.—P. employed in the Commissariat Department of the Bombay Army in Camp at Serroor within the

territories of the Peshwa, forged a receipt upon the East India Company for charges incurred in the public service. The receipt was transmitted to and entered in the commissariat accounts at Bombay *Hil*—that the entering of the receipt was the completion of the offence and therefore the Recorder's Court at Bombay had jurisdiction [3 Knapp 318 (P. C.)] The accused who lived at Cambay a Native State, conspired with his partner A at Cambay to get a valuable security forged by a professional forger at Umreth, a place within British territory. To facilitate forgery, the accused sent a khata-book with A, who proceeded to Umreth and had the document forged there *Hehl*—that the British Court had jurisdiction, in as much as the offence was not wholly committed at Cambay but having been initiated there was continued and completed within the British territory. 30 B 524 See also 2 Weir 115.

5. Acts done within or without British India by British Indian Subjects.—General Rule.—A person, who is admittedly a subject of the British Government, is liable to be tried by the Court of this country for acts done by him whether wholly within or wholly without, and partly within and partly without the British territory in India provided that they amount together to an offence under the Penal Code—2 W R 60

6. [Note.—Who is a British subject.—The fact of a subject of Her Majesty choosing to reside beyond the limits of British India for ten twelve years does not divest him of his allegiance to Her Majesty or take away his liability to be tried as a British subject in the Courts of British India—2 J. G. 7.]

7. In cases of doubt.—In a case where it is doubtful whether the offence is committed in British or foreign territory, the Magistrate's jurisdiction is determined by the place where the offence was committed.

8. The right to be tried by *lex loci*.—For committing the offence of theft in a foreign territory and bringing the property so stolen into British territory cannot be convicted in British Courts for theft, because the *forum delicti* does not lie in British India; nor can they be convicted either of receiving stolen property, for they are not both thieves and receivers; or of retaining the same, because the law to be applied in British Courts is the Indian Penal Code, which has no operation in foreign territory and against provisions of which, therefore no offence can be committed.—2 Weir 145. 20 P. R. 147 C. 523; 7 M. 351; 5 B. 338 (F. B.); 19 B. 72. See 13 B. 72.

II. JURISDICTION OVER OFFENCES COMMITTED OUT OF BRITISH INDIA OR BY FOREIGN SUBJECTS.

9. Offences committed beyond British India by British subjects.—British Courts can under S. 9 of Act XI of 1872 try native Indian subjects of Her Majesty for offences committed by them in any territory beyond British India [20 P. R. 1878] A native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus, while on service in such army, can be tried by the Criminal Courts at Agra for such offence—[2 A. 218 (F. B.)] A conviction in British India for an offence outside its limits (Mayurbhaj) is good under S. 9 of Act XXI of 1870 [8 C. 985 (F. B.) Mitter and Prinsep JJ. diss.] 9 C. 288 Con. 7 C. 523.

10. [Note.—The Foreign Jurisdiction and Extradition Act (See Act XI of 1872. Act XXI of 1879) admits of proceedings being taken in British India, regarding offences committed in Foreign States only on condition (1) that the person charged is a native Indian subject and (2) that the Political Agent of the Foreign State has given his sanction to proceedings being taken in British territory—5 M. 23. 13 M. 423 (426). 2 Weir 148. 24 B. 287. 16 C. 667. 4 P. R. 1902 (F. B.). 24 A. 256. See also 17 B. 369; 5 S. 266. 8 M. T. 64. [The rulings in 1 M. 171. 5 B. 338. 6 C. 307 based on the Code of 1872 are now obsolete. See 26 M. J. 235.]

11. Offence Committed by Foreign Subject in British territory.—Where there is a dishonest retention in British India of property stolen elsewhere, it is no defence by the accused,

if a foreign subject that he himself stole the property and that he was not liable to be tried, convicted, or punished by the British Court for theft—[30 P. R. 1894]. A foreigner found in possession of stolen property in foreign territory but not shown to have committed the theft or have come into possession of that property in British territory cannot be convicted under 411 I. P. C. [20 P. R. 1878. 10 P. R. 158] British Criminal Courts cannot try a foreigner for an offence which may be regarded to have been committed in British territory if at the time was committed, the foreigner was not person present.—[35 P. R. 1850]

12. Offences Committed at a spot in British India subsequently ceasing to be such.—Under S. 177 Cr. P. C. every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed and ss 178 to 189 do not take the case out of that section. Hence, where at the time when the offence was committed by the accused, was a British Indian subject within the local limits of the jurisdiction of the Magistrate's Court, the offence is deemed to be committed in British India and that jurisdiction is not affected by the fact that the place has since been ceded to a foreign power. See 13 B. 72.

13. Notifications of Government of India Regarding Foreign territory.—The accused

a subject of H. H. the Nizam of Hyderabad was arrested on the lands of the Hyderabad State Railway under a warrant issued by a British Magistrate for an offence committed within his jurisdiction—*held* that the arrest was illegal in as much as the venue of arrest was situate within the Nizam's dominions and the notification of the Government of India could give authority only to the extent to which the Nizam permitted the British Government to make that notification—23 C 20 (P. C.) • Cf 33 I. A. 1. 23 M. 607 (619)

14. **Criminal Jurisdiction ceded without cession of territory.**—The applicant was charged with having imported *dhung* into the Presidency of Bombay, in as much as a parcel, containing *dhung* and bearing his name and address was received at a Railway Station in a Native State. It appeared that the criminal jurisdiction along the line of the Railway was ceded to the Government, but there had been no cession of territory—*held*—that no offence was committed unless the importation was into the Presidency of Bombay, that is, into territories which formed part of British India, and if the land upon which the offence was alleged to have been committed, had not actually been ceded, it could not form part of British India—5 B R 873

15. **Abetment by British Subject of offence committed therein.**—*held*—that the abettor was not amenable to the jurisdiction of British Courts—10 B H 356

17. **Abetment by British Subject of offence committed outside British India.**—An abetment in British India by a British Subject of an offence committed in a foreign territory,

may under the amended Section 108-A I. P. C. be tried in British India 24 B 257 (291) • *Con* 5 B 338 (F. B.). 19 B 105 30 P. R 1894

17. **Foreign subjects found in Native State in possession of articles stolen in British India.**—Where the accused persons, who were not proved to be British subjects were found in possession, in a Native State, of property the subject of dacoity in British India, and they were not shown to have participated in the dacoity, nor was there any evidence that they had dishonestly or otherwise received or retained in British India, any stolen property, *held*—that the British Courts had no jurisdiction over them—9 A 523 22 P R 1888 16 P R 1880; 126 P. L 1902

18. **Violation of "ticket of leave" in India by a person convicted at Singapore.**—The accused who was convicted of burglary by the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca was sentenced by him "to be transported to the place to which he was a d d A J leave and permitted to reside at Karwar. At Karwar he committed theft before his sentence had expired, *held*—that the full-power Magistrate at Karwar had jurisdiction to try and convict him under S 277 I P C—9 B H 356

19. **No jurisdiction to try outside British India.**—A District Magistrate cannot legally dispose of a Criminal Case, arising out of an offence committed within his jurisdiction, at a place, not in British India Rat 376
20. **Offence committed by foreigner beyond jurisdiction.**—See Note No 3, above

III. OFFENCES COMMITTED ON THE HIGH SEAS.

21. **As to Jurisdiction of British Courts.**—See 12 and 13 Viet C 96 as extended by 23 and 24 Viet C 85 and S 11 of 30 and 31 Viet C 124

22. **The Law as to offences committed on the High Seas.**—An offence committed on the high seas but within 3 miles from the British Indian Shores is one committed within British Indian territories (what may be called maritime territory) and the substantive law applicable is the Penal Code, and the procedure is also that laid down in the Cr P C. Though under Reg XII of 1827, the District Magistrate had no authority beyond the low water-mark adjoining his District, *held*—that the District Magistrate had jurisdiction on the high seas if they had been committed within the limits of his jurisdiction—8 B H (C) 63

23. **Change of Law.**—In *Elustone's Case* [7 B H (C. G.) 89 (F. B.)] It was laid down that English, not Indian law is applicable to offences committed on the high seas. This view was expressly disavowed in 14 B 227 which held that the law was altered by Statute 37 and 38

Viet C 27 and in 16 C 238 [See also 5 M 23] which laid down that an offence committed by a British seaman on board a British ship on the high seas must be tried by the Indian Courts according to their own procedure and that S 267, Merchant Shipping Act 1854, (17 & 18 Viet C 104) and S 21, Merchant Shipping Act 1867 (30 and 31 Viet C 12) are not intended to interfere with the course of procedure laid down in the General Act 23 and 24 Viet C 88

24. **The law as laid down by Statutes 30 and 31 Viet C 124, S. 11.**—"If any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any Court of Justice, in Her Majesty's dominions which would have had cognizance of such crime or offence, if committed on board a British ship within the limits of the ordinary jurisdiction of such court, shall have jurisdiction to hear and determine such case as if the said crime or offence had been committed as last aforesaid."

Note.—The law has been extended so as to apply to an offence committed on the high seas beyond

the territorial limits of three miles from the shore.—14 B 227 [cf. 8 B II. (C. C.) (3 above)]

25. Sanction of the Local Government is unnecessary.—No sanction of the Local Government under S. 168 Crim. P. C. is necessary for the trial of a Native Indian subject in respect of an offence committed by him on the High Seas. The word "territory" in the first proviso to S. 168

Cr. P. C. is used in that proviso in reference to territories of any Native Prince or Ch. India. The word cannot include the High Seas since they are not part of the territory of a state. A British Court trying such an offence is bound to apply the provisions of the Penal Code—5 L B 221 (F. B.).

IV. OFFENCES COMMITTED BY SOLDIERS.

26. S. 101 Mutiny Act does not bar jurisdiction.—S. 101 of the Mutiny Act does not deprive the civil (as distinguished from Military) Courts of the jurisdiction over British soldiers committing offences within the limits of those Courts, nor does it render the exercise of their jurisdiction dependent upon the Commander-in-Chief's sanction—5 C 124
27. Reg. XX of 1825 (Courts Martial and Military Courts of Requests).—Reg. XX of

1825 has no force in Hazaribagh. Under regulation, the Military authorities can require Magistrate to hand over to them any prisoner may be apprehended and brought before him on offence committed at a place more than miles from the Presidency town; but the prisoner before a Magistrate, when taken at request of and assented to, by the Military authorities, are not absolutely void and the commitment so made is not invalid.—13 B. L. 474

V. MISCELLANEOUS PROCEEDINGS.

28. Applications under S. 488 Cr. P. C.—(Maintenance).—The jurisdiction in cases of maintenance is to be exercised in the District in which the person, against whom any final order that may be passed in the proceedings is resident at the time of making the complaint—9 B 40; 24 C 638 1 C N. 577; (81) A. N. 153; 7 C. P. 12 (13) 1a 13 A 345 (350) [See also 9 P. R 1843] it has been held that the Court of the place, where the wife resided on being compelled to leave her husband had jurisdiction. The Punjab Chief Court has held however that an application for maintenance, not being a complaint for an offence did not come within the terms of S. 177 Cr. P. C. [3 P R 1883; 13 P. R 1883]

Note.—Occasional visits of the husband to a wife who lives apart from him do not constitute residence within the meaning of S. 488 (9) (10) U B. 1-5-10

29. Applications under S. 107 Cr. P. C.—S. 177 Cr. P. C. has no application to proceedings under S. 107 and the use of the word "ordinarily"

VI. EXCEPTION TO THE GENERAL RULES.

32. General Rule.—The jurisdiction conferred by the Cr. P. Code, does not affect any special jurisdiction conferred by any law in force at the time when the Code came into force—10 B. 181.
33. The term "ordinarily"—The use of the word "ordinarily" indicates that this rule is to be read subject to any special provisions of law which may modify it, and the rule is related or modified in several of the succeeding sections of the Code, and it must be read subject to the special provisions of S. 197 cl (2). The power given in S. 197 (2) overrides the general rules contained in Section 177 Cr. P. C.—1 L B. 265.
34. For exceptions to the general rule as enacted by special Acts. See—S. 47 and 48 of Native Passenger Ships Act. (X. of 1887). S. 44 and 48 of Indian Marine Act. (XIV of 1887). S. 134 of Railways Act. (IX of 1890). S. 52 of Pilgrim Ships Act. (XIV. of 1895). S. 60 of the Indian Ports Act (X of 1889). S. 72 of the Indian

in that section excludes trial of cases specified provided for in S. 107 Cr. P. C.—41 M. 24 C. N. 540; 31 C 350; 24 A. 151.

30. Proceedings under S. 110 Cr. P. C.—Proceedings under S. 110 Cr. P. C. must be within the district in which the person whom it is sought to take security is resident and not in any other district, such a proceeding therefore, cannot be transferred to any outside the district within which the accused is residing—16 A. 9; 30 A. 47. But See 18 3 O. C. 217. 2 Weir 53
31. Proceedings under S. 478 Cr. P. C.—S. 478 does not appear to restrict the action of the Court to offences committed within its jurisdiction or even within the province in which it is situated [Per *Chamier C.J.*] It is clear if an offence has been committed no matter, and if in the course of a judicial proceeding brought to the notice of a court that such offence has been committed, that court has jurisdiction to proceed under S. 478 Cr. P. C.—*Sharfud Din J.* 1 Pat J. 298.

Stamp Act (II. of 1889); S. 161 of the Labour and Emigration Act (VI. of 1901 C. 27);

35. Workmen's Breach of Contract (XIII. of 1859).
- (1) Where a person contracted in a foreign country to work for the complainant in British territory and was brought under arrest from the foreign territory for an offence under S. 2 of the Act held—that the British Courts had no jurisdiction over him—7 M. 334.
- (2) Proceedings under the Act, can be instituted either in the Court of the Magistrate within the limits of whose jurisdiction, the defendant resides or in a Court within whose local limits, the usual to perform the contract has taken place, not where the contract has been actually made and money received—12 P R 1010; 17 P. R. 110 M. 21. But See 25 C. 637; 24 M. 600; 2 37. 4 C. N. 253.

VII. EFFECT OF TRIAL BY WRONG COURT.

8. Scope of S. 531 Cr. P. C.—Where an offence is committed within the jurisdiction of a Magistrate in one district but is tried by a Magistrate in another district, the irregularity of the trial is cured by S. 531 Cr. P. C. The section is not limited to cases, where the offence is committed within the jurisdiction of the Court which tries it,

finding, sentence or order, regularly passed by a Court, in respect of an offence committed outside its jurisdiction.

A. 1030 P. R. 1902.

- [Note.—The term "local area" in Ss 531 and 182 refer to the local area and Districts to which the Code applies and not those of a foreign territory—18 C 667]

7. Commitment by a Court not having

jurisdiction.—S. 531 applies to a case where the Magistrate has authority to commit, but has no territorial jurisdiction in the place, where the offence is alleged to have been committed—17 M. 402 25 M. 640 38 M. 387 8 B 312 16 B. 200; 18 A. 350 (353). (84) A. N. 31 2 B. R. 394; (72-72) L. B. 263. Con 3 A 238 10 B 274.

38. Plea of want of jurisdiction.—As a rule, a plea of want of jurisdiction should be taken before the trial Court. But plea may be taken in the High Court, though not taken below. [16 W. R. 79 Con. 4 B. H. 33] It was held that the objection might be raised at a subsequent trial on remand, though it was not taken in the original case either in the trial or the Court of appeal—[32 C 22]

39. Waiver.—An accused who has submitted to the jurisdiction of the Court must be regarded as having waived any illegality or irregularity affecting the manner in which he was brought before the Court.—16 C. P. 9. See, 12 B. R. 1. Con. 6 C 63

VIII. MISCELLANEOUS.

10. The term Sessions Court in S. 213 Cr. P. C.—means one having jurisdiction to try the case under S. 177 Cr. P. C.—10 M. T. 563

11. Jurisdiction over Bhatinda Ry. station.—In accordance with the Government of India Notifications No 515 I. B. and 516 I. B. of 17th March 1913, republished in the Gazette of India in the Panjab Gazette of 29th March 1913 pt II pp. 99 to 103, the Courts of Hissar and Ferozpur Districts have concurrent jurisdiction in Bhatinda Ry. station which is situated in the Native state of Patiala—7 P. R. 1914

12. Jurisdiction over Bhatinda Ry. station.

and is not derived from the Penal Code or the Criminal Procedure Code but from the Common Law of England which was introduced at the time of the establishment of the Supreme Courts—10 C 109 (P. C.) 8 B. 380 (357). Rat 614 (615) See, 33 C 927 (940).

43. Jurisdiction over Bhatinda Ry. station.

1911 26 M. 124 35 B. 225 17 B. 369

44. Instigation by means of letter sent by post.—A person who posts a letter to another inviting the latter therein to commit an offence, is guilty of abetting the offence, as soon as the letter is received by and the contents are known to the addressee and is triable at the place where the letter is received—16 A. 389.

45. Jurisdiction when the accused is charged with several offences.—Where, two different offences are committed in the course of the same transaction, and the accused is tried by the Court which has jurisdiction to try both offences, the Court has jurisdiction to try both offences.—12 B. R. 1. Con. 6 C 63

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power to order cases to be tried in different sessions divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases

committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court under section 15 of the Indian High Court Act, 1861, [or section 107 of the Government of India Act, 1915] or under this Code, section 526.

Notes.

1. The distinction between "Case" and "Criminal Case."—It is doubtful whether the High Court has power, under S. 526 to transfer

cases which do not relate to matters which may strictly be described as "Criminal," i. e., as relating to crime or offences under the law. But

that power exists under S 29, Letters Patent for in the Letters Patent "Criminal Case" appears to be used without the distinction which apparently exists in the Code of Criminal Procedure, in respect of cases tried by Criminal Courts, as opposed to Civil Cases—*Per Taylor J*—28 C. 509.

2. Local Government's power to transfer cases in Burma.—The Local Government has no power under S 178 Cr. P. C. to transfer for trial to the Court of the Commissioner a criminal case duly committed for trial by the

Court of the Recorder of Rangoon; but it has power to transfer a case from the District of Rangoon to the Sessions division of Pegu.

10 C. 613; See (72-92) L. II 263. See also the Lower Burma Courts Act VI. of 1900.

3. High Court's powers of transfer under the Letters Patent.—Under S. 15 of the Indian High Courts Act 1891 (24 and 25 Vict. C. 104)—Each of the High Courts established under the Act has power to direct the transfer of any subject or appeal from any such Court to any other court of equal or superior jurisdiction.

179. When a person is accused of The commission of any offence by reason of anything

Accused trouble in district where act is done or where consequence ensues

which has been done, and of any consequence which has ensued.

such offence may be inquired into or tried by a Court within

the local limits of whose jurisdiction any such thing has been

done, or any such consequence has ensued.

Illustration.

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(f) A is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

Notes.

(1) Object and Scope of the Section.

1. Application of the Section.—S 179 applies not only to cases in which the offence is completed by reason of a consequence ensuing within the local limits of another jurisdiction (as e.g. —the case of a man being wounded in one district and dying in another), but also to cases in which the fact of a consequence ensuing in another jurisdiction is the cause of the offender being accused of the offence [e.g. when a forged draft is presented and got cashed at a Branch office of a Bank, but the loss occurs or is detected at the place where the accounts of the Bank are made up—the Head Office (situated elsewhere)]—18 P. W. 1908
2. The consequence must be a constituent element of the offence.—Sec. 179 Cr. P. C. can be applied only to cases in which the consequence necessary to constitute the offence ensues in some place other than that in which the accused's act is done [29 M. J. 178]. The 'consequence' referred to in S 179 Cr. P. C. must be one of the facts to be proved to establish the offence, and need not be only a consequence arising out of it—[23 P. R. 1916]. The word 'consequence' in S 179 Cr. P. C. means a consequence which forms a part

and parcel of the offence. It does not mean a consequence which is not such a direct result of that act as to form a part of that

But loss to a person, though a normal result of the act of misappropriation by another, is not an essential ingredient of the offence of Criminal misappropriation. S. 179 does not in terms apply to the case of an offence which does not depend on the consequence which has ensued, but only on the act which has been done [44 C. 912]. The words "any consequence that has ensued" in S 179 Cr. P. C. mean some consequence modifying or completing the act or acts constituting the offence [7 P. R. 1910 - 67 P. L. 1901]

- 3 [Note—This is the generally accepted view—See—1 Pat J. 298, 13 A. J. 1067, 12 A. J. 1022, 5 A. J. 333, 17 B. R. 389; 8 B. R. 513; 15 M. T. 505, 5 L. B. 57, 4 O. C. 376, 7 P. R. 1900, 223 P. L. 1901. The wider construction adopted in 26 M. J. 235, 35 A. 29; 32 A. 397, 19 A. 111, 26 C. 746, 2 P. R. 1904, 24 P. R. 1921 (F.B.)—namely—that the term "consequence" includes the direct effect of the offence, has been expressly dissented from several of the later rulings

4. S. 179 does not apply when the offence is commenced and completed at the same place.—When the fracture of the leg was complete within the Baroda territory, S. 179 was held not to apply, even though the injured man was carried to a hospital in British territory and detained there for 57 days. [8 B R 513] The offence defined in S. 477-A I P. C., is complete when accounts are falsified with intent to defraud: and a person accused of falsification of accounts made in one place, cannot be tried in another place, on account of any consequences arising out of the offence. [4 M T 491] Where the substantive offence is completed as soon as it is perpetrated—e.g.—forming a gang for committing dacoity, a prosecution cannot be held at the place where a portion of the stolen property is found concealed. [1 B. 50] The section does not apply to an offence which consists of an illegal act or omission, alone, and to complete which no consequence is necessary. [See 1 Leg. Rem. 1: 6 Ag. 46 and 136. 3 A 251. I P R 1901]
5. Meaning of anything which has been done.—In S. 179 Cr. P. C. the words, "anything which has been done," mean some act constituting the offence. [4 O. C. 276—See also 6 Ag. 36 6 Ag. 40].
6. Illustrations.—The illustrations to S. 179 Cr. P. C. 1893, are not exhaustive and to hold all the consequences prescribed by the legislature in framing the section, as conferring jurisdiction *ex regulis generis* with the consequences specified in the illustrations, is not justified by the language of the section.
(2) Offences initiated in foreign but completed in British territory.
7. Illustration (d) which is now read with S. 188 Cr. P. C.—Makes it necessary that the offence should be committed within the limits or in any place "created by the Code" [See 5 B 338]. The ruling in 10 B H 350 is so far as it lays down that there is no jurisdiction in British Courts if the offence is both initiated and completed out of British India is compatible with the illustration. So where a foreign subject completed the offence of enticing away a married girl from the protection of her husband, living in a Foreign State, cannot be tried by a British Court merely because he is arrested, while conveying her to a Foreign territory, at a Railway Station in British India [1 P R 1901]
8. The General Rule.—Where a foreigner in foreign territory imitates an offence, which is completed within the British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence has been completed.—36 B 524 See R. v Oliphant (1903) 2 K B. 67 R. v Manton (1793) 1 Esp 63
9. Once the offence is complete within foreign territory, the maxim "all crimes are local" applies.—S. 179, is inapplicable, where the offence is completed in a Foreign State and no consequence (in the sense, of an act constituting an incident element of the offence)

which has ensued in British India is necessary to complete it 1 Leg Rem. 1-8 B R. 513; See R v Stoddart (09) 25 T. L. R. 612

10. [Illustrations.—See 8 B R 513 (Note No 4 above): A person who steals property out of British India and brings the same into it, cannot be tried by British Courts of the offence of theft, though he can be tried for the offence of dishonestly retaining the stolen property [6 C. 307] The accused formed a gang which committed dacoity in Velanpor in Baroda territory, but a portion of the stolen property was found concealed by him in British territory—*held*,—as the substantive offence of dacoity was completed as soon as it was perpetrated, a British Court, was not competent to try and convict the accused for that offence [1 B. 50] Where the accused was found at Faridkot in dishonest possession of a currency note, stolen in British India,—*held*—British Courts had no jurisdiction to try him for an offence under S 411 I.P.C [1 '6 P. L. 1902]. Accused persons were found in possession in a Native State of property, the subject of a dacoity in British India but they were not shown to have participated in this dacoity—*held*—that a British Court could not try them as the offence of dishonest retention was completely outside British territory [9 A. 523].

(3) *Illustrative cases.*

- 11
- prison. The offence is complete, if the conversion is done with the intention of causing wrongful gain to the offender, irrespective of any loss which may ensue to any other person. The offence does not depend on the consequences which have ensued but only on the act which has been done. [4 C 912] So where the accused misappropriated the money belonging to the complainant's branch shop at Gouriganj, and which was to be sent to the principal shop at Cawnpore, held that the Courts at Cawnpore had no jurisdiction to try the case. [24 A. 457 See 12 A J 1023] Where the railway receipt was entrusted to the accused at Paga, but the accused took delivery of the consignment of rice at Rangoon, and sold

- 12 Criminal Breach of trust**—The offence of Criminal Breach of trust is completed by the misappropriation or conversion of the property dishonestly i.e., with the intention of causing wrongful gain or wrongful loss. *It is only the intention which is essential.* Whether wrongful gain or loss actually results is immaterial. It is

misappropriate the proceeds of certain bunds entrusted to them by the complainants at Erode in the Madras Presidency. The bunds were received and cashed by the accused in Bombay

and the sale proceeds retained and misappropriated there—*held*—the Courts of Rangoon had no jurisdiction. [*ibid*]. Complainant authorised the accused to withdraw certain money belonging to him at Rangoon and to transmit it to him at Maymyo—*held*—that inasmuch as the money had been received, retained and misappropriated at Rangoon, the Rangoon Courts alone had jurisdiction to try the case [21 Cr. 140 (U. B.)]. The accused as an agent of Messrs S. W. & Co. at Nanyali, (the head quarters of the firm being Madras City), when called upon to account by his employers, failed to account for the monies realised at Nanyali by sale of oil,—*held*—that a competent Magistrate having jurisdiction over Nanyali should try the case [20 M. J. 178]. So where the complainant despatched goods from Delhi to the accused at Calcutta for sale on commission and the latter misappropriated and converted the money raised by mortgaging the goods—*held*—the fact that the money should have been, and was not, sent to Delhi did not give the Delhi Court jurisdiction, the accused having put the money into his own pocket at Calcutta [7 P. R. 1910].

13. [Note—A contrary view is indicated in 41 C 805 19 A 111 32 A. 370 35 A. 29 7 P. W 1908 2 P R 1902 7 P. R 1900. The above view has been adopted in 4 O C. 356; 22 P. R 1916 4 M T 481 67 P R 1901 and is in consonance with *R v Oliphant* (1855) 2 K. R. 67].
14. Exception to the above rule.—The accused as agent at *Mushidabad* the complainant

—held—that under the circumstances the *Burdick* Court had jurisdiction to try the accused {19 Cr 679 (C)} See however 19 Cr. 897 (C).

- 14 A. American Law.—“If the crime charged consists in the failure to account the *venue* should be laid in the country where the defendant was under an obligation to account or declined to do so on proper demand.”—McLain Criminal Law of the United States Vol 1 S. 650 at p 659
15. Cheating.—Where the allegation was that the complainant was induced by the accused to part with his money at Meerut on the false representation that a certain barrel contained a certain amount of spirits which on reaching Agra was found to contain a much lesser amount and it was found that the accused had used a wrong measure—held—that the case ought to be tried at Meerut The discovery of the alleged fraud at Agra, after the goods were delivered could not be said to be a ‘consequence which has ensued’ within the meaning of S 179 Cr P. O [13 A. J. 1067] The accused, a trader of *Balein*, cheated the complainant, a trader of *Dhulia*, by leading the latter to believe that he was buying clean ground nut oil while he was in reality supplied with a mixture of that oil with rock oil—held—S. 179 applied and under

the law the Courts at Mumbai had jurisdiction in the case [17 B R 389] W. the complainant, a shop keeper of Moradbad, ordered a consignment of matches from a firm of Calcutta, (called A. M. Fambhoy) and received a consignment which was so seriously damaged as not to be marketable. The complainant led in the mean time handed over to the post office, at Moradbad, a registered cover containing currency notes addressed to the firm of A. M. Fambhoy at Calcutta—held—that the offence of cheating was in its entirety committed at Moradbad and was therefore triable there. [12 A J 1022] See also: 18 P. N. 1904-7 P. R. 1800; 5 A. J. 539 1 A. B. 55; 24 P. R. 1910 (F.B.) at p. 17; Dist. Sec.—26 C. 546 2 P. R. 1901.

16. **Defamation**—In a charge of defamation, it appeared that the defamatory matter was contained in a petition signed by the accused and addressed to the Lieutenant Governor of the Punjab, which the accused stated was put before him in the L.G.'s petition-box at Lahore. The libel at the request of the petitioner was sent for enquiry to *Amritsar* and published there. *Held* that the Courts at *Amritsar* had jurisdiction—*Per Spitta J.* in 44 P. R. 1883; 14 P. R. 1889. The English law is that when a libel is sent from the jurisdiction of one limit to the jurisdiction of another Court, the *venue* may be laid in either—*R. v. Bunnett*, 4 B. and Akl. 64; *R. v. Ellis* (93) 1 B. 230; *R. v. Watson* 1 Camp 215. The American Law lays down the same rule (*See N. Y. Cr. Pro Code §. 138*). *See also* 5 B. at p. 368 [*Pr West J.*]

ference deduced from the criminal acts of the accused persons which is done in pursuance of a common criminal purpose, and are often not confined to one place, a charge of conspiracy may consequently be laid in any country, where any of these criminal acts is committed—Hallbury's Laws of England Vol IX p 253. See R. v. Bruce (1834) 10 C. 184, R. v. Beales 1 Term Rep 696 R. v. Burdett 4 B. and Ald 95 14 B. R. 147 which enters R. v. Oliphant (1835) 2 K. B. 67 R. v. Rogers (1773) 3 Q. B. D. 29 and Badische Anilin (1884) 11 C. 200; Comp. S. 120 A. I. P. C.

Note—Where a person caused a letter to be posted in Calcutta to his agent at Gornkhpore, including the name of the person at the latter place, the offence of abetting by his means is complete.

18. **Falsification of Accounts.**—The section applies only where a person is accused of an offence by reason of anything which has been done, and of any consequence which has ensued, when the offence under S. 477-A I. P. C. is complete, and the accounts are falsified with intent to defraud, and a person accused of falsification of accounts made in one place, cannot be tried at any other place, by reason of any consequence (e.g. loss)

- which may have ensued.—4 M. T. 491 : See 18 M. T. 25
9. **Bigamy.**—Under the English Law, the offence of Bigamy may be tried in any county where the offender is apprehended or is in custody—S 57, 24 and 25 Vict. C. 100 S. 57.
10. [Note.—This rule applies to the offences of Forgery, Post office and Revenue offences].
11. **Disposal of Minors for Prostitution.**—A woman in District Moradabad, sold her minor daughter to a prostitute who took her to Benares

—held, that the offence was completed at Moradabad, and Benares Courts could not try the case on the ground that the possession of the girl at Benares was a "consequence" within the meaning of S 179 Cr. P. C.—6 Ag. 46 1 Leg Rem 1.

22. **Infringement of copy-right.**—The offence of infringement of copy-right does not depend for its completion upon the ensuing of any consequence such as is contemplated by S 179 Cr. P. C. The court within whose jurisdiction the offence has been committed, is the only court, which has jurisdiction to try it within the meaning of S. 177 Cr. P. C.—23 P. R. 1916

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations

- (a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.
- (b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.
- (c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place

Notes.

1. S 180 is subject to the provisions of S 188 Cr. P. C.—A dacoity was committed in British territory and a Native Indian British Subject was found in a Native State in possession of the property alleged to have been stolen at the dacoity—held—that although, under S 180 Cr. P. C., the offence under S 412 Cr. P. C. could be tried either at the place where the property was retained or where the dacoity took place, a certificate of the Political agent was necessary under S 188 if the charge was to be tried in British India.—8 M. T. 54 But See 18 C. N. 1178
2. [Note.—This rule will not apply if the accused is a non-British Subject and if it is not proved that the accused took any part in the dacoity or received the stolen property in British India.—9 A. 523, 4 D. II (C. C.) 34: 16 P. R. 1850 22 P. R. 1858]
3. **Retention in British India of property stolen in a Native State.**—A subject of a Native State committed theft at Rajkot Civil Station (outside British India), and was found in possession of the stolen property in British territory.—held—that the British Court, had no jurisdiction to try him for theft but could try the accused under S 411 P. C. as the definition of stolen property, under S 410, includes property stolen outside British India.—10 B. 156 29 A. 372: See 1 B. 50: 6 C. 307.
4. [Note.—The decision in 1 M. 171 based on the Code X of 1872 has been superseded, by the amendment of S 410 P. C. (See Act VIII of 1882). The same remark applies to 5 B. 339 (P. B.)—20 M. J. 235 2 Weir 145 must also be regarded as obsolete]
5. **English Law.**—The Larceny Act 1893 (59 and 60 Vict. C. 32) S. 1, Sub sec 1, is as follows. "If any person without lawful excuse, receives or has in possession, any property stolen outside the United Kingdom, knowing such property to have been stolen, he may be indicted in any county or place in which he has, or has had, the property"
6. **Illustration (a).**—Illustration (a) refers to a case where both the abetment and the offence have been committed within British territory. The section (180) assumes that the offence, as well as the investigation has been committed within a local jurisdiction created by the Code. Where therefore a foreign subject resident in foreign territory instigated the commission of the offence of murder in British territory which was in consequence of the instigation committed therein, held that the instigator was not amenable to the jurisdiction of British Courts [10 B. H. 376; also 20 P. R. 1878 35 P. R. 1850]
- [Note.—Illustration (f) to S. 179 which is new seems to militate against this view].

7. **Abetment by post.**—The principle is very neatly and succinctly laid down in *R. v. Rogers* (77) 3 Q. B. D. 29.—"For the purpose of giving jurisdiction, a letter speaks continuously from the moment of its being posted until its receipt by the addressee." A person sent a letter to another by post inviting him to commit a criminal offence—held he is guilty of the offence of abetment as soon as the letter is received by, and the contents become known to, the addressee, and is triable at the place where the letter is received—16 A. 349].
8. **General rule as to abetment.** Where a foreigner in foreign territory (Camlay), initiates an offence which is completed within the British territory, he is liable to be tried by the British

Court within whose jurisdiction the offence was completed.—11 B. R. 147 See 1 Weir, 155; 7 M. 1 A. 72.

9. **Kidnapping.**—Illustration (c)—The offence of kidnapping from lawful guardianship is complete as soon as he or she is enticed or taken out of the keeping of his or her lawful guardian [20 M. 454, 27 C. 1011 (1014) (F. B.); 26 A. 107; 18 A. 350, 13 P. R. 1843]. An attainment of the offence can not therefore be a continuing offence [8 P. R. 1891; 7 P. R. 1891; 6 P. R. 1891. Con.—1 M. 173.] It follows therefore that the *venue* of the trial for abetment cannot be the place where the kidnapped person is taken after the completion of the offence.

181. (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder of having belonged to a gang of dacoits, or of dacoits, escape from custody, etc. of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3) The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Proposed amendments to the section.—For sub-section (3) of section 181 of the said Code, the following sub-section shall be substituted, namely:—

"(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen."

Notes.

1. **Scope of the section.**—S. 181 Cr. P. C. does not apply to the case of an offence committed by a person who is not a British subject, outside British territory. The section is intended to regulate the jurisdiction of courts in British India, in respect of offences committed in British India and cannot vary or abrogate the ordinary rule that no foreign offence.

2 B
7 P R

- 2 S. 181 does not apply to offences under Chapter XX. I. P. C.—A complaint under S. 498 Cr. P. C. can be enquired into, only in the District where the detention occurs. S. 181 (4) Cr. P. C. refers only to cases of kidnapping

and abduction, offences dealt with in Ss. 359 to 361 of the Penal Code and does not apply to offences under ch. XX of the Code.—51 P. L. 1918.

- 3 **Application of the section.**—S. 181 (3) Cr. P. C. only applies as between courts of different local areas, whose jurisdictions have been limited under S. 12 Cr. P. C. and to which the Code applies. A British Magistrate cannot take cognizance of an offence of criminal breach of trust committed in a Native state merely because part of the property was retained by the accused within his jurisdiction 5 S. 200, 21 M. J. 441. But see 26 M. J. 235.
- 4 **Escape from lawful custody.**—[Vide Penal Code S. 224] The British Courts have no jurisdiction under Ss. 181, 188 Cr. P. C. to try the offence of escape from lawful custody committed

beyond the limits of British India (e.g. Mysore State) [Rat 870]. The offence would be complete, even if the accused is acquitted of the offence for which he was placed under arrest [24 W. R. 45] or is found guilty of an offence different from the one with which he was charged [ibid].

[Note.—There is no escape from lawful custody, if the custody itself is unlawful [See 5 M. 22 23 A. 296]. The custody referred to in S. 223 I. P. C. is custody for an offence, and not an arrest under a civil process [12 C. 190]. A convict, who escapes from custody while undergoing sentence, can be tried for the offence only in the district in which he escaped [1 B. H. 139].

5. Person accused of being a member of a gang of dacoits.—Where a resident of Bharatpur, a Native State, was arrested in that state, and was accused of the offence of belonging to a gang of dacoits, without any allegation being made of the prisoner's participation in any dacoity or association with dacoits in the Gurgaon District in British territory, held that the first class Magistrate of Gurgaon had jurisdiction under S. 181 (1) Cr. P. C. to commit the prisoner to the Gurgaon Sessions Court. 1 P. R. 1911. See 6 B. 622 Panj. Cr. A. No 2049 of 1907.

6. As to notes or subs (2).—See Notes no 11 and 12 under S. 179 *supra*.

7. Sub-sec. (2) of S. 179.—See Notes no 11 and 12 under S. 179 *supra*.

convicted for dishonest retention of stolen property [6 C. 307, 1 B. 50, 10 B. 186, 28 A. 372].

8. [Note.—The rulings in M. 171 and 5 B. 335 to the contrary have been superseded by the amendment to S. 410 I. P. C. by Act VIII of 1862 26 M. J. 235. The same remark would apply to the rulings in 4 B. H. 38 and 2 Weir 145].

9. Kidnapping—change of Law.—Under the old Codes, the offence of kidnapping could be tried

only by the Court within the local limits of whose jurisdiction the minor was taken out of the keeping of the lawful guardian [See e.g. 18 A. 350. (83) A. N. 164]; for as has been held, "the offence of kidnapping a person is completed when such person is actually taken from or out of the keeping of his lawful guardian and the offence is not a continuing one so long as that person is kept out of such guardianship [27 C. 1041 (F. B.) 2 O. N. 81 26 M. 454 26 A. 197 18 A. 350: (57) A. N. 139: (63) A. N. 164 (783) A. N. 67, 4 P. R. 1863: 13 P. R. 1893 8 P. R. 1894 7 S. 17]. But by enacting subs (4), the Legislature has expressly made the case triable by a Court within the local limits of whose jurisdiction the person kidnapped or abducted is conceived, or concealed or detained. It should be noted however that the rule applies to an offender proceeding from one jurisdiction in British India to another in British India [1 P. R. 1001].

10. When the offence of kidnapping is committed out of British India.—The accused took a minor girl out of the keeping of her husband in Bikanir, detained her for a month in Bikanir and eventually brought her to Karachi. They detained her in Karachi for 3 days and then were taking her by train to Selwan when they were arrested at the Kotri Ry Station (in British India)—held—that the kidnapping was completed in Bikanir and there was no offence committed in British India of which the Magistrate in British territory could take cognizance under S. 181 (4) [7 S. 17]. An offence of kidnapping committed within the jurisdiction of the Mayurbhanj State cannot be tried within the British dominions, merely because, the person kidnapped was conveyed, concealed or detained within the same. [20 C. N. 62 See 8 C. 895 18 C. N. 1178]. A foreign subject who had kidnapped a girl in a Foreign State but was arrested in British territory while conveying her to another Foreign State does not come within the mischief of subs (1) [1 P. R. 1101].

11. English law as to venue for trials of cases of embezzlement.

Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts

partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Notes.

1. The term "Local Area".—The term "Local area" means a local area over which the Criminal Procedure Code has application. It does not include a local area in a Foreign country or a portion of the British Empire to which the Code does not apply. [16 C. 657]. The expression includes and was intended to include a "District

Province, Sub-Division or Sessions Division" and cannot be restricted to the scene of the alleged offence only [25 C. 835. (193-09) L. B. 61 See 12 A. J. 1022].

2. Application of the Section.—The Section does not apply to miscellaneous proceedings (e.g., proceedings under S. 112) as they do not relate

182 When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and

in offences [See 3 C N. 115] The section intended to provide for the difficulty which may arise where there is a conflict between different areas, in order to prevent an accused person getting off entirely, because there may be some doubt as to what particular Magistrate has jurisdiction to try the case [10 C 667]

3. **Scene of offence being on boundary line of two Districts.**—This Section would cover the case where the boundary between two Districts is uncertain, and consequently it is doubtful to which of the two Districts, the scene of an alleged offence belongs—25 C 859; (193-00) L B 81

4. **Instances of continuing offence.**

- (a) Where A steals a buffalo from B in the District W, and personally or by his agent conveys the buffalo through districts X and Y into district Z, this is a continuing offence, and A may be tried for theft in any of the districts W, X, Y and Z—See—*Illustration (f) to S 67 of Act X of 1872.*

- (b) **The case of a travelling Agent.**—The accused as agent of a firm in Mirzapur sold goods entrusted to him for sale and committed embezzlements in various Districts in Lower Bengal. When called upon to furnish Rs 500 as a deposit, but did not submit any account, held that the Magistrate of Mirzapur had jurisdiction to try the case—32 A 397 See 26 M J 235.

[Note.—But this ruling and the ruling which it follows, 19 A 111, have been expressly dissented from in several cases]

5. **Kidnapping and abetment of kidnapping** is not a continuing offence within the meaning of S. 182 Cr. P. C.—See Note No 9 under S. 180 *supra*

6. **Counterfeit trade-mark (S. 486 I. P. C.)** If the accused has in his possession, an article, within the jurisdiction of a Court, with counterfeit trade mark with intent to sell the same, that Court has jurisdiction and it is immaterial that the sale was intended to take place beyond the jurisdiction of such Court—25 C 639

7. **The rule as to enticement of married women.**—Where a married woman is enticed from the jurisdiction of one Court and detained within jurisdiction of another, both Courts have concurrent jurisdiction to try the offender under S 48 I. P. C as the enticing and detaining constitute a continuous offence—6 L B 17.

8. **Rules in force as to cases of concurrent jurisdiction—**

United Provinces—See *Agra Sudder Court Cir. No 21 of 1864*

Punjab.—*Jud Com Punjab Cir. No. 21 of 1864; Punj Bk. Cir. P. 226.*

9. **Analogous Law.**—When a crime has been committed on the boundaries of two or more counties, or within 500 yards thereof, the jurisdiction is in either county.—S. 133 N. Y. Cr P C. [cf. 7 Geo. 4 C. 54, S. 12]

183. An offence committed whilst the offender is in the course of performing a journey or
 Offence committed on a journey voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Note.

1. **Section 183.**

river, lake or canal situate in or passing through different districts or provinces in British India) See 5 M 23 Con Rat 181.

2. **Analogous Law**—See S 136 of the New York Cr P C When a crime is committed on board a vessel in respect

al or lying in respect diction is in any county through which or any part of which such river or canal passes or in which such lake is situated or on which it borders or in the county where such voyage terminates, or would terminate if completed In America it has been held that the port of destination has no jurisdiction over an offence committed on board a vessel in the course of a voyage through a river. The offence can be tried only in a county through which the vessel passed—*People v. Halse* 3 Hill 309 Compare also, the Criminal Law Act (7 Geo. 4 Ch 64) S. 13, and the Fugitive Offenders Act 1881 (44 and 45 Vict Ch. 69).

3. **The Journey referred to in this section** means a journey which the offender is in the course of performing, and the words that journey at the end of the section refer to the same journey Where, therefore, a sailing was charged under S 250 I. P. C. with rashly navigating a vessel so as to endanger human life, it was held that the only Courts which have jurisdiction to try the offender, are the Courts through, or into the local limits of, whose jurisdiction, the offender in the course of that journey passed—1 C. J. 334

4. **Application of the section.**—In order to give jurisdiction to the Magistrate, the journey must be a continuous one, from one terminus to the other without any interruption by either party (i.e. the complainant and the accused.) So where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad at which the complainant and the accused separated, and proceeded to Calcutta by different trains, held that the Magistrate at Howrah had no jurisdiction to try the case—[13 B. L. (ap) 4] In 1 M H. 193 (a case under the Code of 1802), it was held, that where two Railway

guards were charged with drunkenness while in charge of a train under S. 27 of the Railway Act, and removal and detention at Araknam, a place beyond the local limits of the High Court, but one of them broke away and continued the journey to Madras, that neither of them could be tried by the Madras High Court, as the journey in the course of which the offence was committed could not be said to have ended at Madras having been broken at Araknam.

5. The effect of a halt during the journey.—Where the stoppage during a journey is due to the nature of the journey itself, the stoppage can not be regarded as amounting to a break in the journey. A box containing money was missed from a train during a halt at B in the district of

T. during a journey to C.—held that the journey was not broken at B so the case could be tried at C—(25 W. R. 45)

6. Voyage on the High Seas.—Where the accused in the course of a voyage from Bombay to Honawar, threw over board a box of the complainant while nine miles off the Jinjira State—held that the Court of Honawar through whose jurisdiction the accused had passed on the voyage had jurisdiction to try him for mischief [Rat 181]
7. Indictment must show.—(1) that the offence was committed during a voyage on board a boat etc., (2) that on that voyage the boat etc. had passed through some part of local limits of the jurisdiction of the Court trying the offence.—See Larkin 61 Barb. 225.

184. All offences against the provisions of any law for the time being in force relating to Offences against Railway, Telegraph, Railways, Telegraphs, the Post-office or Arms and Ammunition Post Office and Arms Act may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not.

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Note.

Offence relating to Railways [See Act IX of 1860]; Telegraph [See Act XIII of 1863 amended]

by Act XI of 1889]; Post Office [See Act VI of 1865] Arms and Ammunition [Act XI of 1878]

185. (1) Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this Chapter be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

Notes.

1. Scope of the Section.—S. 185 is not restricted to cases in which there is doubt as to whether one Court or another has jurisdiction, but is applicable also to cases in which the doubt is on the point, whether the choice between two Courts, both of which have jurisdiction should be decided on the ground of public convenience—4 C. 595 (F. B.), 5 L. B. 17; 17 C. N. 761. 24 P. R. 1947-40 M. 385; Con. 41 C. 303 (0)

2. Which High Court is to decide.—Where Courts of two Magistrates subordinate to two different High Courts have jurisdiction, to try an offence, the High Court, within the local limits of whose jurisdiction the offender actually is, may decide by which Court the offence shall be tried—5 L. B. 17.

3. The nature of the doubt referred to in the section.—Apparently be fact [14 P. R. 17], within the the offender ere a doubt

arises as to the Court by which an offence should

alleged to have occurred, the High Court declined to pass any order holding that the Cantonment Magistrate, if so empowered, could himself deal with the matter under S. 186 Cr. P. C. or if he was not so empowered, the District Magistrate could deal with the matter under Ss. 523 and 186 Cr. P. C. the Cantonment Magistrate being his subordinate [See S. 7 Act XIII of 1889]—Rat 819.

5. Doubt due to the place of occurrence being uncertain.—B a resident of A. in Dist K was travelling with his servant H. who had charge of his money and other personal property. On arriving at S in the District B, B demanded an account from H. and found a considerable sum unaccounted for and certain irretrievable property missing. The property being given at different places and, it not being clear where it was given, the Magistrate of B. had jurisdiction to try the case.—(83) A. N. 59
6. Cases.—Where a complaint was made before a

respect of certain handis which the complainant had purchased, *held*—that the alleged offence should be inquired into at Calcutta and not at Aligarh [5 A J 333]. The nominee of a policy-holder, claiming payment in respect of a life-policy effected at Chittagong, brought a charge of cheating against the Secretary and other officers of an Insurance Company (with head office at Gujranwalla in the Panjab with a branch office at Chittagong) and the latter brought a counter-charge of cheating at Gujranwalla. On an application under S. 185 by the nominee, the High Court, Calcutta held that the counter charge against him should be inquired into at Chittagong on the ground of convenience and transferred the case from Gujranwalla to Chittagong [17 C N 761; See 41 C. 303]

7. The power to transfer a pending case under S. 185.—S. 185 Cr. P. C. does not enable a High Court to make an order transferring a case pending on the file of a Criminal Court, whether within or outside its jurisdiction, to the file of another Criminal Court, whether such Criminal Court be within its own jurisdiction or without its jurisdiction. 40 M 815. But see 17 C. N. 761. 41 C. 303. 5 L B 17. Ss 185 and 527 Cr. P. C. compared.—The order under S. 527 Cr. P. C. is an executive order which may be made without opportunity afforded to the accused to be heard. In the second

place, S. 527 contemplates an order of transfer, and recourse may possibly be had thereto, if an order made by one High Court under S. 185 is *disregarded* by another High Court. The two sections have therefore entirely different scopes.—Per. Mookerjee J. in 41 C. 593 (F. B.)

8. S. 185 does not apply to miscellaneous

the Criminal Procedure Code. Proceedings under Ch. XII are not proceedings relating to any offence. Hence, S. 185 Cr. P. C. is inapplicable.—12 A. J. 390

9. Form of order under S. 185 Cr. P. C.—The form of the order should be as follows: "It is declared that the Court's decision is that the case against A. B. should be enquired into or tried by the Court of—". [This will leave it open to the prosecution or applicant to take such steps as they may be advised].—41 C. 593 (F. B.).
10. The object of the section.—S. 185 Cr. P. C. was intended to apply to and to provide for the following two sets of circumstances. (1) Where two cases are pending in two Courts within the jurisdiction respectively of two separate High Courts on the same set of facts, the High Court within which the offender is found has the deciding voice whether the Court within its own jurisdiction shall or shall not proceed against the accused (such decision being intended to be based on the grounds of convenience, jurisdiction, fairness to both sides etc.). If it decides in the affirmative, the outside Court cannot proceed further, as the High Court has full powers to prevent a person who is within its jurisdiction from being taken out of that jurisdiction till the case in the subordinate Court is concluded. (2) Where only one case has been instituted, in a Court subordinate to the High Court, in whose jurisdiction the offender is, that High Court can decide whether the case should be enquired into and tried by its own subordinate Court or should be tried in a Court within the jurisdiction of some other High Court.—40 M 385.

185 (1) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or,

Power to issue summons or warrant for offence committed beyond local jurisdiction

if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that

any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force, be triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person

Notes

6. Proceedings of Magistrate not empowered—If any Magistrate, not specially empowered, acts under this section, the proceedings will not be set aside merely on the ground of his not being so empowered.—See S 629(d) *infra*

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opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Local Government shall be required:

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

Proposed Amendments to the Section.—In section 155 of the said Code, after the words "proceedings", the words "notwithstanding anything in any of the preceding sections of this Chapter" shall be inserted.

Notes.

(1) Preliminary.

1. **Scope of the Section.**—The word "territory" in the first proviso to S 155 Cr P. C. is used in that proviso in reference only to territories of any Native Prince or chief of India. The word cannot include the High Seas, since they are not part of the territory of any State—5 L. R. 221 (F. B.) 41 B. 667.
2. **History of the Section.**—S 155 Cr P. C. has been amended so as to conform exactly to the statutes empowering the Indian Legislature. The first paragraph corresponds to the Indian Councils Act 1869 [32 and 33 Vict. C. 94], the 2nd paragraph with the Government of India Act 1865 [29 and 30 Vict. C. 15], and the third paragraph with the Indian Councils Act 1861 [24 and 25 Vict. C. 67]. The amendment of the proviso to S 155 Cr P. C. seems to have been made in view of the judgment in 13 B. 117 (Queen V. Daya) and to avoid a conflict of jurisdiction with the Courts of Foreign sovereigns and the Courts established by the King by an order in Council under 53 and 54 Vict. C. 37—[6 S. 260]. There is good reason to believe that the words "where there is no political agent" were added in 1899, to remove the difficulty which had previously existed in cases where offences had been committed, for instance in such places as Goa where there is no political agent [41 B. 667].
3. **Application of the Section.**—The proviso to S. 155 Cr P. C. is universal in its application and is not restricted to Native States in India [6 S. 260]. The proviso to S 155 will come into operation only when British Courts cannot get jurisdiction under Ss 179 to 184 and has to depend on the first part of S 155 to get jurisdiction. Surely it could not have been intended to restrict the enlarged liberties and privileges as regards jurisdiction given to the Courts by the previous sections [26 M. J. 235].

(2) Meaning and interpretation of terms.

4. As to definition of "India," and "British India" [See S. 3 (27) and 3 (7) of General Clauses Act X of 1897] "Political Agent" [See S 3 (40) *ibid.*].
5. The term "Servant of the Queen"—denotes all officers or servants continued, appointed or employed in India by or under the authority of the said Statute 21 and 22 Vict. C. 106, entitled "An Act for the better Government of India or by or under the authority of the

Government of India or any Government"—See S 141 P. C.

6. The word "place" in the first paragraph of the section includes High Seas within its ambit—41 B. 667.
7. The expression "where there is no political Agent" means "where there is no Political Agent for the territory in which the offence is alleged to have been committed and excludes the notion of the high seas."—*ibid.*
8. The term "Native Indian subject of Her Majesty"—Means only a Native Subject *de jure* and not *de facto*. A son born of an alien in British India was held to be a British subject notwithstanding that the father was not a naturalized British subject [9 P. R. 1893]. But an occasional residence in British territory and the mere fact that the person owns land in British India cannot make him a *de jure* subject [1 P. R. 150; 22 P. R. 1853].
9. The words "may be found"—must be taken to mean not where a person is discovered but where he is actually present—[2 A. 218 (F. B.) cf. 1 P. R. 1011; See, 13 B. 147]. A Native Indian subject of Her Majesty committed an offence in a Native State and was brought down or came of his own accord to Ahmedabad, *Ad* he was found at Ahmedabad within the meaning of the section [6 B. 622]. Where a man is in the country and is charged before a Magistrate with an offence under the Indian Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The principle, upon which the English cases to this effect are based underlies also S 155 Cr P. C.—[35 B. 225 See 16 B. 157].

[Illustration].—A foreigner in the service of the Punjab Government, who commits a murder in Jhind can be tried and convicted of murder at any place in British India in which he may be found.—*Illus* (c) S 4 L. P. C.]

10. The word "charge" in this section is used in the same sense in which it is used elsewhere in the Code—8 B. R. 507 (511).
11. The word "territory" in the first proviso—See Note no 1. above.

(3) Sanction and certificate.

12. Sanction of the Local Government.—Under the old Codes, offences committed by

- British subjects, in States where there are no Political Agents, could be tried in British India without the certificate required by the section [See Rat 773 (offence committed in Spain); 12 A. 218 (F.B.) [in Cyprus]; G B 222 13 B 117 14 B 227 (Gos.)] But under the present Code, a trial without the sanction of the Local Government will be illegal [G B 201 (offence committed at Las Palomas in Spain)]
3. **Offence committed on the High Seas.**—No sanction of the Local Government under S. 188 Cr. P. C. is necessary for the trial of a Native Indian subject in respect of an offence committed on the High Seas.—(11 B. 221 (F.B.))
4. **Certificate an essential requisite of a valid trial.**—The certificate is an essential and preliminary requisite of a valid trial. It is as essential to an enquiry preliminary to commitment as to a trial before the Court of Session.—(19 A. 109. (41) A N 85; 11 B 531 24 B 257)
5. **Does the want of certificate invalidate the proceedings.**—There is some conflict of rulings on this point. Excepting the Punjab Chief Court, all other Courts have held that the proviso is imperative and the want of a certificate by the Political Agent will invalidate the enquiry, commitment or trial, and the defect cannot be cured by S. 272 Cr. P. C. [19 A. 109 24 B 256 (54) A N 85; 20 Cr. 270 (1) 24 B 247 10 B 109; 8 B 11. 513 Rat 870, 13 M 123 5 M 27 8 M T 51 2 Wair 148 7 Cr 184 (N) (73-72) L B 331 See also G B 260] In the Punjab, it
- 35 P. R. 1854 30 P. H 1859. 1 P. R 1902 (F.B.) *Contra*—11 P. R 1826]
16. **Certificate produced after commencement of enquiry.**—In Bombay [8 B R 607 12 B R 667] it has been held that the certificate of a Political Agent required under this section can be obtained after the complaint has been filed and the enquiry begun. The Allahabad High Court in 24 A 256 held that the fact that the certificate had actually been signed by the Political Agent before the commitment was of no avail, as it was not produced till after the commitment.—[24 A 256]
17. **Where Magistrate is ex officio Political Agent.**—It has been held that it is no answer to the want of a certificate that the Magistrate who tried the case was himself the Political Agent.—[13 M 423 5 M 23 19 A 109 (84) A N 85]
18. **Certificate once granted cannot be revoked or recalled.**—It is not open to the Political Agent once he has issued a certificate either to *revoke* it [Rat 253] or *recall* the same, [14 B R 347].
19. **An informant cannot override**

right to try subjects of the State arrested in British India cannot take the place of the certificate or sanction contemplated by S. 188 Cr. P. C.—42 A. 69

20. **Where the offence is not a continuing one.** The offence of kidnapping not being a continuing offence, the fact that a person accused of committing such offence in a Native State, is arrested in British India, does not give the British Courts jurisdiction without the certificate of the Political Agent as required by S. 188 Cr. P. C. 11 A 452
21. **Prosecution need not be confined to the charge mentioned in the certificate.**—An order of commitment is good, notwithstanding that it is an order of commitment on a charge which is not specified in the certificate [8 M. T. 201] The certificate granted under S. 188 Cr. P. C. in respect of a certain set of facts will cover every charge which the facts disclosed in the proceedings will suffice to sustain and the Magistrate is not restricted to the section mentioned in the certificate [13 A 514].
22. **Conditions precedent to jurisdiction.**—The Magistrate would have jurisdiction under S. 188 Cr. P. C., if the accused were Native Indian subjects of His Majesty and the Political Agent of the Native State where the offence has been committed had certified that the accused should be tried in British India.—7 S 87; See S C 085 (F.B.)

(4) Miscellaneous.

23. **Abetment in British India of offence committed outside British India.**—Before the addition of 188A 1 P. C. which is as follows:—'A person abets an offence in British India within the meaning of this Code, who in British India, abets the commission of any act without and beyond British India which would constitute an offence, if committed in British India,' an abetment by a Native Indian subject in British India is a foreign territory. [See 19 B.
24. **The Code applies to Bangalore.**—Though the Civil and Military Station of Bangalore is foreign territory, belonging to Mysore, the Criminal Procedure Code is in force therein, by virtue of declarations made by the Governor General in Council under Act XXI of 1879—12 M 39.
25. **Section inapplicable to offences under the Post Office Act.**—Offences against the Indian Post Office Act (VI of 1898) committed by officers of the Postal Department, employed in places outside British India, are not governed by S. 188 Cr. P. C.—See S. 57 of the Act
26. **Offences alleged to have been committed by Native Indian or British Subjects of His Majesty, beyond British India, and not being in a Foreign State as defined in that Act, and issue warrants to arrest the accused.**—8 B. R. 607.

27. As to procedure to be followed in obtaining delivery from a Native State of a subject of such State, charged with an offence committed in British India—See Reg & Ord N W. P., S. 10 p. 538

28. Delivery of offenders to Native States—As regards offences committed in some Native States including Jhind, the Governor General in Council has directed that the offenders shall, except under certain circumstances, be handed over to the Courts of the State—*Gaz. of Ind.* 16th Aug. '76, No. 67

29. This Section does not confer jurisdiction on British Courts to try Foreigners

for an offence committed outside British territory.—See Notes under S 177. *Supra*.

30. Case may be enquired into by Magistrate competent to issue process: Where a Native Indian Subject was arraigned under a warrant issued by a Magistrate of First class, for an offence committed in a Foreign territory, and the Political Agent's certificate was obtained, held, the Magistrate was competent to hold the preliminary inquiry himself under S. 184 *supra*, rendered it unnecessary to send the accused to the District Magistrate 97

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried by the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions and exhibits relate.

B.—Conditions requisite for Initiation of Proceedings.

190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police-report of such facts;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special order of the Local Government, may empower any Magistrate to take cognizance under sub-section (1) clause (b), of offences for which he may try or commit for trial

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of this section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.

Proposed Amendments to the Section.—For clause (b) of sub-section (1) of section 190 of the Act, the following clause shall be substituted, namely:—

"(b) upon a report of such facts made by any police-officer."

Arrangement of Notes.

I. Scope of Section 190.

II. Disqualification of Magistrates (S. 191)

III. Taking cognizance.

IV. Complaint.

V. Police Report.

VI. Information.

VII. Cognizance under Cl. (c).

VIII. Procedure.

IX. Effect of irregularities.

X. Transfer.

XI. Miscellaneous.

I. SCOPE OF THE SECTION.

1. **The object.**—The object of the Code is that before proceedings are taken against an accused person, such as would bring him to a court of justice, a Magistrate must have before him knowledge based either on a complaint or upon police report.—11 A J 331
2. **When a complaint must be filed only by the person aggrieved.**—The law has made special provision with regard only to certain offences or offences under chapter XIX or XXI I. P. C. or SS 493 and 494 I. P. C. that a complaint must be made only by the person affected by the offence. As a general rule any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he may not be personally interested in or affected by the offence. Excepting S 195 and 291 Cr. P. C. there is nothing in the Code showing an intention to confine prosecutions to the person directly injured.—13 B 600. 18 A 465 14 Cr 491 (0)
3. **Cognizance of the offence of a person not mentioned in the complaint.**—The law was changed by the Police. After examining the investigating officer the Magistrate considered

that one S should be joined as an accused person. He accordingly issued process against S, and tried him along with H. (Both men were eventually convicted)

Held that the Magistrate was bound to see that justice was done in regard to any person who might be proved by evidence to be concerned in the offence under enquiry. "This principle seems to have been expressly embodied in S 351 Cr. P. C. and it applies equally whether proceedings started on a complaint or a police report. I hold therefore that the Magistrate took cognizance of S's offence under Cl (b) not under Cl (c) of subsection (1) S 190 Cr. P. C. and was consequently not bound to act under S 191."—Per, *Brake Brockman J C*—3 N 65 26 O 786 4 C N. 367 32 P R 1904 See also 21 C N 950 4 C N. 560 15 Cr 546 (c)

4. **Application of the Section to Misc. Proceedings.**—S 190 or S 191 do not apply to proceedings under chapter VIII [27 A 172]. Although the section in terms apply only to offences the principle applies to miscellaneous proceedings.—[4 Pat J 7 29 C 392 Cr R 401 of 1906]

II. DISQUALIFICATION OF MAGISTRATES (S. 191).

5. **Deputy Commissioner in charge of Court of Wards.**—When Deputy Commissioner as such (representing the Court of Wards) granted a lease to one C and on certain information, issued warrants (as Collector) against C for offences committed in respect of the lease—*held*—he was not competent to do so as by such action he was practically making himself a judge in his own case.—10 C N 775=3 Cr 473 See 37 C 221 (Per Stephen J)

Note.—Under the law the Magistrate under such circumstances cannot himself try or commit for trial any such case, but he may none the less, take cognizance and issue process.—37 C 221=(Per Curduff J Stephen J Contra) S=19 A N. 74

6. **Magistrate also Chairman of Municipality.**—Where Magistrate as Chairman of a Municipal Board institutes proceedings, he will be debarred by S 556 Cr. P. C. from trying the case.—19 A N 74

7. **District Magistrate also President of District Board.**—A District Magistrate who is also President of the District Board, is competent under S 190 (1) (C) Cr. P. C. to take cognizance of an offence upon information received by him in his capacity of President of the District Board.—21 Cr 345 (M) See 37 C 221 (Per Curduff J) Con 10 C N 775

8. **The object of S. 191 Cr. P. C.**—The object

is bound to inform an accused that he is entitled to have the case tried by some Court other than the Court of such Magistrate.—11 A J 331

9. **Why the right to claim trial before another Court is given.**—The real distinction between sub clause (c) and sub-clauses (a) and (b) of S 190 (1) is that in the two latter cases, an application is made to the Magistrate to take cognizance of the offence either by a complainant or by the police, while in the former case, the Magistrate takes cognizance *suo moto* either on his own knowledge, or suspicion or information received from some person who will not take the responsibility of setting the law in motion. In this case, the law partly out of regard to the susceptibilities of the accused, and partly to inspire confidence in the administration of justice allows the accused the right to claim to be tried before another Court.—15 Cr 369 (S)

10. **The principle under-lying S 191 Cr. P. C.**—The principle of this section is to clear away everything which might endanger suspicion and distrust of the tribunal, and to promote the feeling of confidence in the administration of justice which is so essential to social order and security.—See *Sargant v Dale* 2 Q B D. 558.

11.

to comply with them. The Magistrate has no discretion in the matter [13 A 345] Silence on the part of the accused to take objection as to the

plaint or upon a police report. If he chooses to take action without such independent report, he

12. **Extent of the rights of the accused.**—All that the accused is entitled under this section is to have the case tried by another Court. The section gives the accused no right to select or determine for himself by what other Court the case is to be tried [7 B R 637 See 22 M. 118]. The right now appears to be that the accused are only entitled to object to a trial by the Magistrate taking cognizance under Cl. (C) of S 190 but the Magistrate is not bound to transfer the case. He may elect to commit it to the Court of Session—[22 M 118 26 C 746]
13. **Objection to be taken at the earliest**

stage.—The accused if he elects to be tried by another Court, must signify his election by any evidence is taken—[20 P. R 1894 (p 82)]

14. **Appeals.**—A subordinate Magistrate who cognizance of a case under sub (C) of 190 is not after becoming District Magistrate bar appeal from an conviction in that case, altho it had been tried by another Magistrate, and following the procedure laid down in S 191 C N. 174. The rule however will not apply the Magistrate did not take cognizance but merely directed summons to issue [36 C. 569]

III. TAKING COGNIZANCE.

15. **Accused cannot be summoned without taking formal cognizance.**—Where subsequent to the conviction of some of the accused the District Magistrate while inspecting the police outpost made a note that the remaining accused should be sent up—held—that proceeding taken on the basis of the note without any one formally taking cognizance of the case are bad and must be set aside—[3 C J. 87.]

15A. **Note.**—A Magistrate has power to make orders under S 151 (2) Cr. P. C without taking cognizance under S 190—[1 M T 259]

16. **Under Cl. (a) and (b).**—Magistrate can under Cl (a) and (b) take cognizance against a prosecution witness when in the course of the trial, the Magistrate found that the offence was not committed by the accused but by the witness—[4 S 258.]

17. **Meaning of "cognizance of an offence"**

The expression cognizance of any offence is equivalent to "cognizance of any offender" [4 256] But a Magistrate having taken cognizance of an offence has jurisdiction to hold judicial proceedings in regard to all persons, who, evidence shows, are the offenders [21 C N 9 1 C. N. 570] The expression "to take cognizance" has not been defined in the Cr P. Code and difficult to ascertain at what precise stage of case cognizance is said to be taken. When Magistrate in charge on receipt of a police report makes over the case to another Magistrate for enquiry and the latter after taking evidence summons the accused the latter and not the form can be said to take cognizance [17 C. N 795-5 65 P. J. 1914]

IV. COMPLAINT.

18. **What amounts to complaint**

C 104 (K.B.) o C N 254 35 C. 141.

19. **Procedure on receipt of complaint.**—See (S) Procedure

20. **Complaint by a party not aggrieved.** Complaint filed by any person aware of the commission of an offence although he may not be the party injured, is a complaint within S 4 cl (b) and a Magistrate acting on it, takes cognizance under cl. (a) and not cl (c) 13 B 600-10 C. 18 (A) 18 A 465. 14 Cr 409 (c) 15 Cr 546 (C)

[Note.—There is no authority for the proposition

that the facts of a case may be established

- 21.

where there is an express statement that the petitioner did not wish to prosecute is not a complaint within S 4 (h)—G C. N. 926.

22. **Complaint at variance with oral statement.**—Where the complaint charged the persons with having committed certain offence but the statement of the complainant on oath disclosed, offences of a different kind committed by those three person and a fourth person not mentioned in the petition and the Magistrate took cognizance accordingly—held—he took cognizance under cl (a) and not cl (c) 26 C. 756

23. **Complaint by person having no personal knowledge.**—A complaint which is

plaintain must have personal knowledge of the offence 11 C. N. 170 21 C R 346 (Pat)

24. **Complaint not in proper form.**—A complaint returned for presentation to the proper court, but the heading of which was left unaltered and on which no fresh stamp was attached can be acted upon under cl. (a) on presentation—18 Cr. 459 (N)

25. **Representation of a complaint.**—All that a person should do is to present a complaint to the Magistrate—Code

—14 C. 707; 15 Cr. 369 (S).

V. POLICE REPORT.

26. **Cognizance under Cl. (b).**—Where warrants were issued against persons not mentioned in the complaint or first information but on the basis of a report made by police after investigation—*held*—that the Magistrate took cognizance of the case under Cl. (i) and not Cl. (b) 8 C N 864.
27. **Magistrate competent to refuse to initiate proceedings.**—Magistrate is competent to refuse to initiate proceedings on a police report in a case in which there is no complaint but only a report to the police.—1 A J 671
- Note.**—In order to justify proceedings must set forth the nature of the information against the accused 37 C 44.
28. **The term Police Report as used in S. 190 (b) includes a report under S. 62 Cr. P. C.** 3 P. R. 1910
29. **Evidence of police officer in the course of trial.**—When a Magistrate puts in the dock a person under S. 331 Cr. P. C. on the strength of the evidence of a police Sub-Inspector he took cognizance under S. 190 Cl. (i) (b) (1910) U. B. (1-g) 2. (17-31) U. B. 161 O. N. 65
30. **Discretion of Magistrates.**—Magistrate before him a police report submitted under S. 157 (d) may determine as he thinks expedient

either to take no cognizance or to take cognizance under S. 190 (b)—2 Weir 119.

31. **Defence.**—A police report mentioned in S. 190 (b) Cr. P. C. is not limited to a report mentioned in S. 170 Cr. P. C. and the preceding sections—11 A J 331.

[**Note.**—But in order that a police report may be acted upon it must set forth the nature of the information against the accused—37 C. 44]

32. **Report in a non-cognizable case.**—The police report mentioned in S. 190 (i) (b) Cr. P. C. is a police report within the meaning of S. 173 Cr. P. C. that is to say a report in the course of an investigation of a cognizable offence—21 Cr. 269 (1911) 40 C 854 11 A J 331. (11) U. B. 1119 (01 06) U. B. 125.

Note.—But the expression police report in Cl. (b) of S. 190 (i) Cr. P. C. does not include a report by a police officer of his own motion in a non-cognizable case—26 B 150 (F. B.) 23 C. N. 470]

33. **Report of a Sanitary Inspector of a Municipality.**—Cannot be treated as a police report within the meaning of Cl. (b) unless he has been authorised by the Governor in Council under S. 242 of the District Municipalities Act, to exercise the powers of a police officer—18 Cr. 611 (1)

VI. INFORMATION.

34. **Information should be recorded.**—See 7 cognizance under subs. (c).
35. **Information should be recorded.**—See 7 cognizance under subs. (c).
36. **Report under S. 62 Cr. P. C.**—Report by Police under S. 62 Cr. P. C. is not information within cl. (c) but is covered by cl. (b) 3 P. R. 1910
37. **What is not information within S. 190 (1) (c).**—

prosecution of a guardian of a minor cannot be regarded as information within the meaning of S. 190 (1) (c) Cr. P. C. 87 P. L. 1910.

- (b) Where a Subdivisional Magistrate listened to information given by the Police and ordered them to *chalan* the accused under S. 143 i, P. O.—*Held*—that the Magistrate really proceeded under S. 190 (b) and not under S. 190 (c) and was therefore not bound to proceed under S. 191 Cr. P. C.—3 P. R. 1910

- (c) A Magistrate is not competent to act under S. 190 (1) (c) Cr. P. C. on any information which has been transmitted to him in any other public capacity—37 C. 221.

(d) The order of a District Judge directing the

VII. COGNIZANCE UNDER SUBS. (C)

38. **Magistrate to follow S. 191 Cr. P. C.**—When a Magistrate took cognizance of a case

procedure laid down in S. 191 12 C N. 434

39. **What amounts to taking—**

(a) A Magistrate passing order for issue of summons in a case placed before him by an order of the Collector couched in following terms. "See under what sections the accused can be prosecuted. Put up the case before Mr. Deb for the necessary order," takes cognizance of the case under S. 190 (1) (c). 12 C N. 433.

- (b) Where names of the accused were added by the Public Prosecutor after the institution of the complaint the case against the newly added accused was taken cognizance of by the District Magistrate under S. 190 (1) (c) Cr. P. C. and that S. 191 applied to the case 14 Bar R. 327.

40. **Provisions of S. 191 mandatory.**—The

- competency of a magistrate to try a person for offence of which he has taken cognizance under Sub. (1) Cl. (c) is contingent on a strict observance of the provisions of S. 191. These provisions

are mandatory and neglect to confirm to them makes the trial null and void 5 N. 113; 6 C. N. 202; 13 C. P. 191.

42. **Information from police diary.**—Where the Magistrate enquiring into a charge against only one man, issues warrant against others on the basis of certain statements of witnesses recorded in the police diary, he takes cognizance under S 195 (1) (c) Cr. P. C.—*Rat 951.*

43. **Cognizance of offence not mentioned in complaint.**—Cognizance of offences of different kind from those mentioned in the petition of complaint based on the complainant's examination on oath is cognizance under Cl (n) and not Cl (c) —26 C 766=3 C N 191.

44. **Cognizance as a result of private conversation with police officer.**—A Magistrate as a result of private conversation with a Police Inspector directed the case to be sent up for trial, he tried the case and convicted the accused without giving him an option under S. 191—*held*—he took cognizance under Cl. (c) even though there was the usual *chalan* and it was imperative for him to give the accused option under S 191—4 P L 455.

45. **Proceedings under S. 351 Cr. P. C.**—Where accused is proceeded against under S 351 Cr. P. C, the Magistrate should be taken to have taken cognizance under 190 (c). It is therefore bound to follow the provisions of S 191 Cr. P. C. 1 C N 105 *Conn* (10) U B (t-q) 2: 5 N 113. 4 S 235

46. **...**

evidence issued summons against the petitioners, *held*, that the latter had issued process neither on police report nor complaint, and although S. 190 Cl (c) may not strictly apply, the petitioners ought to be allowed to have the case tried by another Magistrate—17 C. N 795

47. **Reference in a proceeding under Burmo Village Act.**—Where the Commissioner, Pegu Division, in a proceeding under the Village Act wrote to the District Magistrate requesting him to proceed under S 476 of the Cr. P. C. for an offence under S 199 I P C, *held*—no sanction was necessary and the District Magistrate could take cognizance under S 190 (c) and transfer the case to another Magistrate under S. 192.—11 Cr. 736 (L. B)

48. **Cognizance on the basis of a letter from a superior officer.**—A gunner reported to the Cantonment Magistrate Murree, that one B had assaulted him. The latter reported the matter in letter to the Assistant Commissioner for action. Upon this the Assistant Commissioner made an enquiry in the course of which he examined M. as a witness. Thinking that in reality M and not B. had committed the offence, he proceeded to prosecute M. under S. 504 I. P. C.

Held—that the Magistrate took cognizance of case under S. 190 (1) (c) Cr. P. C. 65 P. L. 1

49. **Recommendation of prosecution Police Officer.**—Where police after investigation

cognizance of the case on his own information within the meaning of S. 190 (c) Cr. P. C

(57) A. N. 93.

50. **Magistrate acting on his own knowledge.**—Where magistrate acts on his own knowledge of facts under S 190 (c) Cr. P. C, he is bound to proceed under S 191.

1 Bur. R. 259.

51. **Cognizance under cl. (c) no bar to preliminary enquiry.**—The fact, that a magistrate took cognizance under the provisions of S 190 (c) Cr. P. C, is no bar to the Magistrate hold an enquiry preliminary to commitment. 20 17 (b) 20 C 766: 21 A. 109 S e 22 M. 148

52. **...** to miscellaneous character—*eg*—to proceed under S. 110 Cr. P. C.: 4 Pat 77. 24 C 38 See C R. No. 401 of 1906 But See 27 A. 173

53. **Application of the clause.**—The power of a Magistrate to proceed on information under S 190 (1) (c) is intended to be used in a case which a Magistrate has good reason to believe that there has been a serious infringement of the law, but is unable to take action in the ordinary manner, because the party aggrieved either unwilling or unable to prosecute. 2 P. J. 657.

54. **Police report a bar to cognizance under Cl. (c).**—It is not open to the Magistrate take cognizance upon the report of any Police Officer under S. 190 (1) (c) 2 Pat J. 651 5 B. L. 271

What does not amount to taking cognizance under Cl. (c).

55. (a) **A complaint was filed by the overseer of a Municipality under the authority of the Vice-Chairman.** The overseer was examined on oath and the accused was then summoned to appear—*held*—that the prosecution was initiated under cl (a) and not cl. (c).—18 Cr 273 (Pat)

56. (b) **A trial commenced against A only as the**

zance under S 190 (1) (c) but amounted to no cognizance upon the Police report of the fact under cl.(b)—18 Cr. 425(A): See 26 C.

7. (c) One S complained against the Hon'ble M. his wife and two daughters under Ss 312 and 363 I. P. C. Long before the date fixed for enquiry, he made a petition of withdrawal of the case, on the 17th Sept, 1913. On the 30th Sept the Magistrate passed the following order: "The complainant is present. He applied before, saying he was unwilling to proceed with the case. This is a serious charge. The witnesses must be examined. Summon them and fix the case for the 3rd Oct next." On the 20th Novr 1913 the following order was passed: "Read police papers and the evidence. The real complainant is the girl named S D (wife of S). From her statement and the statement of other witnesses, it appears that there

is no satisfactory evidence against the persons complained against. There is however evidence against one D B and a woman called B Summon them under Ss 312, 363, 372 I. P. C. Fix the case for the 2nd Decr next"—held that a magistrate having taken cognizance of a complaint, could also proceed against other person or persons, who although not mentioned in the complaint, appeared on the evidence for the prosecution to have been concerned in the commission of the offence. That in so doing, the Magistrate took cognizance under cl (1) (i) of S 190 Cr P C. The provision of S. 191 therefore did not apply.—15 Cr. 516 (C).

VIII. PROCEDURE.

58. To be followed on receipt of complaint. It is incumbent on a Magistrate upon receipt of a complaint to at once examine the complainant if he does not transfer the case under S 192 Cr P C. He could only order an enquiry or investigation in accordance with S 202 and he could make over the case to the police for enquiry. He cannot take any action "just as he might choose"—1 O O 127, 20 Cr 413 (Pat).
59. Strict compliance with provisions of S. 191—is necessary when a Magistrate takes cognizance under cl (c) of subs (1) of S 190. See—(7) Cognizance under subs (c) [39].
60. Omission to examine the accused.—S 193 which lays down the conditions requisite for institution of proceedings must be read with S 200 Cr P C. The cognizance of an offence by a Magistrate is not complete until he has examined the complainant on oath. Failure to examine the complainant on oath vitiates the entire proceedings. It is not a mere irregularity curable by S 537 Cr. P. C.—30 O 823 3 C N 17 18 A, 221 2 Pat

J 637 1 Pat T 316 20 Cr 712 (Pat); But see 11 M 443 9 A 666 1 P R 1911, 1 Pat. J. 692-23 C N 479 46 C 807.

- 61-62. On receipt of a police report in non-cognizable case.—A duly empowered magistrate may take cognizance of non-cognizable offence on receipt of a Police Report under S 190 (h) Cr. P. C. but in that case, he must immediately summon the accused. He cannot hold a judicial enquiry under S. 202 Cr. P. C.—20 Cr. 113 (Pat) 10 C 854 7 S 75.
63. Cognizance of an offence within the purview of S. 195 Cr. P. C.—Although, as a rule, a complaint unsupported by the sanction required by S 195, should not be accepted, the mere fact that the District Magistrate had erroneously taken cognizance under cl (a) will not vitiate the proceedings, in view of S 520 Cr P C when no failure of justice has occurred in consequence.—13 PW 1913

IX. EFFECT OF IRREGULARITIES.

64. Omission to take further proceedings under S. 191—after taking cognizance of a case under Cl. (1) (c) is fatal—O G N 202 13 C P 191.
65. Omission to inform the accused of his right to have the case transferred under S 191 will not fall within the provisions of S 537

Cr P C. It is a material defect and not a mere formal irregularity.—23 A 212 2 Weir 151 13 P R 1895 4 Bur 259 (97-01) U B 1 56 337 P L 1905 5 N 113 See also—8 P R 1905, 31 P L 1905 81 P L 1905 3 A J. 694 10 C N, 775

X. TRANSFER.

66. A Magistrate deciding under S. 191 Cr. P. C. cannot transfer the case to another Magistrate. He does not have to have
67. Objection by accused.—If the accused raises an objection under S. 191 Cr. P. C. to the trial by the particular Magistrate, the magistrate is not bound to transfer it to another magistrate, but

can elect to commit it to the Court of Sessions.—22 M 149

68. No power to refuse transfer.—Where magistrate takes cognizance under S 190 (1) (c), he has no power to refuse to transfer the case.—13 A 345
69. Criminal to inform accused of right to

XI. MISCELLANEOUS.

70. Power to pass order under Subs. (?) without taking cognizance. *See* (3) *Tolson cognizance* (15 A).

71. European British Subjects.—The District Magistrate of Civil and Military Station Bangalore has jurisdiction to take cognizance of and try offences committed by European British Subjects 31 M 216

72. Offence under S. 20, Cattle Trespass Act.—A Magistrate of the 2nd class who is authorized under S. 190 Cr. P. C. to take cognizance of offences upon receiving complaints has power to take cognizance of complaint under S. 20 of the Cattle Trespass Act (I. of 1871) 21 Cr. 95 (11)

73. Magistrates empowered and not empowered.—Where a Magistrate not specially empowered under cl (1) (c) having lawful cognizance of the case, found that a certain other person was concerned in the offence and thereupon issued process against and tried him, *held*—

the Magistrate did not act without jurisdiction

1 C. N. 357.

74. *Revision.*

(a) High Court will not interfere with order for discharge of accused under S. 2 wrong but it is to be taken as refusal to take proceedings, when Magistrate is competent to make such refusal 1 A. J. 609

(b) When Deputy Commissioner who is Revenue officer, institutes proceedings as Magistrate for offence against public revenue, *held* under cl. (1) (c) and as such his order is *not* to be revised by the High Court—4 C. N. 825

75. Sections 190 and 191 do not apply to cases under Bombay Prevention of Gambling Act.—A complaint made to Magistrate in order to induce him to take action under S. 6 of the Bombay Prevention of Gambling Act (IV of 1847) and not under the Code, not amount to a complaint within the meaning of the Cr. P. C. It follows therefore that sec. S. 190 nor S. 191 applies—15 Cr. 657 (S).

192. (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, inquiry or trial to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in the district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Notes.

(1) Application of the section.

1. Cognizance under S. 190 Cr. P. C. condition precedent.—S. 192 refers only to cases of which the transferring Magistrate has taken cognizance—*i.e.*, noted under S. 190 Cr. P. C. It has no reference to cases which have been transferred,—that is to say—the Magistrate to whom transferred.—192 Cr. P. C. A 1 277 36 H 40 (41). *See* 11 Cr. 106 (L B) 1 L B 86 (47). *Con.* 1 S 119

[Note.—It follows therefore that a Subdivisional Magistrate to whom a case has been transferred by the District Magistrate, cannot retransfer it to any Magistrate subordinate to him. But he may on such transfer act as a Magistrate.]

2. District Magistrate of the District to which case has been transferred under S. 528 Cr. P. C.—Upon a transfer to the District Magistrate of the District to which the case has been transferred by the High Court under S. 528 Cr. P. C. can transfer the case for trial by a subordinate Magistrate under S. 192 Cr. P. C. 30 P. R. 1917: *See* 19 A. 219.

3. Deputy Commissioner of Rhotak with reference to offences on Railway land in Jhind.—Under Government of India S. 515-I. B. dated 17.3.13, the Deputy Commissioner of Rhotak has power to take cognizance of an offence committed on Railway land situated in the Jhind Native State, and Government of India No. 516 I. B. of 17.3.13 can exercise all the powers of a District Magistrate which include a power to transfer such case to a Subordinate Magistrate under S. 192 Cr. P. C.—30 P. R. 1917.

4. The term "any case"—does it include miscellaneous proceedings?—There is difference of opinion on this point. In 24 C. 71 (*See* pp. 718-7), it has been held that the words "Cases" and "Criminal cases" are not to be indiscriminately or interchangeably used. It is doubtful whether the term "any case" does not apply exclusively to Criminal cases *i.e.*, cases relating to offences; while in 35 C. 243 (2) it is laid down that the term is not restricted to cases of offences only but includes cases under Ch. VIII, Cr. P. C.

5. The stage at which cases under S. 10 Cr. P. C. can be transferred.—*See* Note under S. 107: (18) Transfer and Withdrawal

6. **Transfer of cases under S. 110.**—A District Magistrate can act under S. 102 Cr. P. C. with reference to a case under S. 110 Cr. P. C. [37 C 243] The case can be so transferred to subordinate Magistrate not competent to institute the same [1 S. 2; 71 C 370; 24 A. 131 Case—Rat 835]

7. **Transfer of cases under S. 145 Cr. P. C.** It is now settled that a District or Subordinate Magistrate can act under S. 102 Cr. P. C. in reference to cases under chapter XII [22 C 849; 10 C N. 1047; 2 C J 614 23 M 188] But a subordinate Magistrate cannot be empowered under S. 102 (2) Cr. P. C. to transfer proceedings under S. 145 Cr. P. C. [36 C 370 4 C N. 821] If however a subordinate Magistrate empowered under S. 102 (2) transfers proceedings under S. 145 Cr. P. C., the legal defect is curable by S. 529 Cr. P. C. [36 C 370 5 C N. 694]

8. **District Magistrate can act under S. 102 Cr. P. C. even before deciding to issue process.**—The term "case" has not been defined in the Criminal Procedure Code, but reading together S. 102 (1), 190 (1) (a), and proviso (c) to S. 200, it is clear that it includes a proceeding upon a complaint, as soon as the complaint has been received by the Magistrate who takes cognizance of the offence complained of. A District Magistrate can, therefore, upon the application of the accused person, withdraw a complaint from one subordinate Magistrate and refer it to another, even before a decision to issue process against the accused has been reached.—7 N 97

9. **A transfer under S. 102 Cr. P. C. operates as a transfer of the whole case.**—A complaint was lodged against several accused persons, and the Magistrate, after examining the complainant issued summons against one of the accused only and transferred the case for trial to a subordinate Magistrate—held—that the whole case of the complainant was transferred and the subordinate Magistrate was quite competent in discharging the accused before him, to order summons to issue for trial against some of the complainant [240] If the offence,

of which cognizance has been taken under S. 190 *supra* and he can proceed even against parties not mentioned in the original complaint [4 C N 560 27 C 979] It has been held however [Per Henderson J. in 32 C 783 (789)] that whether a transfer of the whole case has been made or not is a question of fact depending on the intention of the officer making the order, which intention must be gathered from the order itself.

(2) Rules relating to transfer.

10. **Effect of the transfer.**—After a case has been transferred to a subordinate Magistrate the transferring Magistrate is *functus officio*, unless he recalls the case. The former officer alone has jurisdiction to deal with application or to issue summons. The transferring Magistrate cannot make any order save an order for further enquiry under S. 437 Cr. P. C.—16 C 854; 32 C 783; 30 C 419.

27 C 979; 27 C 798; 5 C N. 499; 4 C N. 346; 4 C N. 212; 3 B. L. (ap) 151.

11. **Cases which should be transferred.**—Cases coming within the terms of Ss. 487 and 556 Cr. P. C. should be transferred [4 B L (ap) 151; 8 B L 422 (F.B.)]. So also cases initiated under S. 190 (1) (c)—[See Notes under S. 190-1 *supra*] and also cases in which the Magistrate himself is a material witness [2 C 23 19 M 263 But see 1 B L (ap) 15] But where the Magistrate simply heard statements of the accused but did not record them, he does not necessarily become a witness and is to be disqualified to try the case [24 C 499]

12. **Ss. 192 and 203 compared.**—The language of S. 202 Cr. P. C. seems capable of an interpretation consistent with the long standing practice under which a Magistrate receiving a complaint refers it to a subordinate Magistrate for local enquiry and report Under S. 192 Cr. P. C. the transferring Magistrate cannot intermeddle with the case transferred, unless and until he recalls it to his own file. The provisions of Ss. 192 and 202 Cr. P. C. are therefore separate and distinct, and the powers conferred by one section do not curtail those conferred by the other.—46 C 854.

13. **Issues processes upon the witnesses of the complainant does not materially alter the nature of the transfer nor does it affect his jurisdiction.**—20 Cr 413 (Pat)

14. **pending before the latter in a particular manner**—e.g.—by commitment [2 Weir 152 1 Weir 239]. Where a complaint made to a Joint Magistrate is not withdrawn by the District Magistrate to his Court, the District Magistrate cannot interfere in the trial of the case and direct judicial enquiry by another Magistrate before issue of process, so as to postpone the trial. It is questionable whether such order can be passed even if the case had been withdrawn to his Court for trial [27 C 798]

15. **Transfer for limited purpose.**—It is doubtful if it is for spirit of only to a it [1 N, c is for enquiry only and not for trial, the proceedings before the Magistrate to whom the case has been referred cannot be treated as a regular trial [404]

16. **Magistrate not bound to examine the complainant before transferring.**—A District Magistrate to whom a complaint is made is not bound to examine the complainant, before transferring the case to a subordinate Magistrate [See S. 200 *infra* 9 B L 146 4 N P 58 (49)]

17. **Denovo proceedings after transfer.**—Magistrate after examining all the prosecution witnesses and framing charge, transferred the

case to another Magistrate—*held*—that the latter Magistrate should have proceeded *ex officio* and his omission to do so vitiated the trial. [11 A. 315; 12 C N 140 (141); 2 Weir 152; 1 L B. 301; Con. 35 C 157]

18. Defect in the proceedings when not material.—Where both the transferring Magistrate and the Magistrate to whom the case has been transferred have jurisdiction over the offence, any formal defect in the order of transfer is immaterial [(190) A N 8]. Where an Assistant Collector trying a case sent the proceedings to the Collector

District Magistrate being legally competent to act in the way he did, the formal error was immaterial [26 A 511 23 A 319]

19. Invalid transfers.—A transfer of case by a Subordinate Magistrate to the District Magistrate is *ultra vires* [12 A 66]
20. Transfer must be made to Magistrate having jurisdiction.—A Magistrate has no power to transfer a case to a Subordinate Magistrate who has no jurisdiction to enquire into or try the same—[6 B L (ap) 115, 23 O 142]. So a transfer can legally be made to a Tesildar Magistrate in *Madrass* [G O No 108 dated 17.1.03 Judicial], but not to a village Headman [1 L B. 59]

(3) Miscellaneous.

21. Cases under Cattle Trespass Act (I) of 1871.—A complaint under S 20 of the Act is a complaint in respect of an offence as defined by S 4 (O) Cr. P C and can therefore be transferred by

the District Magistrate or a Magistrate special authorised [34 C 923 Con 23 C, 309; 23 C 44]

22. Proceedings under S. 476 Cr. P. C. Under the former Code, a District Magistrate whom a case had been referred under S 476 (P. C. could not transfer it to a Subordinate Magistrate [S 2 N P. 21; 3 N P. 129]. But S 476 of the present Code, expressly authorises him to do so
23. Power to act under S 476 Cr. P. C. after transfer.—When Magistrate to whom a case transferred before the issue of process, examine witnesses and records evidence, in order to try the truth of the complaint, he acts at a stage judicial proceeding and is therefore competent to proceed against the complainant under S 4 Cr. P C. for an offence referred to in S. 195 (P. O [36 C. 72]
24. Subordination of Presidency Magistrates.—The subordination of Presidency Magistrates to the Chief Presidency Magistrate shall be deemed to be of the same kind and extent as the subordination of Magistrates to Benchies to the District Magistrate under S 17 *supra*. The Chief Presidency Magistrate cannot S 524 Cr. P. C. *infra*, withdraw any case from any one of them and refer it for inquiry or to any other such Magistrate.—1 B R 347 (348)
25. Powers of the First Class Magistrate.—1 B R 347 (348) 1873 p 7
26. Transfer by magistrate not authorised.—If a Magistrate not empowered under Section transfers a case, the irregularity is cured by S 529 (f)—See 36 O 869

Punj. Gaz 1870 Pt. 1 p 680.

193 (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of an offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try, or, in the case of Assistant Sessions Judges, as the Sessions Judge of the division, by general or special order, may make out to them for trial.

Proposed Amendments to the Section.—In sub-section (2) of section 193 of the said Code, the words "in the case of Assistant Sessions Judges" be omitted.

Notes.

(1) Sub. (1).

1. Object of the Section.—The object of the restriction enacted in this section is to secure in the case of a person charged with grave offence, a preliminary enquiry which would afford him the opportunity of becoming acquainted with the circumstances of the offences imputed to him and enable him to make his defence [3 M 351]. The Law contemplates that in the serious case

of which a Court of Sessions may take cognizance the accused should have some information of case he has to answer [4 M 227].

2. Sessions Court not restricted to offence specified by the committing Court.—It is now well established that Sessions Court has power to amend or alter original charge on which accused has been committed or add an altogether new charge provided

that the charge so added can be supported by the evidence taken before the Committing Magistrate. [S B 207; 9 A 524; 3 M. 371; 9 S 37] The added charge must be for an offence made out by the evidence recorded before the Magistrate, if the charge is added under S 226 Cr P. C. or by the evidence recorded before the Court of Session in the course of the trial, if the charge is added under S 227 Cr P. C. [9 S 37 But see S A 645; 32 C 22]

3. **Note.**—The principles on which a Sessions Court should act in amending charges are well stated by West J. in 11 B R. 278.—"The intention of the Legislature is that whenever an amendment of the charge any way tends to the prejudice of the prisoner, steps should be taken to prevent that consequence arising by ordering a new trial, or suspending the trial going on, to enable him to make his defence, or examine any material witnesses or to recall any witness already examined. It is only in the case of charges clearly related that a trial goes on forthwith after amendment".

4. **Exceptions to the general provision in subs. (1).**—As exception to the general rule—see Ss 477, 478 and 480 Cr P. C. also S 371 Cr P. C. Although under S 193 (1) Cr P. C. a Court of Session cannot take cognizance of any offence as a Court of original jurisdiction, regard must be had to the exception contained in the words "except as otherwise expressly provided in this Code". The rule is therefore subject to the provisions of Ss 226 and 227 Cr P. C. [9 S 37]

5. **Amended charge to be in the name of the Committing Magistrate.**—Where a Court of Sessions amends or alters the charge under S 226 *infra*, it must still be drawn in the name of the Committing Magistrate. M H Pro 30-8-62

6. **Magistrate's signature.**—Where

fact that the commitment was made by an officer exercising the powers of a Magistrate would be sufficient to enable the Court of Sessions to proceed with the trial. The onus is on the party impugning the proceedings to show that there was no jurisdiction to commit. [13 W R 17]

7. **Trial without commitment is void.**—The defect arising from the absence of any commitment is one of substance and not of form. It

cannot therefore be cured by S. 537 *infra* [42 P. R 1841. 6 P. W. 1913. S. 25 M 61 (P C)]. A trial therefore by a Sessions Court of persons not duly committed by a Magistrate having power to commit is *ultra vires* [15 M. 352; 22 C 50]

8. **Approver.**—It is unfair to put an approver, whose conditional pardon has been cancelled, on trial with the other prisoners, in the course of whose trial the approver has given evidence. Nothing should be done, until after the case has been finished, and then his trial should commence *de novo*. 15 M 352 22 C 50 19 W R 43; 23 B 493 (401) (193-00) L B 536 (537) 60 C 236 (237)

(2) Subs. (2).

9. **Reference under S. 123 Cr. P. C.**—A reference under S 123 Cr P C cannot be treated as a commitment. Therefore an Additional Sessions Judge empowered to try all cases which may be committed for trial to the Court of Session, has no jurisdiction, to pass orders under S 123 Cr P C—Rat 830

10. **Change of Law.**—Under the previous Codes, an Additional Sessions Judge (called formerly Joint Sessions Judge) could not deal with matters coming within the scope of Chapter XXXII *infra* [9 B 164 See 1 L B 119] Under the present Code [S 438 (2) *infra*] that power has been expressly given—See also (3) A N 28

11. **Additional Sessions Judge belongs to**

12. **For power of Local Government to specify the Court of an Additional Sessions Judge for the trial of a particular case.**—See 2 Weir 215

13. **Assistant Sessions Judge.**—The word "Case" in S 193 (2) does not include appeals. A Sessions Judge has therefore no authority to transfer an appeal to the file of an Assistant Sessions Judge under S 193 (2). [37 A 286 compare (105) A N 199 and 7 A 661 (Cr)] An Assistant Sessions Judge holding charge of the duties of the Sessions Judge during a temporary vacancy, is not competent to exercise the powers of a Sessions Judge. He can try only those cases which are made over to him under Subs (2) [Rat 500]

Cognizance of offences by High Court.

194. (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the Indian High Courts Act, 1861, [or the Government of India Act, 1915] or any other provision of this Code.

(2) (a) Notwithstanding anything in this Code contained, the Advocate General may, with the Informations by Advocate General. previous sanction of the Governor General in Council or the Local

Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or virtue of any such information shall belong to the Government of India.

(d) The High Court may make rules for carrying into effect the provisions of this section.

Notes.

1. Coroner's inquisition under Act IV. of 1871.

—An inquisition drawn by a coroner, though it may have the effect of a valid commitment, upon which the High Court, in the exercise of its original Criminal

Jurisdiction may act, has not that effect, unless it has been accepted by the High Court, and officers of the Crown have drawn up a charge in accordance with it—31 C. 1.

195. (1) No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, authority of public servants the public servant concerned or some public servant to whom he is subordinate,

(b) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate,

(c) of any offence described in section 463 or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to a proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1) the term "Court" means a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) The provisions of sub-section (1), with reference to the offences named therein, apply also to [Criminal conspiracies to commit such offences and to] the abetment of such offences, and attempts to commit them.

(4) The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

(5) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(6) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no sanction shall remain in force for more than six months from the date on which it was given; provided that the High Court may, for good cause shown, extend the time.

(7) For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, that is to say—

(a) where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate,

(b) where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed,

(c) where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate.

Proposed Amendments to the Section—(i) For sub-section (1) of section 105 of the said Code, the following sub-section shall be substituted, namely, —

(1) No Court shall take cognizance—

(i) of any offence punishable under sections 173 to 189 (both inclusive) of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate

(b) of any offence punishable under sections 193, 191, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 229, of the same Code, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate, or of the Local Government or some officer duly authorised by it in this behalf, or

(c) of any offence described in section 463 or punishable under sections 471, 475 or 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate or of the Local Government or some officer duly authorised by it in this behalf

(ii) In sub-section (2) of the same section, for the word "means" the word "includes" shall be substituted

(iii) Sub-sections (4) and (5) of the same section shall be omitted

(iv) Sub-section (3) and (7) of the same sections shall be re-numbered (6) and (4), respectively

Arrangement of Notes.

1. Object and Scope.

2. Legislative History of Section.

- (1) Previous changes
- (2) Prospective changes

3. Definition and Meaning of Terms

- (1) "Court"
- (2) "Offence"
- (3) "Produced"
- (4) "Document"
- (5) "Party to proceeding"
- (6) Other terms

4. Enquiry preliminary to sanction.

- (1) Necessity for preliminary enquiry
- (2) Notice,
- (3) Procedure,
- (4) Effect of omission,

5. Proceeding.

- (1) Nature and propriety of proceeding
- (2) Initiation, Application for sanction
- (3) Effect of delay in making application.

6. How far is sanction or complaint an essential preliminary to cognizance.

- (1) When sanction condition precedent to cognizance.
- (2) When sanction unnecessary
- (3) Complaint as distinguished from sanction.

7. When may sanction be given.

8. Propriety of granting sanction.

- (1) General Principles.
- (2) Specific points for consideration
- (3) Materials justifying sanction.

9. Procedure in sanction proceedings.
 - (1) General
 - (2) In Subordinate Courts.
 - (3) In Superior Courts
10. Nature, form and contents of order.
 - (1) General.
 - (2) To whom can sanction be given
 - (3) Against whom may sanction be given.
 - (4) Offences in respect of which sanction may be given
11. Different aspects of sanction.
 - (1) Nature and meaning of sanction.
 - (2) Effect and sufficiency of sanction
 - (3) Sanction by implication.
 - (4) Absence of sanction
 - (5) Defective sanction
 - (6) Fresh sanction
 - (7) Can sanction be questioned by trying Magistrate?
 - (8) Assignment, Transfer or Devolution of sanction.
12. Duration of sanction.
 - (1) Limitation and calculation of period.
 - (2) Lapse and extension of time
13. Jurisdiction.
 - (1) High Court.
 - (2) Other Courts.
 - (3) Who can grant sanction and who cannot?
 - (4) Miscellaneous
14. Subordination of Courts and Public Servants.
15. Grant and revocation of sanction by superior Courts.
16. Cognizance, Prosecution and Trial of offences specified in Section.
 - (1) Cognizance and complaint.
 - (2) Who can prosecute.
 - (3) Who can try.
 - (4) Procedure in trial
 - (5) Alternative and cumulative charge
 - (6) Addition and alteration of charge
 - (7) Variance between sanction and charge.
17. Allied Sections.
18. Revision, Appeal, Review etc.
19. Transfer.
20. Miscellaneous.

I. OBJECT AND SCOPE.

1. The object is.

- (1) To protect parties and witnesses against vexatious or frivolous prosecutions 26 M. 116: See 4 L W 815
- (2) To save the time of the Criminal Courts being wasted and accused persons being needlessly harassed by erecting a safeguard against rash, baseless or vexatious prosecutions. It aims at doing so by providing that, where, prior to the institution of the criminal prosecution, a properly constituted judicial tribunal has placed itself in a position to determine whether the facts constituting the offence really exist, the Criminal Court should decline jurisdiction unless that tribunal has, in effect, certified that in its opinion, the complaint is one worthy of investigation—29 M 677.
- (3) To protect persons from being prosecuted out of mere malice, illwill or reckless ferocity of disposition—(87) A N 152 16 Cr 624 (N) 19 Cr. 769 (N)
- (4) To insure that prosecution is instituted after due consideration on the part of the Court before which the offence has been committed.—16 W. R. 37 7 M 500 10 M T 117.
- (5) To prevent parties from oppressing and harassing their adversaries by criminal proceedings—1 R. 63. 1 Mar 497 [P.R. Sir Barnes Pencoek C J]
- (6) To prevent prosecutions by private persons of their own motion. The Court should see if there are good grounds for thinking that a prosecution is necessary in the interests of justice—10 M. T. 117. 1 C N. 400

(2) Scope.

2. Section 195 constitutes a bar to reckless institution of prosecutions for certain kinds of offences

by private individuals. Cr. Revision No 39 1913 (O) : 17 A. J. 431.

3. Considerations by which the sanction

is to be granted is mainly in the interests of public justice and not as a means of satisfying a private grudge [37 C at p 20 (19) Pat 286 20 Cr 337 (Pat) 50 78 (79)] As prosecutions ending in failure are to be deprecated as being calculated to do harm rather than good, they ought not to be undertaken unless there are good reasons for doing so.

The termination of the prosecution should be instituted [Per Mookerjee J. in 15 C. J 337 : 20 C 337 (Pat)]

4. Sanction not to be refused on technical grounds.—When a Court is invited to sanction a prosecution because an offence against public justice has been committed, the ends of justice should not be allowed to be defeated on technical grounds. At the same time, a sanction should not be lightly granted, merely because there is a room for suspicion that an offence has been committed 15 C J 337.

5. Sanction not to be granted to a Magistrate

he should not hold out to a party to a case that if he comes for sanction, the sanction will be granted—19 B. R. 910

6. Prospective changes.—The proposed changes noted above aim at radically altering the scope of the Section. *Private justice* are no longer to be permitted to prosecute for offences connected with the administration of justice. All the provisions relating to the grant or revocation of sanction are to

be deleted. Only a direct prosecution will be allowed to be launched by the Court itself, or, in exceptional cases, by the Local Government, if the changes are confirmed by the Legislature, they will supersede a whole host of rulings so far as they relate to sanction.

III. DEFINITION AND MEANING OF TERMS.

(1) Court.

7. Meaning of "Court".—The term "Court" as used in this section has a wider meaning than a Court of justice as defined in the Penal Code, and includes a tribunal entitled to deal with a particular matter and authorised to receive evidence thereon [45 C 545]. The word "Court" means the Court whose duty it is to consider the evidence and decide the case [11 C N. 499]. The term as used in cl. (a) and (b) is not confined to the Judge who tries the case but includes his successor in office [5 C J. 176]. The word "Court" means the particular tribunal and not the particular Judge before whom the offence complained of has been committed [11 C N. 119 33 C 145 7 A. J. 991 7 M. 11 12 See 31 C 551 (F. B.)]. It means the Court which tries the case on merits and not the Court before which proceedings were instituted and by which process was issued [6 C. N. 35].

8. What are Courts within the meaning of the section.

(1) The Calcutta Improvement Tribunal is a Court within the meaning of this Section—45 C 545—See 17 C 572.

(2) A Collector or a Deputy Collector acting under Sections 89 and 70 Bengal Tenancy Act is a Court—45 C 336 (F. B. 17 C 572).

(3) A Magistrate sanctioning prosecution under Sec. 182 I. P. C. of a person who had given false information about the illicit possession of arms, acts as Court—35 M. J. 656.

Revenue Courts.

(1) Revenue courts are Civil Courts within the meaning of S 195—2 A 533 (F. B.).

(2) A certificate officer acting in the discharge of his duties under the Public Demands Recovery Act is a Revenue Court—(1919) Pat 325.

(3) So is a mamlatdar holding an enquiry relating to Record of Rights under Bombay Act V of 1879—39 B. 310—See 5 B 137.

(4) A Teshildar holding enquiry regarding transfer of names in a land register is a Revenue Court—24 M. 121.

(5) Sub-Registrar.—Is a Court when acting under S. 41 of Registration Act of 1877—10 M 154 Contra 12 M 201 11 O C 358.

Is a Court within the meaning of S. 228 I. P. C 22 W R 10.

(6) Registrar.—Acting under S 72-73 Registration Act is a Court—15 M 139 10 M 154 12 B. 36.

(7) Mamlatdar.—A Mamlatdar's court is a court within S 195—3 B 137.

(11) Village Munsiff.—Is a Court within S 195—11 M 375.

(12) Commissioners.—Commissioners are Courts and are not *functus officio*, even though they have submitted their reports—63 P. L. 1900.

What are not Courts.

9. Collector acting in his executive capacity.

(1) A collector holding enquiry under the U. P. Land Revenue Act is not a court within the meaning of the section—17 A. J. 1018.

(2) Collector of a District acting under the rules framed under the Madras District Municipalities Act is not a 'Court'.—10 Cr. 9 (M).

(3) A Collector to whom application is made for new stamp under cl. (2) of S. 80 Act X of 1862, is not a Court within S 195—3 B L 6.

(4) A Collector entertaining an application (e.g.—one for a *pattan*), which comes before him in his administrative capacity—42 A. 130.

(5) A Collector of Excise is not a Court, within the meaning of the section—10 C. N. 220.

(6) Officer holding departmental enquiry is not a Court within the meaning of S. 195 22 B 306.

(7) A Sub-Registrar (except when acting under S. 41 of the Registration Act 1877)—11 M 3; 11 M 500 12 M 201 15 A 111; 11 O C 354.

(8) District Registrar (registering a document of which execution is admitted) is not a Court—2 M J 280.

(9) Official Assignee.—The official Assignee is not a Civil Court within the meaning of S 195. Where the accused produced a forged document before the official assignee, held that it was the sanction of the Insolvency Commissioner which was necessary. The sanction of the Official Assignee is not enough—1 M. T. 301.

(10) Quoro.—Is a Sub-Deputy Collector acting under the Land Registration Act a Court?—9 U. N. 127.

(2) Offence.

10. Meaning of the word "offence".—Is S 195 (1) (c) the word "offence" occurring as the third word is designedly used in a somewhat abstract manner. It is the "fence" in itself—not any particular offender's offence which the section aims at, and that in accordance with S. 40 of the Penal Code, where "offence" is defined as the thing made punishable by the Code. In other words the clause deals with the case where there is a substantive offence committed by a party to a suit. 12 B. R. 5-3.

11. Offences under S. 407 I. P. C. is an offence described in S. 403 I. P. C. and is within Cl. (c) of S. 195—14 C. N. 479
12. Omission of the name of a joint decree-holder in the application for execution of the decree is not an offence under S. 193 I. P. C.—(87) A. N. 223.

(3) Produced.

13. Meaning of the term.—The word 'produced' means 'produced in Court' though not tendered in evidence [9 B. R. 735; See 15 M. 224] A document handed over to the Court by a person tendering it, though rejected for insufficiency of stamp or want of registration has been produced and given in evidence within the meaning of S. 195 [22 C. 1004; Rat. 212] Where a document being called for by a party is brought into Court and referred to by pleader in argument and by the Magistrate in his judgment, it is produced before the Court within the meaning of Subs. (1) (c) [44 C. 1002]. But a deposit of a mortgage deed under S. 63 of Act IV of 1882 (Transfer of Property Act) does not amount to production or user within S. 195 [(85) A. N. 145]

(4) Document.

14. The word "document" refers only to the original document [8 O. C. 313]

IV. ENQUIRY PRELIMINARY TO SANCTION.

(1) Necessity for preliminary enquiry.

20. Necessity for preliminary enquiry.—Section 195 does not require that a fresh or preliminary enquiry should be held before granting sanction—38 M. 1044 34 A. 207 [Per Wallis J.]
21. Fresh enquiry unnecessary.—In cases where the Court has a knowledge of the facts in the course of the proceeding—Per S. Iyer J.—such an enquiry is unnecessary and the section (195) does not contemplate it—38 M. 1044; See 37 C. 714; 5 A. 62; 4 B. R. 578; 2 P. R. 1888; But see 6 A. 98; 34 C. 845
22. When enquiry is unnecessary.—Where in the course of a proceeding, the Magistrate finds clear ground for believing that offence against public justice has been committed, no further enquiry is necessary—G. C. 308, Rat. 132
23. Enquiry not a necessary antecedent to sanction.—Though it may sometimes well be that a preliminary enquiry ought to be held, the adoption of rigid rule to that effect is neither imperative nor desirable.—20 C. 474 [Fd. G. C. N. 25], 19 C. 315; 13 A. J. 1111
24. Note.—When a suit is not properly tried and no finding arrived at on evidence adduced, a preliminary enquiry should be held before sanction is accorded [Per Abdur Rahim J.]. Per Spencer J.—The section does not require any enquiry as a necessary antecedent to the grant of sanction—(1911) M. N. 256
25. Preliminary enquiry necessary when
(a) Before sanctioning prosecution under S. 211,—opportunity should be afforded to the

(5) Party to Proceeding.

15. The actual party to a proceeding is the actual party to a proceeding—section 3 M. 1040, nor a recognized agent [12 C. 87 (L. B.)]. A claimant who files an affidavit of claim before the official assignee in insolvency proceedings is a party within the meaning of S. 195 (1) (c) Cr. P. C. [13 M. 1]

(6) Other terms.

16. The word "case"—in Cl. (b) means the actual proceedings in which the offence has been committed and not the original case out of which these proceedings arose—34 A. 197.
17. The terms "Principal Court" etc., in Cl. (c).—The nature of the proceedings in which sanction is given or refused is to determine the principal Court of original jurisdiction and there is no justification for reading the words as if they were "principal Court of original civil jurisdiction"—[Ibid]
18. The word "ordinarily" in Cl. (a)—Cl. (a) furnishes a complete definition of the term 'ordinarily' in cases which it covers.—8 N. 57.
19. The opening words of Cl. (c)—refer to particular cases in which no appeal lies, and not to courts against none of whose decisions an appeal lies.—[31 A. 107]

complainant to prove the truth of the charge [8 A. 38; G. C. 496; But see 2 P. R. 1007] Before sanction for preferring a false complaint can be given, there must be judicial investigation. It cannot be given on the result of an investigation by the police [1 C. N. 452; But see 34 M. 1044]

(6)

35 P. R. 1889

26. Discretion of the Court.—The Court must determine in the exercise of its judicial discretion whether the case is one which calls for an enquiry by a Criminal Court—14 B. R. 587

(2) Notice.

27. The General Rule.—A notice of the application for sanction to the accused is not a necessary antecedent to the grant of sanction—11 C. 316 (F. B.) 26 M. 33 C. 1; 33 C. 1; 23 C. 5; Weir 167; 11 Cr. 20 (A); (100) A. N. 189; (84) A. N. 90; 7 C. P. G. 54 P. L. 1918.
28. Notice should ordinarily be given.—Although the issue of a notice is not legally essential to validate a sanction, nevertheless it is desirable as a matter of practice and prudence [20 Cr. 616 (Pat.) See 28 A. 142 (99) A. N. 90; 33 C. 1; 14 C. 707 (F. B.); 8 C. 435; 6 C. N. 235; 5 C. N. 254; 2 Weir 167; 5 O. C. 164; 7 C. P. 6].

Strictly speaking notice to the accused is not necessary before an order for prosecution is made against him, but a person ought to be proce-

29. Court should judicially determine whether notice is necessary.—The Court responsible for granting sanction should judicially consider and determine whether any special reasons appear to warrant a departure from the ordinary practice of giving notice—4 H R 750

30. When notice is unnecessary.—(1) The Chairman of a Municipal Board may sanction prosecution for contempt of the lawful authority of the Secretary without previous notice (92) A. N. 31.

(2) When there has been a discharge or acquittal after due trial. 10 M 232

(3) If sanction is granted by the Court before which the offence has been committed 12 C 35 (F.B.). 15 A 375 See (81) A N 271

31. When notice is necessary.

(1) Where a complaint is dismissed merely on the report of the Police, a Magistrate is bound to give notice to and to hear the complainant before granting sanction for his prosecution under 8 211 I P C.—13 C 707 (F.B.). 16 C 661 5 C N 254. 3 J O 1 (99) A N 90 7 C P 6 10 M 232 (F.B.) 21 M 210 See 20 C 474 (170) (11 C 146 30 A 54

(2) Where notice has been issued no order should be passed before the notice has been served and sufficient time should be allowed for service—11at 404

(3) Where predecessor in office had once refused sanction, his successor acts improperly in not giving notice to the accused and an opportunity to be heard before it is granted—23 M 210

32. When no notice should be issued.—A notice calling upon a complainant to show cause why he should not be prosecuted for preferring a false charge, ought not to issue until it has been finally decided that the complaint must be dismissed as false—12 Cr 539 (17)

(3) General Procedure.

33. Proceedings how to be framed.—Subordinate Courts are bound to frame proceedings in such manner as to enable High Court to judge the propriety of the order granting sanction 16 C 661.

34. Power to take fresh evidence.—A Court has power to hold an enquiry and take fresh evidence for the purpose of determining whether or not sanction should be granted, even though record discloses no foundation for alleged charges 20 M 339. 14 C N 806 Contra 6 M 294 15 M 274

35. False suit.—When a civil suit has been settled without any evidence being gone into the Court has power to make preliminary enquiry and grant

false and if false, should sanction be granted. [14 C N. 806]

36.

2 C J 612 Before granting sanction Court is bound to satisfy itself that there was a *prima facie* evidence that the offence has been committed—[7 M 224 Rat 374] Before granting sanction to prosecute an accused person for forgery it is desirable that the Court should examine the alleged forged document—[19 Cr 6 42 (Pat)]. It is irregular for a judge to order prosecution on the basis of a departmental enquiry without having himself made an enquiry [13 Cr 43 (A)]. Where the evidence on record of original case did not prove case to be false, High Court remanded case for trial according to law [2 C J 612].

37. Record of Evidence not indispensable.

—It is not necessary that evidence should be recorded after the institution of the application for sanction, and the Magistrate is competent to refer to the evidence recorded in the counter case—38 M 1044 It is competent to the Judge to rely on opinions expressed by his predecessor—[Rat 70]

38 Scrutiny of evidence not necessary.—

It is not necessary to go into the defence or controvert the evidence against each individual accused before granting sanction—[7 M. 214]. A Magistrate need not go minutely into evidence or to see whether there is sufficient evidence to support conviction—[3 Weir 557]

39. Proceeding calling an informant to

prove his case not judicial proceeding.—The procedure of calling on an informant who is reported by Police to have made false charge before them, to prove his case and examination of witnesses in this connection is not contemplated by the Criminal Procedure Code and the proceeding is not a judicial one—43 C. 1152 4 C N 351.

40 Magistrate should not pronounce opinion

on the merits of the case.—On a complaint filed by A against B being dismissed, B asked for sanction to prosecute A under Sec 211 I P C The Magistrate issued a notice to A to show cause why he should not be prosecuted under Sec 211 He was further ordered to produce evidence in support of his own case On the date of hearing the Magistrate examined A and his witnesses on oath but without examining B, or his witnesses granted the sanction applied for—Held—that the procedure adopted by the Magistrate can not be supported on any principle at all It is a procedure which has been condemned by the Calcutta High Court in 41 C 416 It is impossible to lay down any hard and fast rules as to the manner in which the enquiry should be held by the sanctioning Court, but it is clear that the enquiry must proceed on the

allegation made by the party who asked for sanction and on the basis of the materials placed by him before that Court. It is in the highest degree inexpedient to pronounce an opinion on the merits of the case—(1919) Pat 256.

41. Accused has no right to participate in proceedings.—Cross-examination.—Cross-examination on affidavits in support of an application for sanction should not be allowed.—[11 B R. 1164] It is not necessary that the preliminary

enquiry should be conducted in the presence of the accused—[9 W. R. 3: See 34 A. 267].

(4) Effect of Omission.

42. Omission to make preliminary enquiry not fatal.—An omission to make a preliminary

V. PROCEEDING.

(1) Nature and Propriety of proceeding.

43. Magistrate acts improperly in granting sanction with relation to pending case.—When a Court before which a case is pending institutes proceedings under this Section before any evidence in the case has been given and without any materials before it upon which it could properly exercise a discretion, the proceedings are highly improper—*Per Garth C J* 6 C 410

44. Nature of proceedings.—Proceedings relating to sanction are undoubtedly judicial proceedings—34 A. 602

(2) Initiation.—Application for Sanction.

45. No application for sanction is necessary in cases falling under Sub-Sec. (1) clause (a) of S. 195.—41 C 14. *But See* 27 C 820

46. Application must be made before Court can grant sanction.—3 A. 62, 18 A. 213; 6 A. J. 186, 20 C 474, 10 C N 222, 23 P. R. 1901, 211 P. L. 1908, 11 U. B. 94, *See* 6 C. N. 37, 12 Cr. 539 (P)

- Note.—Where no application is made, Court should proceed under S. 476. Where there is no application for sanction and the Court orders prosecution, the order must be taken as a complaint made of its own motion—7 M. 189

47. Sanction without application is bad.—(02) A. N. 195, 10 C. N. 223. *Contra* 16 B. R. 947. [Note.—The grant of sanction does not presuppose an application having been made for the purpose, 16 B. R. 947.]

48. Reason of the rule.—The rule that sanction should be given only on application made may be justified to this extent that before sanction is granted, the Court must be satisfied that there is some person who is willing to avail himself of it and carry on the prosecution, (07) U. B. 1—q. 1, 13 I. C. 97. (C)

49. Contents of the application.—The application must indicate the documents in respect of which forgery is said to have been committed [18 A. 203. *See* 2 C. J. 612]. The application must set forth in detail the statements alleged to be false and the place where, and the occasion on which such statements were made (in case of perjury) [ibid.]. But it need not be in writing nor need it be made before an inquiry is held under S. 195 Cr. P. C.—13 I. C. 97 (C).

50. Police report sufficient application.—A Police report setting forth the facts of disobedience to an order under S. 144 Cr. P. C. and

containing a request for prosecution under S. 1, P. C. is a sufficient application for sanction

41. C. 14

51. Where the application should be filed.—Application should, as a general rule, be made to Court before which perjury is said to have been committed—3 M. 11, 92

52. Court to which application for sanction should be made.—A brought a charge against P. in the Court of the Pargana Magistrate but the direction of the District Magistrate to the Court was made over for trial to another Magistrate who convicted the accused. There was appeal to the Sessions Judge who set aside the conviction. In the meantime the Magistrate

the successor of the transferred Magistrate refused for want of jurisdiction. On appeal to the Pargana Magistrate he granted sanction. On appeal to the Sessions Judge he held that the successor of the transferred Magistrate had no jurisdiction. On appeal to the Sessions Judge he held that the successor of the transferred Magistrate had no jurisdiction. On appeal to the Sessions Judge he held that the successor of the transferred Magistrate had no jurisdiction.

Held that the Court to which application should have been made is the Court of the Sessions Judge and the latter not having given the sanction specific terms, it was bad.—(84) A. N. 276

application in order granted—40 C 41

20 C. N. 281.

54. Application for sanction cannot be dismissed for default.—The Court is bound to consider the application on its merits and either refuse or grant it. [32 B. 203, 34 P. R. 1915]. An application cannot be dismissed non-payment of process fees. [15 Cr. 71 (M)]

55. Application to prosecute: approver.—Application to High Court for sanction to prosecute approver for perjury should be made on behalf of Crown by way of motion in open Court and not by a letter of reference [24 C. 492, P. R. 1904]. Prosecution of approver for giving false evidence can be granted only before and after commencement of prosecution.—[10 B. R. 1]

56. Previous oral sanction no bar to subsequent sanction on written application.—Previous oral sanction granted at the time

pronouncing judgment is no bar to granting it subsequently on a formal written application—[40 C 423]

57. There is nothing in the Law requiring that sanction should be granted only upon application by a private party. 10 C. L. 4.
59. Application by person other than party to suit or original case—would not justify sanction. [3 C. N. 3. See G. A. J. 794] But the Government pleader on instructions from the District Magistrate may apply for prosecution [(65) A. N. 209].
59. *Pratt v. ...*
60. Application by a minor must be made through his next friend—11 Cr 327 (C)
61. When a Magistrate ought to proceed suo moto—Where during the course of summary trial, the Court is of opinion that perjury has been committed, it should take action itself instead of placing in the hands of a private person, the right of vindicating the law—16 A J 692.
- (3) *Effect of delay in making application for sanction.*
62. Application by Government an exception—In a case in which application for sanction

was rejected on the ground of delay in filing it, held that the case being in substance a prosecution undertaken by Government, mere delay could not be taken as suggesting malafides 19 C. N. 447; 19 C 477. See 17 C N 617. 43 C 597.

63. Presumption in favour of application by Government—Where the real applicant is the Government, and enquiries have to be made from various departments before an application for sanction can be preferred, a delay of seven months does not point to want of bona fides or wilful negligence 2 Pat J 692. 2 Pat J, 688
64. General Rule—Sanction is improper when there is delay in making application and the delay is not accounted for—7 A J 50. 11 C. N. 119; 18 GS
65. Great delay in application for sanction is good ground for refusing it.—Generally a delay by a private person to apply for sanction to prosecute in the interests of public justice, indicates want of bona fides or culpable negligence or laches 2 Pat J 692. 2 Weir 154. 19 Cr. 642 (Pat) 19 Cr 508 (C).
66. Sanction already granted cannot be revoked.—Sanction already granted cannot be revoked on the ground of delay in making application Rat 803.
67. An application presented after one year in the absence of special circumstances to excuse the delay should be disallowed [8 S 49] A Magistrate acts properly in refusing sanction when accused apply for it 4 months after discharge. [15 Cr. 695 (A) 1 C N. 629 7 A J 50]

VI. HOW FAR SANCTION AND COMPLAINT ESSENTIAL FOR COGNIZANCE.

(1) *Sanction when condition precedent to cognizance.*

68. When sanction is or is not necessary in the case of false complaints.—Where information to the Police is followed by complaint in Court based on the same allegations and the same charge and such complaint has been investigated by the Court, the sanction or complaint of the Court itself is necessary for the prosecution of the informant either under S 162 or 211 I P C but unnecessary when the Magistrate is not moved for enquiry [34 C 630 43 C 1152 30 A 52 (15) U. B. 11 95 See 14 C 707 (F. B.) 31 C 1 24 W R 1, 10 M 232 13 Cr 480 (M) 5 Bur T 129 2 Cr 66] Sanction is necessary when an offence punishable under S 211 I. P. C. is committed in or in relation to any proceeding in any Court [14 B. R 362]. but not necessary when not committed in or in relation to any proceeding in Court [14 B R 1160]
69. Sanction necessary when there is 'user' within the meaning of S. 471 I. P. C. Sanction is necessary for the prosecution of a plaintiff in a rent suit, who himself filed a *Kobiyat* and an *amalnamah* which were forged and which purported to be filed by the defendant, as the act constituted user within the meaning of S. 471 I. P. C. and the offence committed was

one under that section [19 C N 123] So sanction is necessary when a forged register kept by a public servant is tendered in evidence in Court [Rat 83] When the prosecution is under S 467 I P C sanction is necessary, if after committing forgery, the document is subsequently produced in Court [14 C N 479]

70. When sanction necessary, although suit is filed after complaint.—Sanction of Civil Court is necessary, when a complaint of false endorsement on a promissory note was preferred to a 2nd class Magistrate but transferred to a 1st class Magistrate and when, between the date of filing of complaint and its transfer, a Civil Suit on the promissory note was instituted—39 M 677
71. Antecedent forgery and user.—Where a document is produced in Court by a party, the sanction of that Court is necessary for his prosecution in respect of an antecedent forgery and antecedent user before a Sub-Registrar. (1917) 44 C 1002 14 C N 479 35 A 169 39 M 677, Dux 4 B R 255.
72. Date of cognizance and not commission the determining factor.—Sanction is necessary for offence committed in respect of document produced in Court by a party, even where the

alleged offence was committed before the documents came into Court at a time when the person complained against was not a party to any proceeding. The words "when such offence has been committed by a party" refer, not to the date of the commission of the alleged offence but to the date on which cognizance of the Criminal Court is invited.—35 A. 169; 1 B. R. 65 not followed.

73. Private persons prosecuting under S. 182 Cr. P. C.—A private person may institute prosecution under S. 182 P. C. provided that he first obtains sanction of the public officer concerned or his superior. 8 A. 342 (or 5 A. 36).

74. Test of necessity—not the character of offender but of the offence.—The test for the necessity of grant of sanction under S. 185 Cr. P. C. is not the character of the offender but the character of the offence. 11 B. R. 362.

75. Sanction necessary for prosecuting a person for instigating a witness to give false evidence in a divorce case by the co-respondent.—26 C. 339.

When a person is accused of committing perjury by making contradictory statements in two different courts, sanction of both Courts is necessary.—11 B. R. 34.

A Court before which contradictory statements are made should sanction prosecution in respect of each of the statements said to be contradictory of each other.—27 M. J. 586.

76. Forged document.—When a forged document is produced in Court but not tendered in evidence, prosecution can not be started except on the written complaint of the Court concerned.

9 B. R. 735.

77. Sanction necessary—

(a) When—

(i) When the document alleged to be forged has been produced in Court subsequent to commission of forgery. 13 C. N. 379.

(ii) When a complaint has been filed against a public servant charging him with extortion. 7 B. R. 61.

(2) When sanction unnecessary.

78. Sanction when unnecessary for cognizance—

(i) No sanction is necessary for the prosecution of a person who gives false information to the Police, not followed by complaint in Court or judicial enquiry. 44 C. 650. See 43 C. 1152.

(ii) When a person files a false certificate before a Collector in an enquiry under Chap. 3 of the U. P. Land Revenue Act, no sanction for his prosecution is necessary, as the certificate was filed before the Collector entirely in his administrative capacity and as at the time of filing he was not acting as a Court.—(1920) 17 A. J. 1018.

(iii) When the alleged false charge was not the subject of any proceedings in Court. (85) A. N. 95. 14 P. R. 1552.

(iv) When the accused failed to produce the original document for the cancellation of which a writ was instituted and ex parte decree was passed on the basis of a certified copy of the alleged forged document.—S. O. C. 313.

(v) When offences under Ss. 156 and 211 P. C. have been committed before the Police, after to the commencement of any enquiry by the Magistrate. 2 Weir 162, 14 P. R. 1452; 25 C. 760.

(vi) Where the offence under S. 47 of the Police Act has been committed. 1 Weir 545.

(vii) When the offence is completed before the document which forms the subject matter of the prosecution is filed in Court. 10 C. N. 229.

(viii) When the offence relates to a document and was committed before its production in Court.—31 A. 651.

(ix) When the offence (forgery) is committed by a witness in respect of a document given in evidence in a Court.—3 M. 400; 15 C. N. 565.

(x) When the complaint relates to forcible dispossession of a person put in possession by Civil Court.—17 W. R. 10.

(xi) When the offence is committed by a village Munsiff acting as a private individual and not as a Judge.—6 M. T. 124.

(xii) When the offence committed constitutes an abetment of the offences specified in S. 193. The abetment of an offence is an offence of itself and is punishable under separate sections of its own (sic) none of which is specified in S. 195.—20 M. 8. *Contra* 26 C. 359.

(xiii) Where the offence committed was having a charge before the Police which was judicially declared to be false, as the offence is not committed in or in relation to any proceeding in Court.—3 C. N. 33.

(xiv) When there is no proceeding in existence in any Court relating to the false information.—Est. 704; 11 B. R. 1160.

(xv) When the offence is the making of a false statement to Police officer.—11 B. 659; 4 B. 479.

(xvi) When the accused is charged with (i) fabricating false evidence during Police investigation.—[26 C. 780]. (ii) or filing of forged document in Court when not put in evidence.—[10 W. R. 3]. (iii) or offence under S. 82 of the Registration Act.—[11 C. 568; 11 M. 500].

(xvii) Offence relating to the use of a forged document the use being prior in date to its use in evidence in Court.—4 B. R. 268.

(xviii) When the offence of fabricating false document is completed before the document is produced in Court.—10 C. N. 220; *Contra* 14 C. N. 479.

(xix) When the offence complained of is forgery of a document filed in Court but not given in evidence.—15 M. 224.

(xx) When an offence in respect of a document has been committed prior to its production in Court.—31 A. 654.

(xxi) When a public servant is accused of extortion.—7 B. R. 61.

- (d) When the offence is committed by a person who is not a party to the Case.—6 A. J. 1981, See 31 A. 651
- (e) When the offender is a witness and not a party to the suit.—15 C. N. 565
- (f) When a complaint has been filed against a public servant charging him with extortion.—7 B. H. 61.
- (g) No sanction necessary to prosecute a village Munsiff when he was not acting as a Judge
G. M. T. 128
- (h) Where the offence complained of does not require sanction, the mere fact that complainant has cited S. 185 I. P. C. (offence requiring sanction) does not make sanction necessary.—17 W. R. 10

(3) Complaint as distinguished from sanction.

70. A sanction is not tantamount to a complaint, but

it is a condition precedent to the entertainment of a complaint [12 M. 47, See 21. M. 126 (F. B.)]. Where a Munsiff concludes that a prosecution should be instituted and directs that the accused be sent to a Magistrate under bail and that the Magistrate should enquire into the matter, held that the Munsiff's order, whether it was or was not a sanction, was a sufficient complaint within the meaning of this Section. [7 A. 871. (F. B.)]

80. Complaint by Court.—See 476 Cr. P. O. A. complaint directly made by a public servant is quite as sufficient as his sanction. 13 O. 270
- May more. Where a Subordinate Court makes a complaint, neither the High Court nor Sessions judge has power to interfere (But they can interfere with sanction) 23 M. 205 7. B. R. 84 13. B. 109 See 9. C. P. 27.

VII. WHEN MAY SANCTION BE GIVEN.

81. Sanction when to be given.—Sanction may be given before the close of the trial in a Civil Court Plaintiff is not entitled to insist on all his evidence being taken before sanction is granted against him.—20 M. T. 232
82. Sanction should not be granted until it is clear that the original charge has been either heard, dismissed or abandoned. In order to show conclusively that such a charge has been abandoned, the person who made the false charge, should be offered an opportunity of supporting or abandoning it before the order to prosecute for the false charge is made.—14 C. 707 (F. B.) 7 C. P. 6

Note.—When a person called upon to show cause why he should not be prosecuted under Section 211 asks for an enquiry, sanction should not be given until and unless the complaint is judicially deter-

mined.—3. C. N. 251, 33. C. 1 : 4 C. N. 305. G. C. 541.

88. Sanction must be given previous to prosecution.—[7 B. H. 61 10 B. 190] Sanction given after trial has commenced and prisoner pleaded is bad.—7. B. L. 26
84. Sanction for perjury may be given at any time (even after commitment)—3. B. L. 10.
- "At any time" in Sec 169, (Or P. O. 186), explained [18 W. R. 62. 2 A. 533 (F. B.)]
85. Sanction should not be given at an early stage of the proceedings.—3 C. N. 3 It should not be given before proceedings have closed 8 B. H. 126
83. Sanction in appeal should not be given before the appeal is decided.—31 C. 849.

VIII. PROPRIETY OF GRANTING SANCTION.

(1) General principle.

87. General Principles.—The *Leading case* on this subject, which was decided after a full and exhaustive review of all the authorities, may be summed up as follows

Section 193 Cr. P. C. vests in the Court an absolute discretion as regards granting sanction to prosecute this discretion can not be restricted by judicial decisions, but must be fairly exercised according to the exigencies of each case *Per Jenkins G. J.*—"There are however certain rules of prudence to which any Court exercising its discretion would have regard and pre-eminence among them, possibly a compendious statement of all, would be the rule that the Court will be astute to see that there shall be no abuse of the administration of criminal justice. No one therefore would be permitted to use the penal law merely to satisfy his own private ends or personal spite." *Per Chaudhury J.*—"Judicial decisions of Section 193 have thus multiplied. A great number of them have been cited before us and one cannot help feeling that they have unduly overburdened the requirements of the section and obscured its plain intentment. The construction

of a plain section ought not to be influenced by judicial decisions however numerous. It is difficult to grade these decisions usefully when they range between suspicion of guilt and one has matter Court nils to which an honest man, competent to the discharge of his office, ought to confine himself. *per Lord Halsbury in Sharpe v. Watson* (1891) A. C. 173 (1911) 41 C. 446 (F. B.)

88. Note.—The above Full Bench decision was arrived at after a careful review of the whole range of previous rulings, the more important of which are noted below 41 C. 143 23 C. 531-20, C. 474; 16 C. 730 6 C. 304 1 C. N. 490, 6 W. R. (G. N.) 37 23. M. 210; 26 M. 116 6 A. 144. *Garlick v. Jay L. J.* 29 C. D. 50, (54) (1891) A. C. 173; (1897) 76 L. T. 330 1. Maret 497 *Saunders*

As regards the mass of conflicting rulings with which Sec. 193 had been overlaid, *Jenkins G. J. observes*, "If they are all to be read into the section as of universal application, then the enactment of the Legislature will pass out of recognition." There

has been of late a tendency on the part of some of the High Courts to whittle down or explain away this Full Bench ruling but the Legislature intends to prune down the luxuriant growth of case-law by abolishing sanction altogether. (Fide Section as amended by the Select Committee, appointed to revise the Cr. P. Code). In view of this F. B. Ruling which seems to have been generally accepted as the leading case on the subject it is not necessary to accord more than a bare passing notice to the previous case-law which came in for full review at the hands of each of the judges who composed the Special Bench.

In *anore recent case* it has been held that sanction shall not be granted if there is a strong probability that the proceeding would if sanction is granted, prove abortive. The effect of this ruling is to extend the scope of the section beyond that defined in 41 C 416. In the following remarks *Sanderson C. J.* seeks to make out that there is no conflict between the two rulings—"I desire it to be clearly understood, that anything I say in my judgment is not intended to be in any way departing from or minimising what was said by the late learned Chief Justice in 41 C 416. The learned Chief Justice there pointed out that the matter was one for the discretion of the court to which application was made. Our decision in this case is arrived at upon the peculiar and somewhat special facts of this case—(1920) 30 C J 33

89. In granting sanction regard should be had to the wellknown principle that a weapon should not be placed in the hands of a private party who may hold it in *terrorem* over the party against whom sanction is sought. One of the rules of prudence which has been recognized from the earliest times is that "the Court will be astute to see that there shall be no abuse of the administration of criminal justice"—No one therefore would be permitted to use the penal law merely to satisfy his private ends or personal spite—(1919) Pat 280.

90. The name to grant sanction

discretion in the matter because of its

91. *prosecution*, it being that there is a *prima facie* case is necessary condition precedent to sanction.—26 M. 193 Rat 374

92. Note.—There is absolutely no warrant for the proposition that the Court must not only be sure that the offence had been committed but that it was likely that the accused would be convicted. Such a principle is radically unsound in theory and likely to be mischievous in practice.—[Per Beaman J. 11 B. R. 1161] It is not necessary to see whether there is sufficient evidence to support a conviction, it is sufficient if the evidence discloses a reasonable

93.

set out in Section 195 has been made out? It is not necessary that the evidence before the Court granting the sanction should be such that the probable result will be conviction. (1917) 13 A. J. 1111 See 7 B. R. 732; Dies—37 C. 3 (30) 37 C. 250. (254); But See—7 A. 671; G. A. 114

94. No sanction should be granted unless there is sufficient *prima facie* evidence and a reasonable probability of conviction. But the F. B. Case reported at 41 C. 416 has very much weakened the authority of this ruling and has overruled the doctrine that probability of conviction is a point to be considered in granting sanction. The trend of the latest decisions of the Allahabad, Bombay, Madras and Patna High Courts leans more or less on the theory favoured by the Special Bench of the Calcutta High Court. 31 C. 250. 190 12 C. N. 3; 1 C. N. 400; 1 C 439 26 M. 116, 117. 23 M. 210; 7 A. 671; 6 A 111 (1900) A. N. 149 Rat See (1919) Pat 280, 4 Pat. 374.

Contra 11 B. R. 1161. See also—12 M. J. 38 12 M. J. 408; 26 M. 193; 2 Weir 189; 2 Weir 166; 15 C. J. 337.

95. General Principles.—When the alleged offence is not relevant to the trial before the Magistrate, Sanction ought not to be granted. So, Sanction should not be granted for denial of theft committed 38 years ago. "It would be obviously persecution, not protection, to allow any such trial to go on."—16 A. J. 923.

Sanction not granted to be during pendency of appeal. Sanction should not be given by an appellate Court during the pendency of a second appeal.—17 A. J. 101.

96. Prosecution of minor inadvisable.—The prosecution of a boy of 11 years is inadvisable—3 C. N. 35 (v).

97. No sanction in the case of doubt.—When court is in doubt as to whether or not there is sufficient evidence to support a conviction, consideration of comparison of handwriting and more or less evenly balanced testimony, sanction should not be given.—1 C. J. 400.

98. Sanction should be given if with due regard to the view—3 C. N. 3 3; Rat 693

11 A. J. 313. I. S. 69

99. Sanction should not be given by any Court without first examining the evidence. So where a Magistrate grants sanction upon a mere perusal of the calendar of a case tried by a Subordinate Magistrate, High Court set aside his order.—7 M. 500

100. Sanction to Judgment-debtor against decree-holder.—It is inexpedient and not in the interests of justice that sanction to prosecute the judgment-debtor against the decree-holder.—(193) A. N.

101. character express no otherwise of

a document, no sanction should be granted merely because the plea set up on the basis of such document has been disallowed—(87) A. N. 112

102. When sanction is inexpedient.—Where the question is whether prosecution for giving false evidence should be sanctioned or not, the safest rule is to give the witness as far as possible, a *locus penitentis* and if the witness avails himself thereof, a prosecution for perjury is inexpedient [(33) A. N. 64] The mere fact that the charge has not been proved is not by itself sufficient ground for sanction. [11 C 661 33 P R 1400]

103. When the Court expresses no decided opinion.—Where a Court expresses no opinion as to the genuineness or otherwise of a document no sanction should be granted, merely because the plea set up on the basis of such a document has been disallowed—A sanction should not be granted simply to try whether the accusation is true or false—(87) A. N. 142.

104. Sanction only on *prima facie* case being made out.—No order should be made till all available testimony bearing on the question of forgery has been received and a satisfactory *prima facie* case has been made out [19 W R 183. 49 P. W 1912] A Court should grant sanction only when it is satisfied that in all probability a conviction will result. [1 C N 400 12 O N. 3 2 Weir 166]

Note.—1 C N. 400 and 12 C N. 3 must be regarded as overruled by 11 C 410 (S. B.).

105. Test—Character of a Tence not offender.—The test for the necessity of the grant of sanction under S. 193 Cr P C is not the character of the offender but the character of the offence 14 B R 362

106. Sanction for forgery in the absence of finding by Court.—Sanction may be granted to prosecute a person for forgery in respect of a document produced and tendered in court, though not judicially considered by it—29 C 657

107. Rule—reference to sanctions for perjury.—Prosecution for perjury for contradictory statements in one and the same deposition ought not to be sanctioned without considering the deposition as a whole and without having regard to the circumstances under which contradictory answers were given—[2 Weir 166] When there is unmistakable conflict in evidence, the alternative most unfavourable to the accused should not be accepted [9 B R 212]

108. Duty of the sanctioning Court.—

- (a) The Judge granting sanction ought to apply his mind closely to the facts with a view to ascertain whether they really constitute an offence

Rat 693

- (b) The Court should see if there are good grounds for thinking that a prosecution is necessary in the interests of justice—10 M T 117.

- (c) Court should proceed only when the propriety or necessity of doing so is unmistakable.—11 W. R 171.

- (d) Prosecution vested in courts should be most carefully exercised.—6 W. R. 11.

- (c) Sanction should not be granted

granted except on evidence before it of such matters.—8 A J 337.

109. Sanction should be given when—

- (a) Only when there is a strong *prima facie* case against the accused—7 Bar 192. But see 41 C. 416 (S. B.).

- (b) only when the charge is deliberately false (When the charge is true in substance but is bolstered up by false evidence, the offender should be prosecuted under S. 186 and not 211 I P. C.) 7 C J 169.

- (c) only when a *prima facie* case has been established that a false charge has been made maliciously. 5 C P. 78

- (d) only when the Court is satisfied that the interests of justice require a prosecution and there is a strong *prima facie* case against the accused 6 A 114 2 Weir 177

- (e) when one makes a false charge against another and the latter is discharged after judicial enquiry 11 P R 1892 But see 41 C 446 (S. B.).

- (f) Only when satisfied that in all probability conviction will result—

1 C N 400 } Od. by 41 C 416 (S. B.) 2 Weir 166.
12 C N 3 }

110. Sanction should not be granted.—

- (i) When there is nothing to show that the information given by the complainants was false to his knowledge and that he believed it to be false. 20 Cr 678 (Pat)

- (b) When a witness has told a false story in the Court of the Committing Magistrate but a true one in the Court of Session—14 C N 767 21 P. R. 1901 See 2 Weir 166

- (c) Where the statements complained of are slightly discrepant owing to inaccuracies of mind and are not deliberately false—19 Cr 230 (C)

- (d) Where the alleged false statements were made in the course of a lengthy cross examination and are not absolutely irreconcilable 9 Cr 234 (C).

- (e) When the offence charged is disobedience of an order not authorised by law—6 M T 376

- (f) When the defendant's denial of the plaintiff's allegations is meant to put the plaintiff to the proof of such allegations In the *maffian* the pleadings are generally loose in expression, and sanction should not be granted on the basis of such language—6 M T 346

- (g) When the finding is merely that the charge of theft was not proved at all against the accused.

16 C 661.

- (h) When no proper enquiry has been made into the truth or falsehood of a complaint—37 P. L. 1829.

- (i) When there is some foundation for the complaint. 137 P. L. 109

- (j) When the statement of the witness, though believed to be false is not an impossible one. 6 M. T. 81.

(k) When there is nothing to show that the information given by the accused was false to his knowledge or that he believed it to be false, no sanction for an offence under S. 182 I. P. C. should be given.—20 Cr. GIS (Pat).

(l) When the complainant has not been duly examined though his complaint has been dismissed upon enquiry and report ostensibly called for under S. 202. The complainant is not liable to prosecution in such a case.—12 Cr. 539 (P.)

(m) When, if granted, it would prejudice the judicial enquiry and decision of the suit in which it is to be considered. 20 G 887.

(n) When the false charge was of a trivial nature and the Magistrate acquitted the accused on the ground that the case was of a trivial nature. 19 Cr 767 (G)

(o) Unless the accused had acted malefide and committed the offence for which it is sought to prosecute him.—11 G X 195

(2) Specific points for consideration.

111. (a) The chief point for consideration is—whether the statutory bar imposed by Section 195 should be removed and the law allowed to take its ordinary course.—41 C 446 (F.B.).

112. (b) The chief point for consideration is whether the matter is one which on the face of it requires investigation by a Magisterial Court and ultimately by a competent tribunal. Chance of conviction is not a question to be considered.—36 M J CO P. 17 M T 15 [Contra-Sathagiri Aiyar J in 32 M J 54]

113. (c) The sanctioning Court must be guided by two principles viz (i) whether there is a *prima facie* case against the person sought to be prosecuted (ii) whether the real object of the applicant is not to satisfy his private ends or personal spite.—1 Pat. J 374 41 C 446

114. Before sanction for perjury is granted, the following points should be considered:

(i) whether the statements are intentionally false;

(ii) Whether they are material to the issue of the case;

(iii) whether they affect the credit of the witness; 2 A J. 836.

Allowance should be made for evasion of some matter relating to past history of witness [Ibid]

115. (c) The point to be considered in granting or withholding sanction for perjury is—Did the accused know that he was speaking falsely?—6 M T 91.

116. (d) The primary consideration is—

—13 C. N. 422.

117. (a) Point to be considered in granting sanction is—Am I in a position to produce such evidence as, if un rebutted, would support conviction.—11 B. 286.

(3) Materials justifying sanction

118. (i) The mere acquittal of an accused person is not sufficient for sanctioning prosecution under section 211 I. P. C. There is something more than mere acquittal—the reasonable belief in the mind of the sanctioning Court that there was no foundation for the criminal charge; there must be that in instituting criminal proceedings the petitioner acted knowingly without belief in the truth of the allegations made by him or without caring whether the allegations were true or false. The liberty of any person should be jeopardised so that the person who is sanctioned "may take a lesson (or)" 23 Cr 603 4 Pat J. 374. 41 C. 446 (S.D.).

119. (b) A sanction must be based on materials on the record before the Court.—618 (Pat.)

120. (c) Order granting sanction should be made on legal evidence.—Where the Magistrate, after dismissing a complaint, asked the complainant to show cause why sanction should be given and on the complainant not examining any witnesses, sanctioned his prosecution, the sanction was set aside by High Court, as there was no legal evidence justifying sanction.—33 M J 104

(d) Section 195 does not prescribe any rule as to the materials upon which the Court should accord its sanction. Though a sanction should not accord sanction merely on the basis of a police report, yet if the report is based on a judgment of the Court in a counter case brought against the complainant in connection with the same matter wherein it was found to be false, such report is not legal material for according sanction for complaint. The complainant's sworn statement if disbelieved by the Magistrate, is another trial on which sanction may be granted.—1044; [10 M. 232 (F.B.) discussed and explained]

121. Note. *Per Wallis J*—"All that is decided by Full Bench in *Queen Empress v. Shel Bai* 101 (F.B.) is that the Court should not grant sanction to prosecute for preferring a false complaint merely on the ground that the complaint has been referred by the police as false and does not under section 203 Cr. P. C. There are no certain dicta in the judgment of the learned Judges which have been regarded in some subsequent cases as meaning that the order should be made on judicial evidence or legal evidence. Those dicta do not mean that such evidence has been given on the application for sanction. *Per Sadashiva Aiyar J* "In that case (10 M F. B.) it was held, as I understand the point, which all the learned Judges were agreed, the Magistrate should not substitute the judgment of the Police for his own judgment and cannot accord sanction merely upon the Police report."

122. (e) Evidence of an accomplice.—The evidence of an accomplice, unless materially corroborated, does not constitute sufficient basis for sanction.—(70) A. N. 149.

123. Where there has been no proper enquiry.—Where no proper enquiry has been made into the truth or falsehood of a complaint the Court has nothing to go upon and is not justified in granting sanction [2 P.W. 1909]. But a Magistrate is competent to grant sanction, even though the complaint was dismissed on the examination of the complainant alone and without hearing his evidence [7 C 208; *Con* 25 W. R. 10]. A sanction however which has been granted on the strength merely of the report made by the police after investigation, and without making any independent judicial enquiry beyond relying the complainant's statement on oath, is illegal [22 M. J. 419 (F. B.)]

124. *See* *the preceding*

Nat 705.

125. Decree not yet set aside.—A defendant against whom an *ex parte* decree has been passed, is not merely by reason of the decree not having been set aside, precluded from applying for sanction to prosecute the plaintiff under ss. 193 and 210 I P C 2 Pal J 688.

IX. PROCEDURE IN SANCTION PROCEEDINGS.

(1) General.

126. The application of Ss. 192 and 211 I.P.C. to false charges.—A prosecution for a false charge may be under S. 192 or 211 I P C if the false charge is a serious offence, the proper course is to proceed under S 211; otherwise it is enough to direct prosecution under S 192.

32 C 190.

(2) In Subordinate Courts.

27. (a) Proceedings under this section should frequently or, even usually, be *ex parte*. *Per Stephen J* 41 O 449 (F. B.).
23. (b) Sanction for prosecution of witnesses should not be given while the case is still pending

21 C N 753.

(3) In Superior Courts.

129. (a) Superior Courts can not remand proceedings of Subordinate Courts for further enquiry

17 Cr. 222 (L B.). Additional evidence may if necessary, be taken by Superior Court. 44 C. 816 [40 A 21 F 17 Cr 29 (A)]

130. (b) On the hearing of an application to the High Court against an order of the Presidency Small Cause Court refusing sanction, a Vakil has a right of audience—21 C N 654

131. (c) A Sessions Judge, acting under clause 6, may examine on oath the person against whom sanction is applied for and also to hold a thorough and searching enquiry into the matter 3 P R 1016.

132. (d) The intention of the Legislature is that a Court of superior jurisdiction to which an application under Sub-section 6 is made should consider the entire matter on the merits on a complete review of all the facts. Such an application stands on a footing different from an application in revision and is analogous to an appeal—37 A 439

133. (e) Superior Court is bound to give reasons for confirming or revoking sanction. (82) A N 60

X. NATURE FORM AND CONTENTS OF ORDER GRANTING SANCTION.

(1) General.

134. Nature of order.

(a) An order under S 195 is not a sentence or order in a criminal trial [12 M J 408] The grant of sanction is a judicial—not an executive act [35 M J 646]

(b) The orders of a Munsiff or a District Judge, granting or refusing sanction are not orders of a Criminal Court and are not liable to revision under the Cr P C—19 C N 147 15 40 C 477 Also see 17 C N 617

(c) An order granting, revoking or refusing sanction is a judicial act.—13 I C. 111 (C) 31 A 602.

135. Form of the order.

(a) The order should not contain an analysis of the materials submitted to the sanctioning authority or expressing any opinion as to the probability or otherwise of a conviction—[36 M. J. 60 F 17 M T 15 *Contra Cheongay Ayar J* 14 32 M J 51

(c) Order omitting particulars is bad.—An order embodied on a petition for sanction and couched thus "Record seen Sanction allowed" is not a substantial compliance with the law. A sanction which attempts to specify particulars required by subsection (1) is bad

(1918) Pat 366 14 C N 141 3 C N 200 20 J. 612 10 C 1100 20 A 243 2 Weir 172. See also 23 C. 532 23 C 573 16 M 468 6 A. 101. 5 O. C. 161

(b) Order should not be couched in general terms so as to make it impossible to say, exactly what offences and acts were imputed to the accused—11 C N 195

135. Contents of the order.

(a) Prosecutor need not be named.—There is no specific provision that the prosecutor should be named in the order—[41 C. 446 (F. B.); 21 B R. 776; but see 32 C. 461. 32 C 251; 11 C N 195. 6 A. J. 766] The substantial question is whether a particular person could

to be allowed to prosecute but whether the bar against the prosecution ought to be removed [12 M 47]. It does not matter whether the sanction is accorded to a particular person or is couched in general terms—[13 Cr. 206 (M) : 12 M 47 27 M 124 10 S. 65 But see 32 C. 469 : 32 C 351]

Note.—Sanction should be granted to a certain person by name—[6 A J. 706] A sanction must be granted to a contemplated prosecution by a definite person—[20 C 474: But see 8 B R 32 41 C 446 (F.B.)] A sanction to prosecute which omits to specify the person either by name or by office, to whom sanction is accorded, is bad in law, and consequently a trial held under such sanction is invalid—8 P. R. 1919.

137. General Rules.

- (1) **Sanction should be in writing.**—It is very desirable that sanction or direction should be in writing and attached to the record but it is by no means legally imperative—7 M. II. 58.
- (2) **Order must be framed in a manner showing its propriety.**—Order must be framed in such a way as to enable the High Court so satisfy itself that the application for sanction was properly granted.—23 M. 210. 16 C 661
- (3) **A sanction for abetment of offence under S. 211 should show distinctly what is the nature of the abetment.**—2 Weir 167.
- (4) **Order should be in express terms.**—11 C N 175
- (5) **Contents, when given by Civil Court.**—When Civil Court gives sanction, the particular offence or offences for which sanction is given should be stated.—13 W. R 25 6 A. 101.
- (6) **Particular false statements to be indicated.**—The High Court revoked the sanction where the particular statements said to be false in a long deposition were not indicated in it.—10 B 362 Rat 693 3 C N 35 7 B.L. 29n.
- (7) **Forgery.**—In case of forgery Civil Court should state distinctly what the document is for which sanction is given and the particular act or acts of forgery should be specified.—7 B. L. 29n
- (8) **False evidence.**—Sanction should specify the Court in which and the occasion on which the offence is committed and should further specify the particular false statements—3 C N. 35. 6 A 105 8 A 99 11 B H 34. See 9 W. R. 58. 6 A. J 337. But see 11 W. R. 17
- (9) **Offence to be defined.**—A warrant in granting sanction should mention the section or sections of the Penal Code, under which he authorises prosecution, the date of commission of the offence and the place where it has been committed—6 A. 101 (1918) Pat 366
- (10) **No particular form of words necessary.**—Law does not require sanction to be given in a particular form of words.—2 N. P 132
- (11) **What does not amount to Sanction.**
 - (a) The following words in the concluding portion of Judgment viz. let the Magistrate of the

District be informed that the Court sanctions the prosecution of G and D (Witnesses) for false evidence" did not amount to a sanction—3 A. 62

- (b) Words to the effect—"It is directed to bring a case under S. 211 P. C." cannot be considered a sanction. If intended as a sanction it is expressed in an improper manner.—S C 415
- (c) Where complaint being sent to police for investigation was reported to be false and the Magistrate endorsed as follows at the foot of the report.—"The case is closed as D. You may proceed against the complainant" Held—The order could not be accepted as sanction—14 B II. 400
- (12) **Court or place of offence to be specified.**—Sanction must be granted to particular person and must specify the Court or other place in which and the occasion on which the alleged offence has been committed—11 C N. 195. 1 C J. 630 : 6 A J. 706 : But see 8 B R 32
- (13) **Offence to be indicated.**—Although sanction may be in general terms, an indication of the offence which is said to have been committed should be given—[2 Weir 172].
- (14) **Contents of sanction.**—Court sanctioning the prosecution should state its reasons for doing so.—(194) A. N. 171
- (15) **Joint order against several persons.**—Terms of order giving sanction should be accurate and precise, especially when given against several accused.—2 Weir 173. See 2 Weir 172.
- (16) **When the person ordered to be prosecuted should be named.**—Cl (4) applies only to cases in which the offender is uncertain or unknown. A Court granting sanction should name the person to be prosecuted where there is no doubt as to who that person is—25 M 671.
- (17) **Sanction for giving false evidence should contain the following particulars.**—the allegations upon which perjury is alleged, the place where or the time when false evidence was given, and the section or sections of the Penal Code under which the prosecution is to proceed made to the
- (18) **Superior Court cannot direct the subordinate court to rectify a mistake in the form of the sanction.**—14 Cr 655 (C)

(2) To whom sanction can be granted.

138. **Not limited to party to the proceeding.**—There is nothing in the statute law to limit the grant of sanction to a party to the proceeding in connection with which the offence has been committed. Sanction for offences against public justice may be given to a public officer—37 C. 18 Contra 3 C N. 3.
139. **Sanction should not be granted to the judgment-debtor against the person who holds a decree against him.**—31 A. 1.

140. ...
 sending the public, to intervene and procure a stay of proceedings—2 Weir 191.

141. Sanction should not be granted to a stranger to the proceeding.—131 C. 111 (C). See 11 A. J. 313.

142. General Principle.—Neither sanction nor permission to continue a prosecution commenced by another should be granted to person who might use it for the purpose of harassing his opponent in a civil litigation—11 A. J. 313, 31 C 618 13 C. N. 399.

(3) Against whom may sanction be given.

143. (a) Person not a party to proceedings.—Sanction can be given for prosecuting for forgery a person who is not a party—20 Cr. 630 (Pat)

144. (b) Witness.—Sanction against witness may be given, for producing forged document, but not before all available testimony bearing on the question of forgery had been received and a *prima facie* case made out—19 W. R. 183.

(4) Offence in respect of which sanction may be given.

145. (v) Offences under S. 460 I. P. C.—Sanction

for prosecution under Sec 460 I. P. C. may be given, though that section is not specifically mentioned in Sec 195—20 Cr. 630 (Pat)

146. (b) Offences under S. 182 or S. 211 I. P. C.—A prosecution for false charge may be under S. 182 on 211 I. P. C. If the false charge is a serious offence, the proper course is to proceed under S. 211; otherwise it is enough to sanction prosecution under S. 182 I. P. C.—32 C. 180

147. (c) Offences under S. 210 I. P. C.—When an

23 C. 971

148. Offences under special Acts.—The offences specified in the section relate only to those punishable under the I. P. C.—Some special Acts provide sanction for other offences e.g.

(i) Prosecutions under the Arms Act may be sanctioned by the District Magistrate or Commissioner of Police

(ii) Prosecution under the Stamp Act, by the Collector or other officer specially empowered,

(iii) Prosecution under the Metal Tokens Act, by the District or Subdivisional Magistrate.

(iv) Prosecution under the Indian Census Act by the Local Government or officer specially empowered.

XI. DIFFERENT ASPECTS OF SANCTION.

(1) Nature and Meaning of Sanction.

149. A sanction given by a Court is not tantamount to an intimation to the Magistrate that it is his duty to find that there is a *prima facie* case against the accused and commit him for trial. "In effect by according sanction, it does not say to the Court which tries the case—'This is a case which I think you will have to convict,' but 'this is a case which I think it is worth your while to enquire into.' Sanction is only requisite to prevent frivolous abuse of the powers of the Criminal Courts—36 M. J. 60 [F's 17 M. J. 15]

150. The grant of sanction does not involve any trial of the issue nor the formation of any definite opinion as to the prisoner's guilt but is restricted to the removal of a bar to the question being formally tried at another place. 11 B. R. 1161. See remarks by Stephen J. in 41 C. 446 (S. B.)

151. Sanction to prosecute is not a direction to prosecute, it is only a permission granted to a private person to exercise his own untettered discretion as to whether he will take proceedings or not—8 C. 435

152. Sanction implies that the prosecution has under Section 182 I. P. C. emanated from some person other than the officer concerned—5 A. 382

153. The sanction, whilst it is in force, restores to the Criminal Courts a jurisdiction, of which S. 195 deprives them. 8 B. R. 32. See Cr. Rev. No. 36 of 1913 (Ooth).

(2) Effect and sufficiency of sanction.

154. An order granting sanction merely removes the bar which the Legislature has imposed on reckless institution of prosecution by private individuals. Cr. Rev. No. 26 of 1913 (Ooth)

155. Sanction must be in definite terms.—A general and vague order to the effect—"Complaint summarily dismissed. The Thug is at liberty to prosecute the complainant,"—endorsed on an enquiring officer's report is certainly not a sanction within the meaning of S. 195. [11 U. B. 14]. Mere expression of an intention to sanction prosecution in the judgement (which was never carried out) is not a proper sanction at all. [11 C. 78]

156. When a Magistrate may proceed *proprio motu*.—Magistrate may proceed *proprio motu*, if there is a sanction, as the sanction declares that in the opinion of the Court an offence has been committed. 11 S. 19

157. Sufficiency of sanction.—Sanction under S. 211 I. P. C. would not justify trial under S. 182 I. P. C. 13 W. R. 67

Sanction for substantive offence covers abatement thereof. 30 C. 145

(3) Sanction by implication.

158. Sanction by Supply of Police for prosecution under S. 195 need not be expressed but may be implied. 15 W. R. 27.

What is sufficient sanction.

159. (b) Where the Magistrate before whom the witness deposed falsely *himself commits for trial*, sanction is implied—5 B. II. 51.
160. (c) Where a the same Magistrate whose summons was disobeyed also convicted the accused, *held*, there was an implied sanction 5 B. II. 34.
161. (d) Where Sessions Judge directs a commitment, he must be taken to sanction the prosecution out of which the commitment arises.—2 N. P. 132
162. (e) Where Magistrate sent the papers of a case tried by subordinate Magistrate to the superintendent of police with an opinion adverse to the prisoner and on the request of the latter issued a warrant—*held*—that the issue of the warrant was a sufficient sanction on the part of the Magistrate—16 W. R. 37

What is not sufficient sanction.

163. (a) Order in the following words.—If the petitioner thinks there is sufficient evidence against it, I have no objection to give such sanction—11 C. L. 53
164. (b) 'B is directed to bring a case under S. 211 P. C.—(order framed in these words)—8 C. 435.
165. (c) Sanction given to prosecution by District Superintendent of police for false information given to an Assistant District Superintendent—2 N. P. 257
166. (d) Sending up of record by subordinate Magistrate to the District Magistrate "to be dealt with under S. 211 P. C. if the latter thought proper to do so"—16 C. 730
167. (c) Sanction in the following terms—"There can be no doubt that D and A instigated the Chowkidar [who had already been directed to be prosecuted under Ss. 182 and 211] to lodge this (false) information. I direct that they be prosecuted under S. 211 with the chowkidar"—12 C. N. 375.
168. (f) Where D. S. P. forwarding papers of a case to District Magistrate "I request that the case be expunged and the complainant be prosecuted under S. 182 P. C." and District Magistrate wrote "Expunge Subdivisional Magistrate to take cognizance under S. 182 P. C."—*Held*, the requirements of S. 193 had not been complied with—5 O. C. 164.
169. (g) A veracular order passed by an executive officer bearing illegible initials directing a subordinate to take up case under S. 182 is not sufficient compliance with the requirements of law.—211 P. L. 1905
170. (h) Sanction in the following terms: Prosecution sanctioned is not a valid sanction although on reading the order with the petition for sanction, the particulars which a sanction should contain may be inferred.—2 W. R. 172
171. (i) A sanction refused on a mistaken view of the law 'as unnecessary' cannot be construed as equivalent to granting it—2 A. 533 (F. B.)
172. (j) Where perjury is committed in two different Courts, sanction of one Court is not sufficient—11 B. II. 31; 10 B. 190.

173. (a) Sanction given in the following words: is no doubt that T. B. and B. 2 made by certain statements contradictory to the facts which they made before the committing rate. Therefore, if from such statements, they may be liable to any charge, sanction from here—5 B. II. 21.

174. (b) The remarks of the Lower Appellate (in its judgment)—"The case has been for under S. 182 by the officer in charge District Superintendent's office."—19 W. R.
175. (c) Certificate by Judicial Commissioner of in his capacity of Judge of Chief Civil Court a charge of false evidence was entertained the sanction of the District Court to which Court of the Munsiff (of Dibrugarh), be against which the offence was committed, ordinate.—17 W. R. 54.
176. (l) Sanction of the authority of superior granted to an inferior ministerial acts W. R. 22.
177. (c) Sanction under a section of P. C. which that under which the accused is convicted 11 25
178. (f) Letter by the Inspector General Registration, Bengal—to District Registrar Tippera that the Sub-Registrar should be cited as advised by the Legal Remembrances charges under Ss. 417 and 465 P. C. Registrar was convicted under Ss. 463 105 C. 905; See Rat 32.
179. (g) Where the accused made contradictory statements before the Police and the Magistrate sanction was not granted in the alternative to the statement before the Magistrate only that this was sufficient for the prosecution—accused.—5 M. T. 335.

(4) Absence of sanction.

180. No bar to prosecution of witnesses—400. Does not vitiate a conviction unless the of sanction has occasioned a failure of justice—See S. 537 (b); 24 C. 217.
181. Implied sanctions.—See (16) Effect and Sufficiency, supra
182. Refusal of sanction by Subordinate Magistrate does not preclude District Magistrate from taking cognizance—Rat 683
183. Complaint filed before sanction is not valid—10
184. Objection as to want of sanction should be taken at the trial.—7 M. II. 53
185. Want of sanction covered by S. 537.—Want of sanction to prosecution under S. 182 of the Cr. P. C. is under S. 537, no valid ground for the reversal of a conviction, unless such want occasioned a failure of justice—13 C. L. 117; 217-29 M. 149 17 M. J. 533; 2 M. T. 351; R. 1913.

Want of sanction invalidates trial.

186. (a) Where out of two persons prosecuted, sanction had been given only against one of them, the High Court directed the release of the prisoner against whom there was no sanction.—15 W. R. 55. 10 W. R. 214.
187. (b) Sanction against agent for false verification of plaint cannot be any ground for proceeding against the principal without sanction against the latter also.—4 W. R. 7
188. (c) When there is neither complaint nor sanction. Where there is neither complaint nor sanction, the irregularity cannot be covered by S. 537—(01) A. N. 205. See 18 W. R. 32
189. (1) Where the alleged false statements were made during police investigation in a case which was subsequently tried, *And*—no prosecution for perjury should be made in the absence of sanction granted by the Court which tried the case.—14 B. R. 715

(3) Defective sanction.

190. (a) Where order sanctioning prosecution omits to specify the Court or other place in which and the occasion on which the offence was committed—held—order is defective.—30 A. 213
191. (b) Sanction which omits to specify the particulars required by Sub S. (4) is bad in law.—2 C. J. 612
192. (c) Where the order of the Magistrate purporting to grant sanction does not comply with the terms of S. 193 it is bad in law. ('84) A. N. 209
193. (d) Sanction for prosecution under S. 182 on an application for prosecution under S. 193 P. C. is bad (95) A. N. 205.
194. (e) ...

2 Weir 172

195. (f) Joint order against several persons without any attempt to discriminate between them or to define the offence with which each of them is charged is bad.—2 Weir 172
196. (g) A sanction granted by a Magistrate without jurisdiction cannot be validated by the order of confirmation by the Sessions Judge (though in the first instance, the latter had power to part sanction) (01) 22 A. N. 9
197. (h) Sanction granted to a minor who has not applied through his next friend is illegal and objection to it can be successfully taken in the Appellate or Revisional Court.—61 C. 367.
198. (i) General and indefinite sanction to prosecute under S. 211 is bad.—6 C. N. 37
199. (j) Order sanctioning prosecution for perjury or in the alternative for offence under S. 182 is not valid. 23 A. 214
200. (k) Time-expired sanction.—Conviction on the basis of a time expired sanction is covered by S. 537. (01) A. N. 157. *Contra* 2 Weir 202.

201. (l) As to cases where sanction was considered defective and bad. See (10) Effect and Sufficiency.
202. (m) Prosecution of a person under a sanction not properly given is illegal. 2 C. J. 619

(6) Fresh sanction.

203. See cases under (12 B) *Lipsa' and Extension of time, supra.*
204. Power to grant fresh sanction.—It is competent for a Court which has granted a sanction which has expired by efflux of time to grant a fresh sanction.—[6 A. 45 *Contra* 22 C. 573] Provide a sufficient reason for delay is shown [18 A. 339 11 C. 577. ('91) A. N. 40; ('92) A. N. 215]
205. No bar to fresh sanction.—There is nothing to prevent fresh sanction being given.—(6 A. 45. ('89) A. N. 70 ('83) A. N. 86] *Per Contra* When a sanction is given it is given once for all. It cannot be repeated because the previous sanction has expired.—[22 C. 573].
206. When previous sanction has been revoked by District Judge.—When previous sanction has been revoked by the Sessions Judge, the District Magistrate cannot grant a fresh sanction. He can only move the High Court to have the order of the Sessions Judge set aside.—1 A. J. 335
207. Very strong grounds required.—Grant of another sanction to a different defendant after the period of the previous sanction had expired, can only be made on very strong grounds.—2 B. R. 1097

(7) Can sanction be questioned by the trying Magistrate?

208. (i) A Magistrate before whom a prosecution is instituted in pursuance of a sanction given by a competent Court, cannot question the propriety or the legality of the sanction.—26 M. 169
- (b) Sanction granted by a superior Court cannot be questioned at the trial.—[1 C. 869] The most that can be done is to stay proceedings to enable the accused to get the sanction revoked by the proper authority.—[2 P. R. 1555]

(8) Assignment and transfer or devolution of sanction.

209. The person to whom sanction or devolution granted may assign it to the person to whom he transfers the decree in the suit.—43 B. 534; See 8 C. N. 83. But see 32 C. 469 32 C. 331.
210. Note.—Sanction granted to a particular applicant cannot be availed of by some other person against his wish and without his authority.—32 C. 331; See 32 C. 429. But see 141. C. 26
211. Heir may prosecute.—The heir of a deceased person to whom sanction was granted may prosecute.—5 C. N. 83

(f) High Court would refuse to interfere unless the applicant had applied to the Sessions Judge in revision or appeal against the Magistrate's order refusing to grant sanction—25 A 129

(g) When a Magistrate thinks it advisable to apply for sanction to the High Court, the proper course for him is to do so through the Legal Remembrancer.—(93) A. N. 13

(h) In the case of a false charge of violent assault the High Court granted sanction even when the Magistrate and Sessions Judge had refused it—11 P. R. 1592

(i) The High Court has power to call for and examine the record and pass such orders as a Court of Appeal could have passed under S. 195, when the latter (Sessions Judge) refuses to interfere with the sanction granted by a Magistrate.—30 A. 243 See 5 C. J. 222

(j) High Court acts as an appellate Court and not as an original Court.—The power of the High Court to deal with a sanction granted by another Court comes within the purview of its appellate and not original Jurisdiction.—36 N. 134

(k) The High Court may grant sanction and by way of course inordinate

to it, within the meaning of Sub 7 (1), gives or refuses sanction whether in respect of an offence committed before it or of one committed before a Court subordinate to it. The High Court may accord sanction when the refusal of the lower Courts proceeds upon an error of law—27 M. 223. See 29 M. 122; 2 Weir 577.

(l) District Magistrate may move High Court to set aside the order of the District Judge revoking sanction granted by Subordinate Magistrate, but he cannot grant fresh sanction on the same charge.—[1 A. J. 395] But the High Court refused to interfere when the District Magistrate moved it against a sanction granted by the Sessions Judge, holding that the Court which would try the case was the proper tribunal to weigh the evidence.—[Rat. 473]

(m) Sanction refused by Small Causes

228. As to the power of High Court to revise orders of Civil Court under S. 439 Cr. P. C.—See (18) Revision Review etc.

229. Appeal lies to High Court not only in the cases where the Court of the first instance refuses sanction and sanction is granted by the Court to which the former is subordinate, but also in cases where the Court of the first instance grants sanction and the sanction is revoked by the Court to which it is immediately subordinate.—17 M. J. 266 (F. B.) Con 10 C. N. 1026

230. Interference with revocation order.—High Court cannot interfere under S. 195 Cr. P. C.

with an order of a District Judge revoking a sanction for prosecution granted by a Munsiff.—10 C. N. 1026 Con 17 M. J. 266 (F. B.).

231. Interference with sanction granted by first Court and upheld by the lower appellate Court.—Where Munsiff granted sanction under S. 193 P. C. and it was upheld by the District Judge—held—no application under S. 622 (Civil P. C.) would lie to High Court—(9) A. N. 85 But see 26 M. 139

232. High Court cannot interfere with sanction confirmed
A. N. 170.

233. With reference to Presidency Small Causes Court.—A Bench of the High Court refused to hear an application to set aside an order granted by the Court of

Small Causes.—36 M. 168

234. When High Court or Sessions Judge cannot interfere.—Where a Subordinate Magistrate makes a complaint under S. 195 (1) (b), neither the Sessions Judge nor the High Court has power to interfere.—23 M. 205 7 B. R. 84 But see 9 C. P. 27.

235. First application to the High Court.—It would be very undesirable for the High Court, except under very peculiar circumstances to entertain in the first instance an application to authorise a prosecution for perjury.—17 W. R. 46

236. Interference on merits.—Under S. 193 (b)

Con 10 C. N. 1026. 37 C. 13 33 A. 512 31 A. 48 30 A. 243

(2) Other Courts.

237. The Sessions Judge cannot interfere with the order of the District Judge.

238. The offence of perjury is complete when the false statement is made in the Court of first instance and it is not recommitted in the appellate Court so as to entitle it to grant sanction as an Original Court.—41 M. 787; Contra 35 A. 80 (not followed)

239. The Sessions Judge cannot interfere with the order of the District Judge.

240. The Sessions Judge cannot interfere with the order of the District Judge.

not as an obiter dictum that the other side was authentic of a Civil Court forgery

241. Power of Sessions Judge to examine defendant on oath.—A Sessions Judge, acting under Clause 6, Sec 195 has power to examine on oath the person against whom sanction is applied for and to hold a thorough and searching enquiry.

3 P. R. 1916

242. Remand.—An Appellate Court referred to in S 195 has no jurisdiction to make an order of remand even if he is a Judge sitting in a Civil Court.—17 Cr 222 (L. R.) See 11 C 818

243. Submission of record to District Magistrate on transfer.—When a committing Magistrate at the time of his transfer, submits certain proceedings, pending in his file, to the District Magistrate who conducts enquiry and grants sanction, the District Magistrate acts within jurisdiction "inasmuch as he was clearly one of the officers on whom devolved the disposal of the committal of cases"—42 B 190.

244. Power to take additional evidence.—The Court to which application is made under Sub-section 6, is competent to take additional evidence. 40 A 21 F. 321 C 157. (A)

245. Civil Court acting under S. 195.—Civil Court acting under S 195 is not a Court exercising Criminal Jurisdiction.—14 C N 506

246. Superior Court cannot direct rectification of mistake.—A superior court cannot direct a subordinate court to rectify a mistake in the form of the sanction.—14 Cr 675 (C)

(3) Who can grant sanction and who cannot?

247. Court other than that in which offence was committed.—No other Court than that in which the offence was committed has power to grant sanction. When a Deputy Magistrate is transferred and another takes his place, the latter is not the former's successor and cannot grant sanction in respect of offences committed in the outgoing Magistrate's Court.—[42 G. 667 7 M. H. (1p) 12] Prosecution for offences specified in S 195 must have the stamp and countenance of the authority.—[2 A 533 (F.B.)]

248. *Transferred*...

(02) A N 9

249. Subdivisional Magistrate cannot grant sanction for offence committed before District Magistrate.—When false information is given to the District Magistrate, his sanction is necessary for prosecution under section 182 P. C. The Subdivisional Magistrate is not competent to grant sanction.—17 A J 1051

250. In proceedings submitted to District Magistrate.—In a preliminary Sessions enquiry commenced by a Deputy Magistrate but afterwards submitted to District Magistrate, latter can grant sanction.—42 B 190

251. Offence committed before court abolished but subsequently restored.—An offence specified in S 195 was committed before a Court

which was abolished but restored two years after with territorial jurisdiction somewhat after *Held*—that the latter Court was not "such Court within the meaning of S 195 (1) (b) and cannot therefore grant sanction for an offence committed before the former.—16 Cr 787. (N)

252. Case received by transfer.—A Joint Magistrate to whom Court an appeal from a 3rd class Magistrate does not ordinarily lie but who received it by transfer from District Magistrate, can grant sanction for perjury committed before 3rd class Magistrate, either as an Original or Appellate Court.—41 M. 787; 35 A 90 not followed.

253. Case tried by City Magistrate who is transferred.—The Court of the City Magistrate is a permanent Court with a perpetual success of Judges, so that after the City Magistrate transferred, his successor cannot grant sanction in respect of an offence committed before predecessor. In such a case, the Sessions Judge alone is competent to grant the necessary sanction under S. 195 Cr. P. C.—22 P. R. 1918

254. Where application was dismissed in default.—Where the first Court merely dismissed the application for default, the Appellate Court has no jurisdiction to grant sanction, first Court not having given or refused the sanction within the meaning of cl. 0—4 P. R 13 See 32 B 203 (16) M. N 8

255. Court to which case is referred for enquiry and report cannot.—Only the Court which has *seisin* of the case can grant sanction (or direct prosecution) The Court to which case is referred for enquiry and report cannot do so.—4 C. N. 368.

256. False information.—In the case of officer he served the public servant sought to be injured. 11 U B R 94

257. When sanction may be granted by appellate court.—Sanction for abetment of offence may be given by Appellate Court even when offence has been committed in the Court of first instance.—15 W. R. 22.

258. Public servants.—The Chairman Magistrate Board, cannot grant sanction for contempt lawful authority committed against Secret (S 182 P. C.)—(92) A N 31

259. Officer exercising dual functions.—When an officer acts as District Magistrate and as District Officer, he may grant sanction for contempt of lawful authority committed against Secret (S 182 P. C.)—(92) A N 31

following order: Read Report of District Officer. Prosecution of E. B. under S 211 182 P. C. sanctioned. Summon E. B. under S 211 P. C.

Held—If the sanction was given under S 195 was without jurisdiction, as he was not the public officer concerned or the public officer to whom he was subordinate.—11 C. J. 111. 40 A 144

260. Officer other than he who tried the case.—May grant sanction for perjury.—7 A. J. 50

261. **Successor.**—Successor can grant sanction for offence committed before his predecessor.—7 M. H. (Sp) 12; 29 P. R. 1870; 6 C. J. 170; 37 C. 193.
262. **Offence before Arbitrator.**—The sanction for an offence committed before an arbitrator appointed by the Court can only be granted by the Court.—17 M. J. 120.
263. **Sanction cannot be given by the referring Court.**—where a Magistrate is deputed by another Magistrate to hold an enquiry and the latter decides the case. It is the latter and not the former who has the power to grant sanction.—40 C. 41.
264. **High Court in insolvency proceedings.** A claimant in insolvency proceedings who files an affidavit in support of his claim before the Official Assignee, who is empowered as a Subordinate officer of the Court to investigate it, is a party to the proceedings before the Court within the meaning of S. 195 (1) (c) Cr P C. The High Court can therefore in the exercise of its insolvency jurisdiction, sanction the prosecution of the claimant for false statement contained in such affidavit.—43 M. 1.
265. **Sanction Cannot be granted after the Court is functus officio.**—A District Magistrate dismissed an application under S. 195 (6) against the order of a subordinate Magistrate who refused to grant sanction in a case tried in him, "till the decision of the Civil Suit" brought by the complainant in the case, but after its determination granted sanction—held that the order of the District Magistrate was illegal, in as much as he was *functus officio* when he passed his order dismissing the appeal, there being no such thing as a temporary dismissal of an appeal.—10 A. J. 210
266. **When**

which the alleged offence took place or the Court to which such Court is subordinate.—6 C 440
6 P. R. 1873

267. **Judge of Presidency Small Causes Court.**—A Small Cause Court Judge may grant sanction against a person who has obtained decree on the basis of a bond which the Registrar subsequently declares to be a forgery.—3 B. L. 9
268. **Contradictory statements in the Court of an Honorary Magistrate and subsequently in the court of Magistrate 1st class.**—The proper authority to grant sanction is the Court to which both are subordinate. The
269. **Provincial Small Causes Court.**—A Provincial Small Causes Court is subordinate to the District Judge within the meaning of subsection 7. 4 Pat J 609 (F. B.). 37 C. 13. 21 C. N 948 39 A. 637 (F. B.): *Con.* 2 Pat J 1. 1 Pat J. 2.6 34 A. 197.
277. **Presidency Small Cause Court.**—The Presidency Small Cause Court is subordinate to the

1st class Magistrate can not grant sanction for offence committed before the Honorary Magistrate.—30 P. R. 1901.

269. **Sanction by officer who neither tried the case nor gave the original sanction.**—Where the Munsiff who tried the case refused sanction but it was subsequently granted by his successor and the sanction granted by the latter also expired by efflux of time, but was renewed by another officer who succeeded the 2nd Munsiff—held—that it was extremely doubtful if the latter could give a valid sanction.—22 C 573.
270. **Only the Court having seized in of the case can grant sanction.**—Where Deputy Commissioner referred the complaint to the 1st Assistant Commissioner, and the latter referred the case for

missioner and not the 2nd Assistant Commissioner could grant sanction.—3 C N 480.

(4) Miscellaneous.

271. **Sanction is condition precedent to jurisdiction.** A conviction without sanction having been duly obtained is bad.—[7 B H 61. 7 B L 26]. But jurisdiction may be based on a sanction not given in express terms but which may be implied.—[16 W R 57]
272. **Application silent as to the offence in question.**—A Magistrate is not competent to sanction prosecution for having used dishonestly documents in regard to which the application is silent and there is no complaint.—2 C J 612
273. **Sanction by a Magistrate**

referred to District Judge and the District Judge of P. granted sanction—held—he had no jurisdiction to do so.—6 C 440

274. **Going behind decrees.**—Successor can make enquiry into the charge that the decree passed by his predecessor was so done without the plaintiff's knowledge and on a forged document.—4 W R. 23
275. **When Sessions Judge cannot stay proceedings.**—A Sessions Judge can not stay proceedings instituted pursuant to a sanction granted by a Magistrate within his Sessions Division, if the prosecution is being conducted by a Magistrate of another Sessions Division.—25 M. 137

XIV. SUBORDINATION OF COURTS AND PUBLIC SERVANTS.

276. **Provincial Small Causes Court.**—A Provincial Small Causes Court is subordinate to the District Judge within the meaning of subsection 7. 4 Pat J 609 (F. B.). 37 C. 13. 21 C. N 948 39 A. 637 (F. B.): *Con.* 2 Pat J 1. 1 Pat J. 2.6 34 A. 197.
277. **Presidency Small Cause Court.**—The Presidency Small Cause Court is subordinate to the
- High Court within the meaning of subsection 7. 36 M. 133. 43 C 597. 34 C 774 (721).
278. **A Collector or Deputy Collector acting under Section 60 Bengal Tenancy Act** is subordinate to the District Judge and not to the Commissioner, inasmuch as proceedings under this section are of a Civil nature.—45 C. 330; F. 17 C. 572.

279. Subordinate Judge as oppellato, Court subordinate to District Judge.—Where a Subordinate Judge, sitting as an appellate Court refuses to sanction prosecution for forgery committed in the Court of first instance, he is subordinate, not to the High Court but to the District Judge within the meaning of subsection 7. 17 A J 191 17 A 51 11 B 435 10 Cr 264 (N) 2 B 481 22 O C 189 But see 16 C. N. 615: 19 Cr 431 (Pat).

280. Munsiff not subordinate to Subordinate Judge.—A Subordinate Judge cannot grant or revoke a sanction refused or granted by a Munsiff

16 C N 615

Note.—See—however 40 A 21 in which it has been held that a Munsiff is subordinate to the Subordinate Judge if appeals from the Court of the former are preferred to the Court of the latter and ordinarily he to his Court. Also 29 P. R 1918 in which it has been held that under S 39 (1) of the Punjab Courts Act and Chief Court Notification No 4124-G dated 30th July 1914, a Munsiff's Court is subordinate to the Court of a Subordinate Judge in respect of certain appeals

281. Where appeal against the appellate Judge

to the former under S 19 (1) against an order by the latter dismissing an application for sanction—17 A J 191 See 19 Cr 631 (Pat)

282. First class Magistrate subordinate to Additional Sessions Judge.—A first class Magistrate is subordinate to the Additional Sessions Judge within the meaning of Subsection 7. The Sessions Court consists of the Sessions Judge and the Additional Sessions Judge—1 Pat J 374

283. Judge of the High Court sitting singly.—A Judge of the High Court sitting singly is not subordinate to a Division Bench of the Court and an order by the former granting or refusing sanction cannot be altered by the latter under Subsection 6—39 A 147

284. Subordinate Judge as appellate Court.—suit.—g sanction suit to the District Judge, whose Court is not, in relation to such proceedings, the "principal Court of original jurisdiction"—34 A. 197 1 Pat J 236

285. Police officers.—Police Officers in the District are not subordinate to the District Magistrate as contemplated by S 195. The latter therefore is not competent to grant sanction for the prosecution of a person who gave false information to the Police—27 C. 452; 6 M 116: 2 Weir 156; But see 6 P. R 1910. 47 P. R 1867. 27 A 292 Police Officers are not subordinate to Bench Magistrates—(95) A. N. 152

286. Magistrate first class not subordinate to District Magistrate.—A Magistrate 1st Class is not subordinate to the District Magistrate within Cl 7 of S 105—Rat 511; (98) A. N. 74 7 P. R 1002. 30 P. R 1801; Contra 2 A. 205; 2 B. 285: 2 B 384

287. Hulkarni.—A Hulkarni is subordinate to Patel or the Mamlatdar—7 B. 11, 64

288. Committing Magistrate subordinate Sessions Judge.—A Subordinate Magistrate who has committed a case to the Sessions Court is subordinate to the latter in matters connected with and arising out of the trial. The Sessions Judge can grant sanction against a witness who gave false evidence in preliminary inquiry although he was not examined at the Sessions trial—2 Weir 160

289. Court of Sub-Magistrate not subordinate to that of the Joint Magistrate.—A Sub-Magistrate is subordinate to the District Magistrate within the meaning of S. 195 Cr. P. C. 1 is not subordinate to a Joint Magistrate who hears appeals from orders of Sub-Magistrates only in such cases as are made over him by the District Magistrate—11. M 757

Note.—A court is subordinate to another when appeals ordinarily lie from the former to the latter, ordinarily meaning in the Majority Cases—[11 B 438 22 C. 487] The Valuation of the suit is immaterial to the question—17 A 5

290. Magistrates acting as executive officers.—A Subdivisional Magistrate acting as an executive officer is not subordinate to the Sessions Judge—2 Weir 19

291. Small Cause Judge.—not subordinate to the District Judge within the meaning of S. 195—[ibid]

292. A Munsiff is subordinate to Deputy Commissioner.—8 P. R. 1879

Court of Principal Salar amir on the small cause side is not subordinate to Civil Court—6 M. 191; But See Mursh 407

Memlotdar's Court is not subordinate to Collector.—(see Bombay Act V of 1864) Cr 21-11-76, but to the District Judge—5 B R 2 8 B 586

293. Court of Subordinate Judge is subordinate to the District Court for the purposes of S. 195.—2 B. 481: 11 B 438 17 15: Rat 937.

294. District Magistrate hearing appeals.—Where the District Magistrate had persons appointed to the District Court, the orders of a 2nd class Magistrate should be heard by a Deputy Magistrate, it is the latter and not the former who can grant sanction for offences committed in connection with proceedings before the 2nd class Magistrate.—15 M 487.

295. Tashildar.—Court of Tashildar acting as Assistant Collector and trying a suit for arrears of rent, is subordinate to the Court of the District Judge for the purposes of S 195 (and not to the District Magistrate) 10 A. 682: 10 A. 121

Note.—Tashildar's Court is ordinarily subordinate to the Collector. Neither the District Magistrate nor the High Court has jurisdiction to grant sanction refused by the Tashildar.—12 Cr 101

6. **Single Judge of the Chief Court Burma.**—Is not subordinate to a Bench of the Chief Court Burma for the purposes of S 195. 4 Bur L T 206.
7. **Reverting officer not subordinate to permanent incumbent.**—Where the offence was committed in the Court of a Deputy Magistrate who commenced proceedings under S 476 Cr. P. C. as Acting Subdivisional Officer but reverted before the enquiry was completed and the permanent incumbent came and granted sanction under S 195 (i) (b)—*Id.*—that the latter was not a superior court within S 195 (7). All that he could was to have continued the proceedings and taken action under S 195 or 476 as the case Court—7 A J 591 See 6 A J 392
8. **Decree of Presidency Small Cause Court transferred for execution to District Judge.**—District Judge to whom a decree of Presidency, Small Causes Court has been sent for execution and which he has referred to a Subordinate Judge can grant sanction for offences committed in connection with the execution of proceedings before the Subordinate Judge
1 B 82
9. **Court of Assistant Collector.**—
- (a) Court of Assistant Collector is not subordinate to the District Magistrate but to the District Judge. 6 A 99 19 A 121
- (b) Court of Assistant Collector 1st Class is subordinate to the Collector of the District although in the particular case the appeal lies to the District Judge—(70) A N 121
- (c) Court of Assistant Collector or Collector acting Under N W P Land Revenue Act is not subordinate to the District Judge or to the High Court—(91) A, N 82.
- (f) The Chief Court cannot grant or revoke sanction refused or granted by the Collector or Assistant Collector—8 P R 1902 404 P L 1903
- (e) See No 284 above
10. **Magistrate empowered under S. 407 (2) Cr. P. C.**—Magistrate empowered to hear appeals under S 407 (2) by the District Magistrate is not the court to which appeals ordinarily

he for the purposes of S 195 (7): 30 C 394: 26 M 656 (F. B.): 27 M, 124: 3 N. 50.

301. **Court of Munsiff is subordinate to District Judge** and not the Divisional Judge. So the latter cannot grant or revoke sanction in respect of cases tried by the Munsiff 56 P. L 1901.
302. **Revenue Courts.**—Neither the Court of an Assistant Collector or a Collector is subordinate to the Chief Court—8 P R 1902 404 P L 1903.
303. **Lower appellate Court.**—The Appellate Court of inferior jurisdiction is the Court to which the Court giving or refusing sanction is subordinate for the purposes of S 195 Cr P. C.—30 C 916
304. **Sanction in which**—*Id.*—which no sanction in which
ub S 7 of
S, 195 Cr P C, the District Judge as being the principal court of original jurisdiction had jurisdiction to revoke sanction—31 A 313
305. **District Magistrate.**—District Magistrate when granting sanction under S 182 P C, is acting judicially and not as superior officer of the public servant before whom the offence has been committed, and is therefore subordinate to the Sessions Judge—(90) A N. 68 (90) A. N 107 (84) A N 271 42 M 90.

Note.—For the purposes of S 195 Subs (7) he is subordinate to Additional Sessions Judge—19 C. 195

306. **Divisional**—the authority the District e a sanction granted by that Court S N 57 but See 38 P L 1901
307. **Village Munsiff.**—No appeal lies from a Court of Village Munsiff. The District Judge, is therefore, as the principal Court of original jurisdiction competent to grant sanction, under S 195 (1) (6)—6 A J 796
308. **Divisional**—the authority the District e a sanction granted by that Court S N 57 but See 38 P L 1901

XV. GRANT AND REVOCATION OF SANCTION BY SUPERIOR COURTS.

09. **Order refusing revocation of Sanction.**—An order refusing to revoke a Sanction granted by a lower Court is one granting Sanction, from which an Appeal lies to a superior Court—39 M 750 (F. B.) Fa 39 M 382 But See 39 M 1044 (below)
- Note.**—A third Appeal to the High Court to revoke a Sanction, though legally made in the form of a petition under Sec 195, ought not to be encouraged in practice—35 M 1044
10. **Jurisdiction under Subs (6) Confined to appellate Court.**—Application under Sub-section 6 for revocation of sanction granted by a Munsiff cannot be transferred to the Court of

Subordinate Judge by the District Judge [13 Cr. 226 (C)] No Joint Magistrate cannot be authorized by the District Magistrate to receive applications for revoking or granting a sanction given or refused by a subordinate Magistrate—[27 M 124]

Note.—A Subordinate Judge cannot revoke or grant a Sanction given or refused by Munsiff—See (14) Subordinate of Courts, (240) *supra*

Procedure before the Superior Court:

311. **Application for revocation must be dealt with on merits.**—An application for revocation of sanction can not be dismissed as being

- belated without enquiring into its merits—[17 A J 429; 26 M 116; Rat 805]. An application under S. 195 (c) cannot be summarily rejected without giving the applicant an opportunity of being heard in support of the same. *The petitioner is entitled as of right to be heard through his pleader in such cases*—[12 C N. 248].
312. **Power of High Court.**—High Court can revoke any sanction granted by a Subordinate Court—16 C 661.
313. **Grounds for giving sanction refused by Subordinate Court.**—Sanction by Superior Court when it has been refused by the Court before which the offence took place, should be given only when it is able to satisfy itself that there are good grounds for holding that the Subordinate Court was in error in refusing to grant sanction—[30] A N 104.
314. **Abatement.**—Sanction may be given by Appellate Court for abatement of offence committed against the Court of the first instance—15 W. R. 332.
315. **Procedure when application has been dismissed for default.**—Where application for sanction has been dismissed for default, The Superior Court cannot grant sanction. The proper course in such a case would be to set aside the order dismissing case for default—32 B 203.
316. **Shewing Cause.**—Where the Lower Court has refused sanction, the Session Judge should call upon the person against whom sanction is applied for, to shew cause before granting it—8 C N 613.
317. **Power of superior Court.**—It is immaterial how the Superior Court is set in motion. It can grant sanction upon a perusal of the record. The power is not restricted to cases in which an appeal is heard. [2 Weir 100]. The appellate Court has power to revoke any sanction granted by the Court against whose order the appeal has been preferred, as also to grant sanction refused by it. [29 M 122].
318. **Complaint no bar.**—Filing of complaint in pursuance of sanction is no bar to entertaining an application for revoking such sanction and disposing of it according to law.—27 M. 124.
319. **Judgment what to contain.**—A Superior Court dealing with an application for revocation of sanction is bound to give its reasons for either conferring or revoking sanction. [27] A. N. 60.
320. **Ground for cancellation.**—When there is no prima facie case for the prosecution, the sanction should be cancelled—49 T. W. 1912.
321. **Appellate Court to proceed carefully.**—Power of Appellate Court in granting sanction refused by Lower Court should be exercised carefully.—31 C. 811.
322. **Sanction in the first instance by the appellate Court.**—Under Cl (b) and (c) of Subs 1 of 195 Sanction may be accorded in the first instance by the Court to which the Court in which the offence has been committed is subordinate, even though no application for Sanction has been made to the latter Court—27 M. 223.
323. **District Magistrate cannot grant Sanction refused by Magistrate of the first class.** See (14) Subordination of Courts—(256) supra.
324. **Sanction refused by Small cause Court.**—High Court will not grant sanction refused by Small Cause Court unless it appeared very clearly that there were strong grounds for granting it—23 W. R. 11.
325. **Ruling which is obsolete.**—1 A. 17 (F.B.)
326. **Power of revocation.**—The power of revoking given under S. 195 (b) is only in respect of sanction and not of complaints.—21 M. 205.

XVI. COGNIZANCE, PROSECUTION AND TRIAL OF OFFENCES.

(1) Cognizance and Complaint.

327. **General Rule.**—Complaint can not be entertained if it relates to offence requiring sanction and no sanction has been obtained.—8 M. 11 (Ap) 2.
328. **Rule as to complaint filed by agent.**—An agent or employee of a person to whom sanction has been granted, can not file complaint without a written and lawful authority from the latter, which must be exhibited and recorded before action can be taken.—32 C 469; 32 C 351; But See 8 B. R. 32. Contra 4 C 712; 12 M. 47 27 P. R. 1902; 13 Cr 206 (M).
329. **Refusal of sanction when no bar to cognizance.**—District Magistrate is not precluded from taking cognizance of offences under S. 193 I. P. C. merely because the Subordinate Magistrate in whose Court the evidence had been given, had refused sanction. [Rat. 653].
- 329A. **Complaint by person other than who obtained sanction.**—It is open to a Court to entertain a complaint for a sanction granted to a party other than the complainant under

S. 195. 13 Cr. 206 (M); 12 M. 47; 27 M. 124. 10 S. 65. But See 32 C. 351. 32 C. 469.

(2) Who can prosecute.

330. (i) **Assignee.**—
The Assignee of a decree holder who has obtained the sanction, may institute a prosecution on the strength of the sanction. 43 B 535. See 8 C. N. 853; But See 32 C 469; 32 C 351.
331. (b) **A party other than the complainant may prosecute,** if he has obtained proper sanction. 13 Cr 206 (M).
332. (c) **Heir of deceased person.**—
The heir of any deceased person to whom sanction was granted may prosecute—8 C. N. 853.
333. (d) **Authorised agent.**—
Prosecution may be instituted by a person expressly authorised by the person to whom sanction has been granted but the authority must be a matter of record. 8 C. N. 853; See 21 B. R. 206; 32 C. 351 But See 32 C. 469.

(3) *Who may try the case.*

34. The High Court declined to say that conviction was laid because Judge who gave sanction also tried the case.—[22 W R 10]. The District Magistrate who sanctioned the prosecution can hear appeal from conviction of the person against whom sanction has been granted [27 C 452].
35. A Deputy Magistrate may try a case on a sanction granted by him as a Revenue officer [2 Weir 613].
36. Trial by a person who is competent to give sanction.—It is not a sufficient fulfilment of the condition that an officer competent to give the sanction himself entertain the complaint.

2 Weir 171.

(4) *Procedure in trial.*

37. Complaint must be examined.—Complaint to whom sanction has been granted must be examined under S 200 and no process should be granted unless Magistrate is satisfied that there is sufficient ground for proceeding.—1 L B 256 See 32 C 460.
38. Procedure when complaint is filed by person other than the person obtaining sanction.—When complaint is filed by a person other than the person to whom sanction has been granted, it is for the prosecution to satisfy the Court that the sanction is not being taken advantage of by the District Magistrate against the wish or without the authority of the person in whose favour it was originally granted.—15 O C 177.
39. Prosecution quashed on appeal.—Where the prosecution has been quashed on appeal because it was made before a Court incompetent to try the case, a competent Court may retry the case on the basis of the previous sanction even in cases where no such order is made by the appellate Court.—3 M 48.
40. Prosecution to be started promptly.—Prosecution should be instituted as soon as possible after the decision of the case.—7 A J 50.
41. Objection as to want of sanction must be taken at the trial.—Objection as to want of sanction should be taken at the trial.—7 M H 58.
42. Trial Judge cannot go behind the sanction.—A Magistrate trying an accused person for an offence under S 195 Cr P C has no right to go behind the order of sanction and to question

its propriety or legality. If he thinks the sanction is bad, for any reason, he cannot refuse to recognise it, all that he can do is to stay the proceedings in order to allow the accused an opportunity of getting the sanction revoked by a Court to which the sanctioning authority was subordinate [S P R 1918]. A Magistrate cannot refuse to act on a sanction granted by the Session Judge on the ground of its insufficiency. [193] A N 177.

(5) *Alternative and cumulative charges.*

343. Where it is intended to try on alternative charges

proper sanction for each branch of the alternative charges.—11 B H 34 10 B 190.

344. Contradictory Statements.—Where the accused made contradictory statements before the Police and the Magistrate, and sanction is not granted in the alternative but for the statement before the Magistrate alone, held the sanction is not invalid.—6 J T 355.

(6) *Addition and alteration of charges.*

345. Additional charge.—A Magistrate has no jurisdiction to convict an accused on an additional charge not included in the sanction.—8 B H 28.
346. Alteration of charge.—Where the Magistrate in the course of the trial altered the charge from S 211 for which sanction had been obtained to one under S 182 P O and convicted the accused. The High Court altered the conviction to one under S 211 holding that the accused was not prejudiced at the trial.—7 B L 29 n.

(7) *Variance between sanction and charge.*

347. Charge different from that mentioned in the order granting sanction.

(a) Where sanction to prosecute has been granted in respect of an offence and thus the bar to the Magistrate taking cognizance of the case has been removed, the Magistrate may frame a charge in respect of any other offence referred to in S 195 and which is disclosed by the facts.—12 Cr 320 (5).

(b) A sanction under S 211 I P C would not justify trial under S 182 I P C.—7 B. L. 29 n.

XVII. ALLIED SECTIONS.

348. Sanction not acted upon no bar to direct action by court.—Sanction granted under S 195 to private individual but not acted upon does not bar action of Civil Court under S 478 Cr P C.—34 B & S 13 B 384 3 C N 3 1 C 450 4 C 712 8 C 435 GA 42 8 A 382 12 M. 47. 27 P. R 1902 Rat 422 But See 5 Pat J. 58.

Note.—Six months' time allowed by Sec 193 cannot be extended by a resort to Sec 478.—5 Pat J 58.

349. Dual enquiry under S. 195 and S. 478 Cr. P. C. not permissible.—6 B. R. 578.

350. Nature of enquiry under S. 195 and 197 Cr. P. C.—Enquiry previous to sanction under S. 195 is judicial, while that previous to S. 197 is executive.—8 M T 205.

351. S. 195 compared with S. 478.—Complaint made under S. 195 may be dismissed under S. 503 but complaint made under S. 478 cannot be disposed of in that way.—[13 B 109]. The steps which a Court is required to take under

S 476 differ in kind from a complaint which it may lodge under S 195—[21 M. 126 (F. B.)] S 195 should be read in conjunction with S 476 [7 A. 871 (F. B.). & Pat J. 34] "I am not certain whether the regulations can be said to distinguish between the cases where a Court orders a prosecution as under Section 476 and those where it sanctions one, as under Section 195. But the distinction certainly appears in

Code of 1861 and has been perpetuated in subsequent legislation.—Per. Stephen J. 41 C. 494 (F.B.).

Note.—In the Cr. P. Amendment Bill now pending, it is proposed to recast Sec 195, abolishing sanctions and substituting prosecution on complaint and to confine Section 476 exclusively to matters of procedure.

XVIII. REVISION, APPEAL REVIEW ETC.

352. **Rules as to interference.**—*Per Salazar Aguirre* "I think that we ought not to interfere with the discretion of the subordinate Courts in the matter of the grant of sanction unless there is some *prima facie* strong ground for holding that there is no reasonable probability of having a conviction on the sanction or that it is otherwise inexpedient to award sanction on the facts of the particular case, or that the party against whom sanction was granted was probably innocent"—[38 M. 1044]

353. **Nature of Proceedings under Subs. (b) —**

... and not by way of appeal. 10 A. 61.

354. **Superior Court cannot remand application for Sanction.**—When one of the parties to a suit applied for sanction which was refused by a *Munsiff*—*held*—that the Judge had no power, to revision, to order a remand and compel the *Munsiff* to reconsider the petition, [8 A. J. 429].

355. **When High Court and Sessions Judge cannot interfere.**—Where a Subordinate Magistrate makes a complaint under S 195 (1) (b), neither the Sessions Judge nor the High Court has power to interfere. [23 M. 205. 7 B. R. 84]

Note.—A Divisional Judge can not interfere with orders passed by the District Judge—56 L. L. 1901. C. S. N. 37

356. **When the High Court is bound to interfere.**—When the delay was due to the orders of the Lower Courts requiring (sic) sanction, High Court could not refuse to interfere in revision. G. M. T. 128

357. **Revision under the Civil Procedure Code.**—No application for revision under the Code. High Court upholding S 195 Cr.

358. **Right of audience.**—Where sanction was given in the interest of public justice and notice was issued upon the District Magistrate to show cause against revocation, *held* the opposite party had no *locus standi* to be heard—31 C. 811.

359. **Revision by**

When Sessions Judge revokes sanction granted by a Subordinate Magistrate the High Court may be moved by the District Magistrate to a side the Judge's orders. See (13) (1) High Court. *Supra*.

380. **S. 439 Cr. P. C. does not apply to orders of Civil Courts.**—Where a Civil Court grants sanction under S 195 the High Court has no jurisdiction under S 439 in the exercise of its revisional powers on the Criminal Side to revise that order. *24 A. 354 (F. B.). 31 A. 35 26 M. 139. (107) A. N. 283. See (108) A. N. 290. (104) A. N. 10. [*Overruling (103) A. N. 110, 26 A. 1]

361. **Power of Revision of High Court under S. 115 Civil P. C.**—High Court has power to set aside an illegal order of revocation by the District Judge and to restore the original sanction granted by the Small Cause Court, under S 115 C. P. C.: 13 C. N. 1038. See 14 C. N. 800

402. **Power of High Court to call for record.**—It cannot be denied that as the law stands at present, the High Court has jurisdiction to call for and examine the record of a proceeding under S. 195 cl. (c) held to the Court of a Sessions Judge and confirming a sanction granted by a subordinate Court—*Per Piggot J.* in 20 Cr. 561 (A): 36 A. 403

363. **When application for revision is too late.**—Where the application for revision had been made long after the sanction had been given, and the prosecution had advanced to the stage of framing of charges. *Held*—it was too late (186) A. N. 83.

364. **Application to set aside. Sanctions should be made to lower appellate Court.**—Should except in very special circumstances and would High

365. **Belated order.**—It is illegal to set aside sanction on the ground that no formal or legal order was recorded, after an interval of three and a half months after the proceeding. Rat 859

Review, Reference, Rehearing and Appeal.

366. **Review.**—An ex parte order granting sanction may be reconsidered [2 Weir 194] But a Sessions Judge has no power to revise his order refusing to revoke a sanction to prosecute, such an order being final and not open to review 23 B. 60

367. **Reference.**—Sessions Judge cannot refer to the High Court any matter in respect of a sanction, which he can dispose of himself. Rat 937.

- Rehearing.**—Where the District Judge revokes a sanction granted by District Magistrate on evidence of a Magistrate the latter is competent to return the application for sanction—2 Weir 195.
- Appeal.**—To High Court against order refusing sanction—See (17) (1) High Court.
- Procedure in Appeal.**—Appellate Court cannot take or call for further evidence under S. 424 Cr. P. C. in appeal under S. 195 [31 M 91] or

direct the Lower Court to take fresh evidence. [30 M 311]

- 371. An appeal.**—lies against order passed by a Single Judge of the High Court.—30 M. 311.
- 372. Letters Patent appeal.**—An order under S. 195 Cr. P. C. is not a sentence or order in a criminal trial and is therefore appealable under S. 15, Letters Patent. 12 M. 408.

XIX. TRANSFER.

- Assuming that S. 551 applies, application for sanction under S. 195 should be transferred to a Court to which the Court before which the

application is pending is subordinate for no Court not mentioned in this section can take cognizance of the case on a sanction—34 M. 146

XX. MISCELLANEOUS.

- Complainant cannot be prosecuted when.**—A complainant cannot be prosecuted in respect of a complaint in which he has not been duly examined, though the complaint has been dismissed upon enquiry and report ostensibly called for under Sec. 232 P. C.—12 B. 534 (C)
- 5. Civil Court acting under S. 195 Cr. P. C.**—A Civil Court acting under S. 195 is not a Court exercising Criminal jurisdiction—14 C. N. 509
- 6. Order under S. 250 Cr. P. C. no bar to sanction.**—Award of compensation to accused does not debar the Magistrate from granting sanction for an offence under S. 193 and 211 IPC 18 P. R. 1901 6 P. R. 1904 21 M. 217 But see 13 P. R. 1896 26 C. 181 Con. 22 C. 546
- 7. Prosecution on illegal sanction is illegal.**—Prosecution of a person under a sanction not properly given is illegal—[2 C. J. 619] Conviction or the basis of a time-expired sanction is cured by S. 337—[(01) A. N. 157 Con. 2 Weir 202]
- 8. Duty of Magistrate entertaining complaint.**—Where a Court grants sanction, the duty of the Magistrate who takes cognizance of the offence is precisely the same as it is in a case where no sanction is granted—41 C. 446 (S. B.).

- 379. Power to take supplementary evidence**

duly recorded—Rat 629.

- 380. S. 367 Cr. P. C. does not apply.**—S. 367 Cr. P. C. does not apply to orders passed under S. 195—6 B. E. 597.

- 381. Trial piecemeal prohibited.**—When a person could not be tried on a major charge without sanction of Civil Court he should not be tried piecemeal on minor charges—12 C. N. 822.

- 382. Sanction does not entitle Magistrate to vary procedure.**—The only effect of sanction is to permit him to proceed in the ordinary way and his duties are not in the least affected by sanction being granted—41 C. 446 (F. B.)

- 383. Costs.**—The Court cannot award costs in proceedings under S. 195 (even when taken in Civil Court) [2 Weir 196] It is illegal to award costs in applications filed under S. 195—5 Cr. R. 447 (31); See 2 Weir 196.

- 384. Time expired sanction.**—A conviction based on time-expired is not void in the absence of prejudice.—(01) A. N. 157; Contra 2 Weir 202.

CORRIGENDA:—

II. LEGISLATIVE HISTORY OF THE SECTION.

(1) Previous changes.

This section follows the lines of the Vexatious Indictment Act of England of 1859 and was grafted in its present form on the Cr. Procedure Code of 1861, the object of both the English and the Indian Legislature being to place a statutory bar on improper prosecutions. This statutory bar has been handed down to the present day through all the successive Codes of 1862, 1872, 1882 and 1898. The section may be traced back to Regulation III. of 1801 and onwards to the Regulations of 1813 and 1817, where it occurs in a rudimentary form.

(2) Prospective changes.

The proposed changes noted above aim at radically altering the scope of the section. *Private persons are no longer to be permitted to prosecute for offences connected with the administration of justice.* All the provisions relating to the grant or revocation of sanction are to be deleted. Only a direct prosecution will be allowed to be launched by the Court itself, or, in exceptional cases, by the Local Government. If the changes are confirmed by the Legislature, they will supersede a whole host of rulings so far as they relate to sanction.

S. 476 differ in kind from a complaint which it may lodge under S 105.—[21 M. 126 (F. B.)] S 195 should be read in conjunction with S 476 [7 A 871 (F. B.): 5 Pat J. 34] "I am not certain whether the regulations can be said to distinguish between the cases where a Court orders a prosecution as under Section 476 and those where it sanctions one, as under Section 195. But the distinction certainly appears in

Code of 1861 and has been perpetuated in subsequent legislation.—Per. Stephen J. 41 C 4 (F.B.).

Bill now pending abolishing sanction on complaint as to matters directly matters procedure.

XVIII. REVISION, APPEAL REVIEW ETC.

352. Rules as to interference.—*Per Sadana Ayar J* "I think that we ought not to interfere with the discretion of the subordinate Courts in the matter of the grant of sanction unless there is some *prima facie* strong ground for holding that there is no reasonable probability of having a conviction on the sanction or that it is otherwise inexpedient to award sanction on the facts of the particular case, or that the party against whom sanction was granted was probably innocent"—[34 M 1044]

353. Nature of Proceedings under Subs. (b).—The proceedings under S 195 Cr P C by which an order granting or refusing to grant sanction to prosecute may be set aside is a proceeding in revision and not by way of appeal. 15 A. 61

354. Superior Court cannot remand application for sanction.—When one of the parties to a suit applied for sanction which was refused by a Munsiff—*Held*—that the Judge had no power, in revision, to order a remand and compel the Munsiff to reconsider the petition, [8 A. J. 429]

355. When High Court and Sessions Judge cannot interfere.—Where a Subordinate Magistrate makes a complaint under S 195 (1) (b), neither the Sessions Judge nor the High Court has power to interfere. [23 M 205. 7 B R 84].

Note.—A Divisional Judge can not interfere with orders passed by the District Judge.—50 P. L. 1901. *Con* 8 N 37

356. When the High Court is bound to interfere.—When the delay was due to the orders of the Lower Courts requiring sanction, High Court could not refuse to interfere in revision. 6 M T 128

357. Revision under the Civil Procedure Code.—No application for revision under the Civil Procedure Code would lie to the High Court against the order of the District Judge upholding a sanction granted by a Munsiff under S. 195 Cr. P. C. (75) A N 85 (73) A N. 172

358. *Per* [34 M 1044]

359. Revision by Sessions Judge.—Sessions Judge cannot revise the orders of the District Magistrate granting sanction refused by third class Magistrate. [30 A 109]. When Sessions Judge revokes sanction granted by a Subordinate Magistrate the High Court may be moved by the District Magistrate to set aside the Judge's orders. See (13) (1) High Court. *Supra*.

360. S. 439 Cr. P. C. does not apply to order of Civil Courts.—Where a Civil Court grants sanction under S 195 the High Court has jurisdiction under S 439 in the exercise of its revisional powers on the Criminal Side to set aside that order. [24 A 554 (F. B.). 31 A 526 M. 129. (77) A N 283. See (78) A N 29 (74) A. N. 10. [*Overruling (73) A N 16 26 A. 1]

361. Power of Revision of High Court under S. 115 Civil P. C.—High Court has power to set aside an illegal order of revocation by a subordinate Magistrate. 81

432. Power of High Court to call for record.—It cannot be denied that as the law stands at present, the High Court has jurisdiction to call for and examine the record of a proceeding under S 105 cl (C) held in the Court of Sessions Judge and confirming a sanction granted by a subordinate Court.—*Per Figgot J.* in 20 C 564 (A) 36 A. 403

363. When application for revision is too late.—Where the application for revision had been made long after the sanction had been given and the prosecution had advanced to the stage of framing of charges—*Held*—it was too late. (86) A. N. 63.

364. Application to set aside sanction should be made to lower appellate Court.—Should except in very special circumstances. *Per* [34 M 1044]

made to the District Judge and not to the High Court. [(81) A. N. 57]

365. Belated order.—It is illegal to set aside a sanction on the ground that no formal or legal order was recorded, after an interval of three and a half months after the proceeding. Rat 552

Review, Reference, Rehearing and Appeal.

366. Review.—An *ex parte* order granting sanction may be reconsidered. [2 Weir 194]. But Sessions Judge has no power to revise his order refusing to revoke a sanction to prosecute, as an order being final and not open to review. 23 B. 50

367. Reference.—Sessions Judge cannot refer to the High Court any matter in respect of sanction which he can dispose of himself. Rat 937.

question collaterally the legality of the conviction upon the allegation that the Local Government was irregularly constituted and the Sessions Judge irregularly appointed—*Per Monckey J*—15 C. J. 517 (S. B.)

(5) *Insufficiency or Absence of sanction and effect thereof.*

22. A complaint merely copying out language of the sections I. P. C. is a colourable compliance only.—Where the complaint in the case did not set out the facts which constituted the offence but stated that the persons named have amongst themselves and together with other person or persons known or unknown, conspired to wage war against His Majesty the King and to deprive His Majesty of the Sovereignty of British India and they have collected arms etc.—*held* that a complaint of this description being merely a copy of the wording of the section I P C was a mere colourable compliance with the provisions of this section—*Per Monckey J* in 10 C N 1105 (S. B.)
23. Absence of complaint vitiates the trial.—A Magistrate or a Sessions Judge exceeds his jurisdiction if he takes cognizance of an offence under Chapter VI I P C without a complaint. The defect is not curable by S 537 C. P. C (16 P. R 1890, 37 C 407, 17 M. J. 533). The absence of such authority is a defect which vitiates the proceedings *ab initio*—[12 P. R 1891]
24. Objection to be valid must be taken at the trial.—Where the accused was prosecuted

under S 507 I. P. C. without a formal complaint but there was a valid sanction and no objection was taken at the trial, *held*—the defect was cured by S. 537 (4) *infra*—[8 P. R. 1909]. The proper course is to bring up the question of insufficiency or legality of the complaint before the

was defective, *held* that after an elaborate enquiry and trial, it was plainly no longer competent to the accused to invite the Appellate Court to set aside the conviction. Such a case was covered completely by S. 537 *infra* [15 C. J. 517 (S. B.)]

(6) *Miscellaneous.*

25. Effect of refusal of Government to sanction.—The refusal of the Government to prosecute the accused under S. 122 I. P. C. does not affect the accused's liability to punishment under other sections for minor offence. A refusal to sanction prosecution for graver offences as required by S. 100 Cr. P. C. cannot prevent the accused from being brought to trial under other charges—25 B. 90.
26. Misdescription in the first sanction rectified in the second.—When an article in respect of which a prosecution is instituted under S 124-A. I. P. C., is misdescribed in the sanction and the misdescription is subsequently rectified, after the institution of the proceedings, by a second sanction, *held* that the defect is cured by S 537 Cr. P. C—31 M. 80.

Prosecution for certain classes of criminal conspiracy.

Indian Penal Code,

196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or nuler authority from the Governor-General in Council the Local Government or some officer empowered by the Governor-General in Council in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of the proceedings.

Provided that where the criminal conspiracy is one to which the provisions of sub-section (3) of section 195 apply no such consent shall be necessary.

Proposed amendments to the section.—The section 196A of the said Code, the following section shall be inserted, namely:—

"196 B. In the case of any offence referred to in sections 196 or 196 A, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary

197. (1) When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

(2) Such Government may determine the person by whom, manner in which, the offence or offences for which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Proposed amendments to the section.—In section 197 of the said Code, for the words "as such Judge or public servant of any offence," the words "of any offence alleged to have been committed by him while actually purporting to act in the discharge of his official duties" shall be substituted.

Arrangement of Notes.

S. 197=S. 466 (1872)=S. 167 (1861-9): See Presidency Magistrate's Act 1877 S. 39

1. Change in the Law.
2. Scope and Application of the Section.
 - (1) Scope of the section
 - (2) Meaning of terms
 - (3) Application of the section
3. Sanctioning Authority.
4. Procedure in relation to Sanctions.
 - (1) Form of sanction
 - (2) Preliminary Enquiry
 - (3) Procedure
5. Judge or any public servant.
 - (1) Public servants etc., within S. 197 Cr. P. C.

- (2) When sanction is necessary.
- (3) When sanction is not necessary
6. Power of Local Government to specify Court etc.
7. Miscellaneous
 - (1) The doctrine of *qui facit per per alium* ^{per se}
 - (2) Want of sanction curable by S. 531 517 Cr. P. C.
 - (3) Difference between secs. 195, 196 and 197
 - (4) Revision.

I. CHANGE IN THE LAW.

1. The words "as such Judge or public servant of any offences."—It is proposed to amend S. 197 by replacing the above words by the words "of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties" [Comp. 2 B 481 and S. 466 of the Code of 1872] The words "purporting to act" are intended to cover such cases—as for example, the case in 26 C. 852, in which a distinction is sought to be made between a Judge acting within the strict limits of his official powers and a Judge who goes beyond such limits.
2. The words "in his capacity as public servant" in the previous codes of 1872 were omitted in the codes of 1882 and 1891 but the same has not been thereby extended 25 M. 15 (22)]
3. The corresponding S. 167 of the code 1841 related to charges of offences punished under the Penal Code only [See C. II C. Cr. No. 20 of 4.10.64. 7 B H 61.] No such limitation is laid down in the present Code.

II. SCOPE AND APPLICATION OF THE SECTION.

(1) Scope of the section.

1. Scope of the section under the Code of 1872.—The scope of S. 466 Cr. P. C. (=S. 197 Cr. P. C.) extended to all acts *ostensibly* done by a public servant, i.e. to acts which would have no special significance except as acts done by a public servant. The first part of the section applies, at least, chiefly to cases of persons responsible to Government, who have failed in their duty, the second part to persons *professing to exercise* certain authority and with that pretext doing an act, which is impeached by a subject on the ground of its being wholly *unwarranted* by law or of an excess or impropriety of the same kind—2 B 481.
2. Scope of the section under the present Code.—Under the present Code, a sanction is required only if the act complained of involves *as one of its constituting elements* that it was committed by the public servant *as such* [26 C. 852 (10) M. N. 381; 32 M. 235. 25 M. 15; 6 M. T. 124; 7 B H. 61] offences committed against the person or property of individuals by one who happens to be a public servant, are not necessarily committed by him *as such* public servant in the sense in which these words are used in the Penal Code; and unless committed in that character

must be regarded as the acts of individuals in *private capacity*—13 C. P. 126 (129).

3. The section applies although the Judge was acting *ultra vires*—[Where a village Mansiff with power to try suits but not to act before judgment, attached certain property by judgment, held, that he was still purporting to exercise the function of a village Mansiff, and must be deemed to have acted "as such public servant."—[17 Cr. 394 (M)]
4. The scope of the section as explained in 26 C. 852.—The interpretation put on S. 197 Cr. P. C. in the leading case 26 C. 852 is somewhat obscurely worded, but if the meaning be that it covers only those offences which are committed by a public servant or Judge in an official capacity and no other, it appears to be correct. ^{at the time} ^{of the act} ^{as} ^{the} ^{act} ^{is} ^{done} ^{by} ^{persons} ^{other} ^{than} ^{public} ^{servants}—29 I. 1904
5. Where a Judge commits an offence in discharging his duties as such, on the belief that he is discharging such duties,

19. In the case of subordinate Magistrates etc.—The power of sanctioning the prosecution of subordinate Magistrates, Tahsildars and Deputy Tahsildars in their Magisterial and revenue capacity is delegated to the Board of Revenue—G No 1281 J. dated 29-6-'91.
20. In the case of Registrars etc.—The power as regards Registrars and Sub-Registrars is vested in the Inspector-General of Registration.—9 Mad. Jur. 81.
21. In the case of Superior Magistrate.—The power to grant sanction is reserved to the Governor in Council—Port St. G. Gaz 1873 p. 1503.
22. In the case of kulkarnis—The sanction may be given by the *mamlatdar* or by *pateel* to whom the kulkarni is subordinate—7 B. H. 61
23. In the case of a Second class Magistrate.—Where an offence is committed by a

Magistrate of the second class, sanction for his prosecution can, under S. 197 Cr. P. C. be given by the District Magistrate to whom he is subordinate, and whose power to give such sanction is not limited by the Local Government—17 B. 1919. 7 M. H. 68.

24. Implied power to grant Sanction.—Upon a construction of S. 167 Cr. P. C. (196) S. 197 of the present Code, it was held that the power to give sanction by implication, vests in the Court or authority to whom the Judge or other public servant, not removable etc., is subordinate. It does not say that such power must be expressly given by the Government—M. H. 58
25. [Note].—The proper authority to sanction the prosecution of a District Munsiff for acts of extortion, committed as a Judge of Small Causes, is the District and Sessions Judge to whom the former is subordinate—7 M. H. 184]

IV. PROCEDURE IN RELATION TO SANCTIONS.

(1) Form of Sanction.

26. Form of Sanction.—No set form of sanction is required by S. 197 (1) Cr. P. C.—21 Cr. 700 (P) No form is necessary for sanction to prosecute under S. 197 Cr. P. C.—[21 Cr. 684 (Pat)] A sanction is not invalid because it omits to mention the place or time when the offence was committed.—[27 M. 54]. Sanction granted by a letter addressed to the Magistrate is sufficient—[30 C. 905. Rat 32].

- 26A. What amounts to sanction.—Where a Deputy Commissioner after carefully considering the charge against a Sub-Deputy Collector (in charge of the Chowkidari Department) and after carefully considering the materials before him suspended the Sub deputy Collector, and then made over the papers to the Superintendent of Police with the object of his prosecution under S. 409 I. P. C., held that the order making over the papers etc., was clearly a sanction under S. 197 Cr. P. C.—21 Cr. 581 (Pat)

(2) Preliminary Enquiry.

27. Complainant must be examined.—A complaint against a public servant *eg*, the Chairman of a Municipality is to be treated as any other complaint, and the question whether the case is one that can be proceeded with, having regard to the terms of S. 197 Cr. P. C. should be decided after examining the complaint in accordance with law—3 C. N. 17.

28. Object of Examining the complaint.—The preliminary examination of the complainant is not such cognizance as is referred to in the section. It is often necessary to examine the complainant, before his complaint can be understood and the complaint must be understood before the sanction is given—[7 M. H. 182 (187)]

- 28- If a complaint against a public servant and

if he thinks right, he may make under S. 202 Cr. P. C. a preliminary enquiry into its truth or otherwise. But he cannot cause the attendance of the accused or take any evidence against him until he has obtained the necessary sanction—7 B. H. (C. G.) 61.

29. If a preliminary enquiry.—On report The Collector then enforced the attendance of the petitioner against his will by writing to the Police. The petitioner denied having sent the petitions bearing his name but went on to state how he had paid the bribe—Held that in the absence of a sanction from Government as required by S. 197 Cr. P. C. the enquiry by the District Magistrate, who was ordered to make the enquiry and report, was not judicial but merely departmental—19 B. 51.

30. Notice to accused before sanction unnecessary.—The sanction given by the Government under this section is not invalid because no notice was given to the accused to show cause why it should not be given. It is a matter entirely within the discretion of the Government to give such notice or not—27 M. 51

31. Preliminary enquiry before granting sanction not provided by the Code.—There is no provision in the Criminal Procedure Code, or the Indian Penal Code indicating how the Government or some officer empowered in that behalf by the Government, is to inform itself whether or not to grant sanction. In the absence of any provision of law authorizing the officer conducting such enquiry to hold a judicial enquiry, such enquiry is not a judicial enquiry and there is no authority in him to administer an oath, there is no authority in him to administer an oath, the enquiry being merely a departmental enquiry. Therefore, a person who gives false evidence in the course of such enquiry is not liable to be punished under S. 193 Cr. P. C.—23 M. 223.

32. Government acts in its executive capacity.—The Government in according or withholding sanction under S. 197 Cr. P. C. for the prosecution of a public servant in respect of an offence alleged to have been committed to him as a public servant acts purely in its executive capacity and the sanction is not a judicial or legal decision. 4 M. T. 25, 27 M. 14

(3) Procedure.

33. Specification of the charge.—Under S. 197 Cr. P. C. the Government in granting sanction need not specify the offence with the same precision as is necessary in framing a charge. (111 N. 1062-11 P. R. 101) But See 21 Cr. 584 (Pat.) So where a Collector sanctioned the prosecution of a Kulkarni and a Patel "for cheating or for such other offence with which it may be necessary to prosecute them in connection with obtaining money from ryots," held that the offences were sufficiently designated in the sanction, and the sanction was not invalid on account of vagueness.—[43 B. 117.]

34. [Note per contra.—A Sanction ought to be granted with reference to some specific offences but where the language used in it points clearly to a particular section of the Penal Code, and upon

35. No fresh sanction necessary for prosecution for abetment.—Where a sanction has been granted to prosecute a person for a substantive offence, no fresh sanction is necessary to prosecute him for abetting that offence, as the latter charge is founded on the same facts as those on which the first charge is founded.—30 C. 405 (904)

36. Power of selecting the charge cannot be delegated.—An authority empowered to grant a sanction under S. 197 Cr. P. C. did not sanction the prosecution of the accused for any offence designated by itself, but merely delegated to another

37. Want of Sanction is not a mere irregularity curable by S. 537 Cr. P. C. It is fatal to the prosecution. 42 P. R. 1884.

See however (4) Miscellaneous (68).

38. Sanction obtained after commencement of trial, is of no avail.—42 B. 172, 22 B. 112; 9 B. 254 (F. B.) 31 M. 80, 42 M. 83 (55); See 2 B. 451, 7 B. R. (C. C.) 61.

39. [Note.—Though proceedings taken by a Magistrate before receipt of the necessary sanction are illegal, he can take cognizance after the sanction. 10 B. R. 1073.]

V. JUDGE OR ANY PUBLIC SERVANT.

(1) Public Servant within S. 197 Cr. P. C.

40. Chairman of a Municipality.—is a public servant within the meaning of S. 197 Cr. P. C.—[3 C. N. 17] He cannot be prosecuted without the sanction of the Government [1 Weir 235]

41. Village Magistrate.—A village Magistrate exercising jurisdiction, and trying an offender under Mad. Reg. XI. of 1816 is a Judge within the meaning of S. 197 Cr. P. C. and S. 19 I. P. C.—23 M. 540; 18 Cr. 37 (M).

42. Municipal Commissioner.—A Municipal Commissioner cannot be prosecuted for an offence committed by him in his capacity as Commissioner, except with the sanction of the Government.—14 P. R. 1830, 28 P. R. 1890, 17 P. R. 1902

43. Member of a Committee of a notified area.—is not a public servant 'not removable from his office without the sanction of the Local Government within the meaning of S. 197 Cr. P. C.—48 P. W. 1916.

(2) When sanction is necessary.

44. Village Magistrate preparing false record.—A village Magistrate who prepares a false record in a case pending before him, does not act in his private capacity but as a Judge, and if the making of that record amounts to an offence, sanction is necessary under S. 197 Cr. P. C.—21 Cr. 233 (M)

45. [Note Per Contra.—A Magistrate who fabricates a record in which he figures as Judge, cannot properly be said to be acting as a Judge when he does so.—32 M. 255]

46. Defamatory words used by a Judge.—If defamatory words are used by a Judge in the course of the trial of a suit, the words must be taken to have been uttered by him as a Judge, and not as a private individual, and no complaint can be entertained without sanction.—9 M. 439, Con 26 C. 852

47. Vatandar Patil.—Where a Magistrate took cognizance of an offence committed by a Vatandar Patil, without the previous sanction required by S. 197 Cr. P. C. and began to record evidence on the 5th of April, but the sanction was not signed until the 12th, held that the proceedings were without jurisdiction and must be regarded as totally invalid.—42 B. 172. See 21 Cr. 594 (Pat.) at p. 691.

48. General Rule.—The sanction of the Government is required for the prosecution of any Judge if a complaint is made against him as such.—[6 M. H. (1p) 21] In the case of a Public Servant other than a Judge, sanction is necessary only when the public servant is "not removable from his office without the sanction of the Government of India or the Local Government"—[12 M. T. 351]

2. **Meaning of "person aggrieved."**—In cases of defamation, the words "person aggrieved" must be treated as equivalent with the expression "person injured," the object of the section apparently being to limit the right of complaint to the person who suffered injury.—1 Bar. S. 617.
3. **The object.**—The section is clearly designed to prevent Magistrates from inquiring, of their own motion into cases connected with marriage unless the husband or other person authorised moves them to do so.—1 C. L. 523.

(2) Defamation.

"Persons aggrieved" in the case of a Hindu Lady.

4. **General Rule.**—"A Hindu lady living with her father her brother or her son is a member of his family, and her reputation is bound up with the reputation of the person in whose house and under whose charge she is living. If any imputation is made against her character, that would affect as much the relative with whom she is living as herself"—32 C. 423 *But See* 25 B. 151 (F. B.). 18 M. 250 Rat 327
5. **Husband.**—A husband has a right to lodge a complaint about the defamation of his wife, as he is a person aggrieved by an imputation of unchastity to his wife with whom he is living.—25 B. 151 (F. B.). [Ranade J. diss.] 15 M. J. 224 14 M. 379 20 P. R. 1882 *See* 3 S. 15 *Con* Rat 327 (O.)
6. **Brother.**—Where imputations were against a Hindu widow living in her brothers house—held—having regard to the circumstances and conditions in which people live in that part, the brother was a person aggrieved within the meaning of S. 198 Cr. P. C. and it was competent to the Court to take cognizance of the offence upon his complaint.—[32 C. 423]
7. **Father-in-law.**—Where the complainant is the head of his family, his son a lunatic and his daughter-in-law had been living under his protection, and an allegation is made that she was taken away to the house of her father and subsequently married to another person, the offence, if true seriously affects his reputation and status in society and the father-in-law is a person aggrieved within the meaning of S. 198 Cr. P. C.—3 C. J. 34 (41)
8. **Son.**—For the purpose of instituting a criminal proceeding under S. 499 I. P. C. a mother and son are not in the same position as husband and wife.—(93) A. N. 207 *Con* 32 C. 425.
9. **Note.**—A distinction seems to have been drawn between Criminal and Civil proceedings. In 18 M. 250, it was held that the husband was not entitled to sue in tort for defamation of his wife. In 32 C. 1060, it has been held that a brother cannot sue for the slander of his sister unless the slander necessarily involves a slander upon the brother as well. The case reported in 32 C. 425 was distinguished as turning upon the construction of S. 194 Cr. P. C.
10. **When the slander is true.**—Where the alleged defamatory statement is true as regards

the complainant he is not a person aggrieved by the publication within the meaning of S. 198 Cr. P. C., because it may be false so far as other persons are concerned.—(14) M. N. 351.

11. **Municipal President cannot complain for defamation against Health Officer.**—Where a newspaper published statements which were alleged to be defamatory of specified acts of negligence on the part of the Health Officer and his subordinates held, that the President of the Municipality was not a person aggrieved within the meaning of S. 194 Cr. P. C., as it could not be said that by imputation against his subordinates his conduct and administration had been impugned.—26 M. 13; Cf. 1 Bar. S. 617
12. **Witnesses.**—A witness cannot be prosecuted for defamation in respect of statements made by him in a judicial proceeding.—[17 B. 127; 17 B. 573; 2 M. 13; 11 M. 477; 15 C. 204 10 A. 433] or in answer to question by a Police Officer [16 M. 235 3 O. C. 80 (82)] Nor can he be sued in tort for damages [11 B. L. 321 (P. C.) 28 C. 794] But if the statement is wholly irrelevant to the matter under enquiry and introduced by the witness maliciously and voluntarily he is not protected.—[32 C. 756]

13. When the Court may act without a formal Complaint.

Appellate Court.—An Appellate Court can under S. 423 *intra* convert a conviction under S. 182 I. P. C. into one of defamation under S. 500 I. P. C. notwithstanding that there was no complaint within the meaning of S. 198 Cr. P. C.—35 A. 534

Absence of complaint fatal

- 14(a) Where a complaint did not contain a charge under S. 500 I. P. C. but that charges were subsequently added by the Magistrate on the examination of his section
 15(b) A person addressed a post card to another containing a false claim of money. The post card was privately handed over to the Magistrate without a complaint—held—the Magistrate acted without jurisdiction in starting a criminal prosecution thereon.—3 P. W. 1909
- 16(c) Where a complainant alleged that the accused with a view to injure the complainant's reputation, had brought a false charge that the complainant's daughter was a prostitute—held—under S. 2 substance of the complaint, the false charge under S. 500 I. P. C.—24 P. R. 1884
- 15(d) A Criminal Court cannot avoid the strict provisions of this section by altering a charge under S. 501 I. P. C. to one under S. 500 I. P. C.—18 P. R. 1859

17. ... on death of ...
 ...
 ...
 ...

[Note.—Compare S. 49 of the Probate and Administration Act V of 1881.]

(3) Bigamy and other offences against marriage.

18. **The person aggrieved.**—It cannot be said that the only person aggrieved under S. 191 is the person with whom the second ceremony was gone through. The husband is also a person aggrieved under S. 195 Cr. P. C.—[20 C. 336] when the offence of bigamy is committed by a girl having a husband who is of age, the husband and not the father of the girl is the person aggrieved [13 Cr. 201 (V)] A brother of the husband of the woman who committed bigamy is not as such a person aggrieved [11 O. C. 148 25 A 172 10 B 319 1 C L 523] and the rule will hold good even if the husband is a lunatic [26 C 336 (317)] The mother of a minor-husband aged sixteen is not a person aggrieved within the meaning of the section [2 Weir 211]

19. **When proceeding without specific complaint is legal.**—Where the complaint by the husband was to the effect that a certain person had taken away his wife but it turned out that the wife had committed bigamy, held that the Magistrate was competent without a further complaint by the husband, to commit the wife for trial under S. 494 I. P. C.—1 C L 521 25 A 204 Con.—Cr. R. 39 of 15 593 20 C 115, 14 C N celxv 10 A 30 5 A 233

20. **Only the first or the second husband can complain.**—In case of a bigamy, the person aggrieved is either the first husband or the second husband and not the father. Hence where, in such a case a complaint was preferred by the father of the husband, under S. 494 I. P. C. but not by either of the husbands; held there was no valid complaint before the Court and the commitment was bad—32 A. 78

21. **Complaint at the suggestion of the Police not illegal.**—The fact that a complaint in respect of an offence under S. 494 I. P. C. is written at the suggestion of the Police does not contravene the provisions of S. 198 Cr. P. C.—5 P R 1919

22. **Complaint may not be precise.**—A section cited shall complainant if proved, 494 I. P. C.

[25 A 209]

23. **Meaning of the present section.**—4 P. R. 1886

24. **Person charged with bigamy cannot be convicted of adultery.**—See 14 C. N celxv. see Note No 7 under S. 189 infra

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian

Protection for adultery or enticing a married woman Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Proposed amendment to the section.—To section 199 of the said Code, the following proviso shall be added, namely—

"Provided that, where such husband is under the age of 18 years, or an idiot or lunatic, or is from sickness, infirmity or absence unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf

Proposed insertion of a new section.—After section 199 of the said Code, the following section shall be inserted, namely—

"199 A. When in any case falling under section 198 or 199, the person on whose behalf the complaint is sought to be made is under the age of 18 years, and the person applying for leave is not the guardian appointed or declared by competent authority, notice shall be given to such guardian (if any), and the Court shall, before granting the application, hear any objection which such guardian may wish to make."

Notes.

1. **Offences referred to.**—S. 497 deals with adultery; S. 498, with the offence of enticing away or detaining a married woman with criminal intent.

2. **Meaning of the word "complaint."**—The word "complaint" referred to in S. 199 Cr. P. C. means a "complaint" as defined by S. 4 (b) of the same Code. Therefore an information to the Police cannot be treated as a

complaint.—[30 C. 910 (F. B.): 17 C. P. 103] The report of a Police Officer is not a complaint within the terms of S. 4 (b) and 199 Cr. P. C. [32 P. R. 1910; (12) U B 155; (32) 2 Weir 235. 2 P. R. 1916] The word complaint in this section includes not only a written complaint, but also the examination of the complainants at any rate before the issue of process. [Rat 541 14 A. J. 233. But See 14 B. R.

141 10 P.R. 1883]. The formal assent of the husband to a charge of adultery added at the end of his deposition would not be a proper compliance with the requirements of the section. [21 W. R. 18]

3. **Object of the Section.**—S. 199 Cr. P. C. was designed to protect the rights of the husband; but that is not its sole aim. The rights of guardians are also entitled to protection. The object of the law is not so much to afford protection to the husband or guardian as to inflict punishment on those who interfere with the sacred relation of marriage. The restriction in S. 199 is not intended to afford immunity to the offender, but to prevent a person unconnected with the woman from giving publicity to a matter which neither the husband nor the guardian is willing to agitate. —17 Cr. 363 (M), 3 S. 15.

4. (a)

formally complains either orally or in writing to a Magistrate with a view to his taking action. "It does not follow that because a husband may wish to punish a person, who has committed rape on his wife, that is, who has had connection with her against her consent, he will desire to continue proceedings when it turns out that she has been a willing and consenting party to the act.—*Per Straight J* in 5 A. 233, 36 A. 1 ('82) A. N. 165 ('12) U. B. 155]. The circumstance of the husband's appearing as a witness in the prosecution for an offence of rape cannot be regarded as amounting to the institution of a complaint for adultery [20 Cr. 415].

5. (b) Where a person was charged by the husband with kidnapping or with abduction and the Judge convicted the accused on the evidence merely of an offence under S. 498, *held* that the conviction was wrong as there are no specific complaint by the husband of an offence under S. 498 I.P.C.—27 M. 61.
6. (c) Where the husband is the complainant and brings his complaint under S. 366 I. P. C., a conviction under S. 498 I. P. C. may properly be had in the absence of complaint by the husband under S. 199 Cr. P. C., if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one.—20 Cr. 483; 1 W. R. 45. *Con*—27 M. 61; 17 O. P. 105 (106); 14 B. R. 141, 22 C. 1006.
7. (d) Where the husband lodged a complaint to the effect that his father-in-law had remarried his wife to the accused but the Magistrate acquitted the accused of the charge under S. 491 I. P. C. but convicted him for adultery. *Held*—the conviction was illegal as the husband had not complained that the accused had committed adultery with his wife.—[13 O. N. cclxxx]
8. (e) Where the husband preferred a charge under S. 350 but "upon a perusal of the Police papers, it appeared that the case was under S. 493 I. P. C." and the accused were convicted under S. 493 I. P. C.—*held*—that in the absence of any complaint under the latter section, the conviction was illegal.—2 P. R. 1918.

9. **Complaint under S. 199 Cr. P. C. unnecessary when the charge is for house-trespass to commit adultery.**—The complaint of the husband is unnecessary for proceedings in respect of the offence of house-trespass to commit adultery.—(65) 2 Weir 23 S. M. H. (ap) vi; 2 P. R. 1857 (F. B.); 19 (1881) (N); 16 C. P. 152 (187); See also 21 A. S. 19 A. 74; *Con*. ('80) A. N. 12; 5 M. H. (2p.) 7.
10. **The section explained.**—So long as a wife is under the protection of her husband it is not open to any other person, whether he be her father or brother, to institute a complaint under S. 497 or S. 498 I. P. C. if the husband does not want that proceedings should be instituted. Where at the time of the offence, the wife was under the care of another person, the fact that the husband stands by, will not prevent the temporary guardian from preferring the complaint.—17 Cr. 363 (M); See 2 Weir 235; 31 B. 218, 4 R. 1888, 32 P. R. 1910.
11. **What does not amount to a complaint.**—Where the husband presented a complaint follows: "The 2nd accused enticed away the 1st accused, the wife of the complainant. The 2nd accused made away with jewels valued Rs. 2050 and 3 silver vessels. The 1st accused abetted the theft. So I charge the 1st accused under S. 498 and 370/109 and the 2nd accused under S. 379 I. P. C. Pray inquiry and justice but subsequently, there was a meeting between the husband and wife. The woman agreed to surrender the property and went away with the husband who said no further action in the matter was necessary. The matter was therefore dropped. The husband committed suicide the next day and his son filed a formal complaint charging the two accused under the sections mentioned above. *Held* that even assuming that the complaint filed by the husband was sufficient as a complaint under S. 199 Cr. P. C. of an offence under S. 498 I. P. C., a fresh complaint by the husband would be necessary after he had agreed to drop the proceedings and it was not open to other persons than the husband after the latter's death to revive the proceedings.—16 Cr. 466 (M).
12. **Effect of the husband's death after institution of proceedings.**—The law only requires that the prosecution on a charge of adultery should be instituted by the husband. Although it is desirable that such charge should be withdrawn by the prosecution on the death of the aggrieved party, it cannot be said that the death necessarily puts an end to the prosecution.—4 M. H. (ap) iv.
13. **Minor husband.**—A minor husband cannot be represented by another in a prosecution for adultery.—[71] 2 Weir 235; 1 S. 72]. The Legislature has not provided for the protection of the insane, the paralytic or invalid husband and the word "absence" cannot be taken to include such cases.—[3 S. 15]
14. **Complaint under S. 497 is not sufficient for a charge under S. 498 and vice-versa.**—A complaint of offences under S. 494 and 498 I. P. C. does not involve a complaint of an offence under S. 497 I. P. C. and the

Magistrate has no jurisdiction under S. 193 Cr. P. C. to try the accused under Section 476. [Est. 571. See 14 C. N. ex. 112]. A complaint under S. 476 I. P. C. cannot be partly filed before a Magistrate to commit the accused under S. 476 I. P. C. [12 C. N. ex. 18 P. R. 1471].

15. Additional charge under S. 489 I. P. C. at the Sessions illegal.—The accused was committed to the Sessions on charges under Ss. 303, 304 I. P. C. At the conclusion of the prosecution evidence and after recording the evidence for the defence, the Sessions Judge added a charge under S. 489 I. P. C., held, that the additional charge at that stage was prejudicial to the accused and must be quashed.—31 B. 215. See 14 B. R. 441.
16. Wife divorced previous to institution of proceedings.—Where the complainant had divorced his wife previous to making his complaint, an order of acquittal under S. 489 Cr. P. C. was upheld.—27 P. R. 1870. See Cr. E. 50 of 17-7-85.

[Note.—Husband who has deserted his wife.—may complain of adultery.—See 18 Cr. 321 (L. B.).]

17. Case dismissed for want of proper complaint no bar to fresh proceedings.—The fact that the accused was acquitted in a trial under S. 498 I. P. C. on the technical ground that the complaint was filed by the brother of the husband alleging the latter's authority to do so, but there was in fact no such authority—cannot be pleaded in bar of a second trial on a fresh complaint by the husband.—31 A. 817.
18. Cases to be registered as private complaints.—The High Court of the N. W. P. has directed that cases under Ss. 497 and 498 I. P. C. ought not to be registered as *Emperva* so and so; but only as private complaints *v. So and so*.—N. W. P. Gaz. 1879 p. 123.
19. Unwillingness of husband to prosecute.—The Court, ought to, in the absence of anything to prove collusion, order the accused to be discharged, if the husband withdraws from the prosecution on a charge of adultery.—5 B. 11, (C. C.) 24. 5 B. 11 (C. C.) 27.

[Note.—But a Magistrate cannot after committing the accused, discharge him on the representation of the prosecutor that he wished to withdraw from the prosecution.—[1 A. 130]

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. Subject to the provisions of section 476, a Magistrate taking cognizance of an offence on Examination of complainant complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate.

Provided as follows:—

- (a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;
- (b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;
- (c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Proposed amendment to the section.—After provision (a) to section 200 of the said Code, the following proviso shall be inserted, namely:—

- (ia) when the complaint is made in writing and signed by a public servant acting or purporting to act in the execution of his official duties, a Magistrate may, if he thinks fit, and shall, when the complaint is made by a third person under section 176, proceed with the inquiry into or trial of the case without examining the complainant on oath."

Arrangement of Notes.

S. 200—Ss. 41, 144 (1872)—S 66 (1861-9)

- I. Object and application of the section.
 II. Procedure.
 (1) Who can prefer a complaint.
 (2) Procedure on receipt of complaint.
 III. Magistrate's obligation to take cognizance.

- (1) Magistrate bound to take cognizance.
 (2) Magistrate cannot decline jurisdiction
 IV. Magistrate's discretion with reference to complaints.
 V. Miscellaneous.

I OBJECT AND APPLICATION OF THE SECTION.

1. The object of the examination of the complaint before issue of process.—The examination of the complainant under S 200 Cr. P. C. is a very valuable safeguard that the Legislature has provided and must be scrupulously observed and insisted upon. Petitioners of complaint are not drafted by the complainants themselves and it is therefore necessary that before action is taken upon written complaints filed in Court, the complainants should be examined on oath—[20 Cr 247 (Pat)] The object of the provision is to prevent the issue of process, when the examination of the complaint would show that the complaint was clearly false, frivolous or vexatious and that further proceedings would tend merely to harass unnecessarily an accused person and waste the time of the Court [11 F R 1911 10 A J. 79. See *Bomb. H. C. Cr. Cir. p. 14*].
2. The Examination of the complainant is not mere matter of form.—The examination of the complainant is not mere form but an intelligent enquiry into the subject-matter of the complaint, carried far enough to enable the Magistrate to exercise his judgment as to whether there is or there is not sufficient ground for proceeding.—Wilkins 2. See (10) U B 4—q 73
3. The Words "subject to provisions of of S. 8. 476."—The express reference to S 476 (2) is to relieve the Magistrate who makes the order under S 476 (1) from the obligation of making a finding of fact. These words were introduced to give effect to the views expressed by Petheram C. J. and Straught J. in 7 A 871 (F.B.).
4. Object of proviso (a).—This proviso is intended to meet the decision in 4 N. P. 88-9 B. L. 146 (F B) and 8 R. L. 19: in which the omission of a District Magistrate to reduce to writing the examination of the complainant on a complaint directly preferred to him, before

referring to a subordinate Magistrate for dis was held to be an illegality vitiating all the proceedings taken subsequently [See (10) 4—q 73].

5. Presidency Magistrates.—A Presidency Magistrate is not bound to examine complainant before dismissing the complaint. S 203 Cr. P. C. [(11) M. N. 356]. But not excused from the necessity of placing on record the necessary evidence of the complainant's authority in cases where sanction to process is given to a person other than the complainant.—[39 C. 469 See (80) A. N. 164]
6. Magistrate receiving the complaint bound to dispose of it himself.
 (a) A Magistrate who has taken cognizance of offence under S. 200 Cr. P. C. is entitled to be relieved (if relieved at all), of the case if he who ought to make final orders in the case cannot relieve himself of the responsibility shifting the burden on the District Magistrate 15 A. J. 612; 43 C 173. 10 C N. 1086 9 C 193 (201)
 (b) The Code does not permit a Magistrate to refer a complaint to another Magistrate for enquiry and report.—43 C 1
7. District Magistrate cannot direct submission of cases for orders.—When Magistrate was authorised to receive petition of complaint and to examine complainants on oath, but as regards a particular class of cases, he was directed by the District Magistrate not to pass orders, but to submit them to the District Magistrate himself, held, that such direction of the District Magistrate was illegal 10 C N. 1086
8. The term "Complaint" in S. 200 Cr. P. C.—The word 'complaint' means a complaint as defined by S. 4 (h) Cr. P. C.—30 C. 910 (F B)
 [Note.—For what is and what is not a complaint—See the Notes under S. 4 (h) *supra*]
9. As to who may make the complaint etc.—See Notes under S. 4 (h) *Supra*

II. PROCEDURE.

- (1) Who can prefer a complaint.
 10. Complaint to be ordinarily filed personally by the complainant.—The word "at once" in S. 200 Cr. P. C. clearly indicates that

ordinarily a complaint must be presented by a person. A complaint should never be accepted which is not signed by the complainant and is not preferred by a person duly authorised to prefer that specific complaint.—42 C 19.

11. **Person holding general power of attorney.**—A person holding a general power of

of a complaint is made orally or in writing and is sworn to by the complainant, the requirements of S 200 Cr P C. are sufficiently satisfied, though the complaint has not been examined on oath.—9 A 666, 6 B R. 662, 4 B R. 609; (11) M. N. 354; Cr. Rev. case 398 of 1908 (M); Con. 18 A. 221, 30 C 923.

12. **Complaint through Mukhtear.**—A complaint under Ss. 404 and 405 I P C. having been presented by the complainant's Mukhtear instead of by the complainant herself, who was not present in Court, held that the Magistrate was justified in dismissing the complaint, as he had no opportunity of examining the complainant.—Rat 625

20.

of that examination is by law, to be reduced to writing and it is obvious that that writing must be and was intended to be distinct from the complaint.—18 A. 221.

13. **Pardanashin Lady.**—Where the complainant is a pardanashin lady, the Magistrate ought to follow the procedure laid down in S 503 Cr P C.—42 C. 19. Con. 10 P. R. 1896.

21. **Effect of failure to examine the complainant.**—There is a divergence of judicial opinion as to whether the failure to examine the complainant amounts to an illegality vitiating all

14. **Where the complainant is a responsible public official.**—Where a complaint is preferred by a responsible public official, is reduced to writing and duly signed and authenticated by him, a Magistrate's failure to observe the strict requirements of S 200 Cr P C. has been held to be an irregularity sufficiently covered by S 537 (a) Cr P C.—1 A. 60, 11 M. 443, 63 P. R. 1901, 11 P. R. 1911, 4 B R. 609, 20 Cr. 247 (Pat.)

(10) U. B. 4-q 73, 20 Cr. 413 (Pat.) 20 Cr. 553; (Pat.) 20 Cr. 742 (Pat.) 4 N. P. 88; 3 B. L. (Ap.) 67; 3 B. L. (Ap.) 10, 16 W. R. 40. The cases for the second alternative (i.e. failure amounts to irregularity curable by S 537) are: 9 A 666, 6 B R. 662, 4 B R. 609, (11) M. N. 356, Cr. Rev. case 394 of 1908 (M), (87) A. N. 141, 46 O 807, 1 Pat. J. 592, 18 W. R. 18; 14 W. R. 1. See also rulings included in para No 14 above

15. **Procedure when the complainant has no personal knowledge.**—A complaint which is otherwise proper, is not illegal because the person making it has no personal knowledge of the offence committed. [21 Cr. 346 (Pat.) Con. 11 C. N. 170.] In such a case, the Court before issuing the summons should satisfy itself upon proper materials that a case has been made out for issuing summons [10 C. N. 1090.]

22. **Mode of Examination.**—The Allahabad High Court in 18 A. 221 has held that the substance of the examination of the complainant which is required by law to be reduced to writing must be distinct from the complaint itself. The complainant is to be examined on oath, and the substance of the examination is to be reduced to writing. It is not a sufficient compliance with the requirements of the section to merely call upon the complainant to swear to the complaint as it was filed and to sign it [18 A. 221]. The Bombay High Court has however laid down that where the complaint made in writing is sufficiently clear, it may frequently be a sufficient compliance with S 201, if the Magistrate reads it over to the complainant and he is asked to subscribe to it [6 B R. 662. See Note No. 19 above] A Magistrate cannot refer the complaint to the Police and upon receipt of the police report, cross examine the complainant thereon, and then proceed to dismiss the complaint. [30 C 923. See Note No. 18 above]

(2) Procedure on receipt of complaint.

16. **Nature of the proceeding.**—A Magistrate taking a complaint and issuing summons thereon, acts not ministerially but judicially.—5 B. 11 29, 2 B 481.

17. **Examination on the complainant.**—The Court is bound to examine the complainant and re-

deposing
C 923
L 134
N 37, 10
B. 447; Rat 951, 9 A 85, 3 N. P. 272, 20 Cr. 481 (Pat.) 2 Pat. J. 657, 2 Weir 237, 4 O C 127, (10) U. B. 4-q 73, (100-02) L B 286.

18. **Case cannot be made over to police without examination.**—It is incumbent on the Magistrate under S 200 Cr P C. if he does not transfer the case under S 192, to at once examine the complainant. He cannot make over the case to the police.—4 O C 127, 30 C 923, 16 C. N. 143, 18 A. 221, 10 A. 79, (11) M. N. 74

19. **Whether attestation of written complaint by the complainant is sufficient.**—It has been held that where the deposition in the shape

23. **Signature of the Complainant.**—The omission to take the signature of the complainant vitiates the record and cannot be cured by S. 537 Cr P C. [6 C N 810] Unless the complainant is examined on oath pursuant to his complaint and such examination reduced to writing and signed by him, the Magistrate cannot take cognizance of the complaint. [3 B. L. 67]

III. MAGISTRATE'S OBLIGATION TO TAKE COGNIZANCE.

(1) *Magistrate bound to take cognizance.*

- 24 The use of the term "may take cognizance of an offence" in S. 191 Cr. P. C.; does not make it optional with a Magistrate to hear a complaint but refers to the action of the Magistrate in taking cognizance of an offence in any one of the specified courses in which the facts constituting the offence may be brought to his notice. *He is bound to examine the complainant, and can then either issue summons to the accused or order an enquiry under S. 202, or dismiss the complaint under S. 203 Cr. P. C.—13 C 334; 4 O C 127 (131), 8 W. R. 12; 2 P. R. 1912.*

24 A

once examine the complainant. He cannot make over the case to the Police. [4 O C. 127; 12 B. 101 (11) M N 74] Even in a case in which the charge can in the first instance be laid before the Police, he is bound to examine the complainant if the complainant chooses to make a complaint [14 W. R. 36].

(2) *Magistrate cannot decline jurisdiction.*

25. (a) Where the complaint related to the theft of coconuts valued at Rs. 8p. (an offence cognizable by the Village Magistrate), the Magistrate cannot refuse summons because it was not laid before the Village Officer—7 M H (app) xxvi.
26. (b) He cannot dismiss a complaint because the complainant is actuated by malicious feelings—Rat 549
27. (c) A complaint properly laid under the Indian Penal Code should be investigated, even if the

case be one in which a civil action will lie—10 W. R. 40.

28. (d) Magistrate cannot refuse to entertain a complaint, on the ground that by so doing, he would stir up old religious feuds—Rat 562.
29. Complainant entitled to process if complaint is true—A complainant is entitled to be examined on his complaint, and if his case is found to be true to have process against the accused. After having found to be true, the Magistrate cannot refuse judicial enquiry on the ground that there is no probability of conviction—20 C, 410.
30. Magistrate bound to hear complaint—A Magistrate is bound to hear a complaint on its being only presented to him. It is not open to him to refuse to take cognizance or to postpone its investigation *sine die* on the ground of a non-existent Civil proceeding—Rat 206.

Note.—But where a complaint is of a purely Civil nature and discloses no offence, the Magistrate may refuse to entertain it.—16 W. R. 68

31. Case made over by Civil Court.—Where a Civil Court makes over a case to a Magistrate

32. Previous petition to District Magistrate by post, alleging certain facts (amounting to offences) against certain persons, and asking for an enquiry to be made, and upon which, the District Magistrate has refused to interfere, is no bar to the jurisdiction of a Subordinate Magistrate to entertain a formal complaint, in the same matter in as much as the previous petition did not amount to a complaint—(199) A. N. 201.

IV. MAGISTRATE'S DISCRETION WITH REFERENCE TO COMPLAINT.

33. Magistrate not bound to adhere to sections I. P. C. mentioned in the complaint.—A Magistrate is not bound to adhere to any particular section of the law, which may be mentioned by a complainant in his petition of complaint, but may apply any section which he thinks is applicable to the case—12 W. R. 40

When the complaint is defective.

34 (a)

212

35 (b)

"in my written complaint are to the best of my belief true" Held, that though the petition was defective is not stating all the facts necessary, the Magistrate could treat it as a complaint of offence falling under Ss 500, 501 and 502 I. P. C.—8 P. R. 1891.

36. Petition disclosing no offence.—When a complaint only amounted to saying that because as between the father of the complaint and the accused, certain arrangements were made in consequence of which, certain moneys were received by the accused and that the accused declined to render accounts, held that the accused would not be guilty of the offence of Criminal Breach of Trust, unless it was alleged that the money had, as a matter of fact, been realised by the accused and was wrongfully appropriated to his own use—9 A. 668.

37. "Filing" a complaint.—An order directing the petition of complaint to be filed (i.e. entered in the office) is illegal—16 W. R. 68
38. False complaints.—When Magistrates have a suspicion that a charge is false and vexatious,

but the suspicion is not strong enough to justify the withholding of process, they may before directing issue of process, or ordering a local enquiry, warn the complainant of the risk he runs of being prosecuted for a false complaint—(Indh. Cr. Dig. p. 7.)

39. Original complaint not to be returned.

—It is irregular to endorse and return to a party his petition of complaint alleging an offence. Such papers form part of records of a Magistrate's Court and should not be returned to the party. What the party is entitled to, is an authenticated copy of the Magistrate's order on a proper stamp.—2 Weir 237.

V. MISCELLANEOUS.

40. Summoning accused before examining the complainant.—Where a Magistrate summoned the accused before examining the complainant, it was held that he had misconceived his duty in supposing that it was not his business to examine the complainant—(64) W R 37 + M H 162
41. When formal complaint is unnecessary.—When the accused appears voluntarily to answer a charge the want of a summons or a complaint in order to the issuing of summons becomes immaterial [5 B. H. (C C) 29]
- 41 A. Application for process against other accused. When a District Magistrate taking before whom the case is, and to no other Magistrate—27 C 879 See 30 C 449 32 C 783 (791) 30 J 87.
42. S. 200 does not apply on taking cognizance.—S. 200 does not apply on taking cognizance necessary to treat t—2 L
43. Government pleader as a complainant.—Where the proceedings were commenced on the
44. When the complaint is vague or obscure.—The Magistrate is bound to examine the complainant at sufficient length for the purpose of clearly ascertaining the allegations on which the complaint is based—6 B R 662.
45. Order under S 202 Cr P cannot be made unless the complainant has been duly examined.—See Notes under S 202 *infra*
46. Magistrate cannot call for a report from the accused.—It is an irregular proceeding on
47. Report by police in a non-cognizable case.—A Magistrate cannot treat a report by a police officer in a non cognizable case as a complaint and make over the case for enquiry and report without formally taking cognizance under S. 190 (b)—40 C 851.
48. Provisions of S. 260 and 203 does not apply to S. 552 Cr. P. C.—The provisions of S. 200 and 203 does not apply to S. 552 where no offence is alleged—4 B R 609
49. Prosecution under S. 211 I. P. C.—Where the police making enquiries upon an information laid before them, reported a case as false, an application by the informant to the Magistrate, impugning the police report and asking the Magistrate to investigate the case and to summon his witnesses, is a complaint within the meaning of S 200 Cr P C The Magistrate is bound to examine the complainant on oath, and to give him an opportunity of substantiating the charge, before he can be prosecuted under S. 211 I P C—17 C 707 (F.B.) 33 C 1. 27 C. 821; 18 C N 93. 10 C N 773 5 C N 254 4 C N. 305 (99) A N 90 15 A 336; 22 B 596; 7 M. 292 (F. B.) 2 P R 1012 7 C. P. 6 See. (74) U. B 1—q 6
50. Refusal to sign a statement is an offence punishable under S. 180 I. P. C.
51. Admissibility in evidence, of petition and oral statement of the complainant.—A petition of complaint may be admissible in evidence, as a dying declaration of the complainant under S 32 (1) Evidence Act [36 C 659]
52. Accused as a complainant, and the other in his examination subsequently as a witness, both the statements contradicting each other, is bad, if the statement recorded under S 200 Cr. P. C. does not bear the signature of the complainant as required by that section [6 C N 840].

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Note.

1. Procedure when the Magistrate is not competent.—If on perusal of the petition of complaint, the Magistrate finds that he has no jurisdiction, he is not bound to examine the com-

plainant, and indeed should not do so, but should return it, after making the endorsement, required by this section when the complaint is in writing—(32) Ag. N. 318; Candy 1843 p. 67

202. (1) The Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, is not satisfied as to the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons; and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

(2) If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Proposed amendments to the section.—In section 202 of the said Code—

(1) For sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—
“(1) Any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, after examining the complainant where such examination is prescribed by the Code, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.”

(2) If an inquiry or investigation under this section is made by a person not being a Magistrate or a police officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.”

(3) After sub-section (2), the following sub-section shall be added, namely:—
“(2a) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.”

Notes

S 202—S 116—(1872)—S 160 (1861-9).

I. OBJECT AND APPLICATION OF THE SECTION.

1. The object of the section.—The object of S 202 Cr. P. C is to prevent the issue of process where there is some initial ground for doubting

the truth of the complaint and where on a local investigation, there appears to be no evidence to support it—(10) U. B 1—g 73: 21 Cr. 51^a (Ful)

[Note.—If a District Magistrate to whom a complaint of an offence exclusively triable by a Court of Session is made, makes it over for enquiry to a second class Magistrate, before examining the complainant, such enquiry cannot be regarded as one made under the section.—4 C. N. 305.]

2. Condition precedent to action.—A Magistrate can act under S. 202 Cr. P. C. and refer the case to the police for investigation only when for reasons stated by him, he distrusts the truth of the complaint.—(2) A. N. 195; (54) A. N. 47; 20 M. 387; 27 C. 921.

[Note.—Unless a complaint is duly examined, an inquiry and report under S. 202 Cr. P. C. cannot be called for, and if made, are without jurisdiction and cannot form the basis of any further action.—2 P. R. 1912; 13 C. 331; 27 C. 921; Pat 368; See 30 C. 923; 9 C. N. 199; 4 C. N. 305; 3 C. N. 17; 4 C. L. 134.]

3. Nature of the Enquiry.—It is doubtful whether an investigation under S. 202 Cr. P. C. can be regarded as a judicial proceeding and may be used for supporting an order under S. 476 Cr. P. C.—20 Cr. 815 (P); 39 M. 750 (F. B.); 21 M. J. 795; See 4 C. N. 306; 22 B. 936; 23 M. 223; 15 P. R. 1824; 32 A. 30; 7 A. J. 618, Coa. 59 C. 72; 1 Cr. 118 (M).

4. Scope of the enquiry.—When it is found that there is evidence in support of the complainant's charge, the function of the officer, making the local investigation is fulfilled. Process should then be issued and the truth or falsity of the evidence should be determined in a regular manner. [(10) U. B.—4 q. 73]. It is a misapplication of S. 202 Cr. P. C. to refer the complaint to a Magistrate for local enquiry as well as disposal.—[15 C. N. 93].

5. The enquiry is no substitute for trial.—The police enquiry contemplated by S. 202 Cr. P. C. cannot take the place of such evidence as the complainant may desire to produce before an adjudication is made of his or her complaint. Such an enquiry can be ordered before evidence is recorded, to enable the Magistrate to determine how far the complaint was *prima facie* well-founded. When the Magistrate decides to record the evidence himself, he should complete the enquiry and determine upon the evidence adduced, how far the complaint is borne out.—22 C. C. 321.

[Note.—It is not competent to a Magistrate by virtue of this section to direct further enquiry to be made by the Police into a case in which the accused has been discharged under S. 253 *infra*.—2 Weir 239.]

6. Power of Magistrate holding enquiry strictly limited.—A Magistrate before whom a complaint is laid cannot direct another Magistrate to make a local enquiry and then dispose of the case in as much as the Cr. P. C. does not make any provision for such a course by a Magistrate to whom the case is made over for disposal.—[18 C. N. 95; 43 C. 173; 15 A. J. 642; 10 C. N. 164; The Magistrate who holds the local enquiry under S. 202 Cr. P. C. is not competent to dismiss the complaint under S. 203 Cr. P. C.—15 C. N. 93].

7. Scope of the local investigation.—The local investigation referred to in S. 202 Cr. P. C. is a restricted investigation of physical features only; it means an enquiry into the truth or falsity of the allegations made in the petition of complaint. The word "local" is used with a view to hold investigation in the locality for the convenience of the parties and their witnesses, and it may also necessitate in certain cases, an inspection of the place of occurrence. The word "investigation" is not defined in the Code. It must be taken to have been used in its ordinary sense.—19 Cr. 126 (Pat)

8. Magistrate's discretion not fettered by S. 202 Cr. P. C.—A Magistrate has full power if he believes that there is truth in the complaint, to issue summonses straightway. It is not necessary for him to call for an enquiry, beforehand, if he is satisfied that there are good grounds for proceeding against the person accused in the complaint.—21 Cr. 220 (Pat)

9. Enquiry not to be ordered as a matter of course.—When a man files a complaint and supports it by his oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed, unless there is some apparent reason for disbelieving him, and he is entitled to have the persons against whom he complains brought before the Court and tried.—17 C. N. 200 11 A. J. 754.

- 9a. When the complaint is not based on personal knowledge S. 202 Cr. P. C. should be followed See Note No. 13 under S. 200 *supra*.

10. When the police after full enquiry has reported the case to be true, the Magistrate to whom the report is made, has no jurisdiction either under S. 150 or S. 202 Cr. P. C. to make a further enquiry into the same matter.—(59) A. N. 87.

11. *[Faint text, possibly a note or reference]*

J. 754.

12. Application of the section.—S. 202 applies only if the Magistrate takes cognizance upon a complaint. There is no provision in the Code empowering the Magistrate to refer a case of which he has taken cognizance under S. 150 (c) for preliminary enquiry.—7 S. 75. 24 P. R. 1884

13. When cognizance is taken upon police report.—A Magistrate cannot hold a judicial enquiry under S. 202 Cr. P. C. upon taking cognizance of a non-cognizable case on a police report under S. 150 (b) Cr. P. C.—20 Cr. 413 (Pat)

14. Case sent up under S. 476 Cr. P. C.—S. 202 Cr. P. C. has no application to a case sent up under S. 476 Cr. P. C.—21 Cr. 310 (N)

15. Petty cases.—It is an abuse of the power conferred by S. 202 Cr. P. C. to refer petty cases of assault and the like to the police for enquiry.—19 P. R. 1594.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Note.

1. Procedure when the Magistrate is not competent.—If on perusal of the petition of complaint, the Magistrate finds that he has no jurisdiction, he is not bound to examine the com-

202. (1) The Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, is not satisfied as to the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

(2) If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on a officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Proposed amendments to the section.—In section 202 of the said Code—

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(2) If an inquiry or investigation under this section is made by a person not being a Magistrate or a police officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.”

(3) After sub-section (2), the following sub-section shall be added, namely:—

“(3) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.”

Notes

S 202=S 146=(1872)=S 180 (1861-9).

I. OBJECT AND APPLICATION OF THE SECTION.

1. The object of the section.—The object of S 202 Cr. P. C. is to prevent the issue of process where there is some initial ground for doubting

the truth of the complaint and where on a local investigation, there appears to be no evidence to support it.—(10) U. B. 4-q 73; 21 Cr. 519 (Pat)

[Note.—If a District Magistrate to whom a complaint of an offence exclusively triable by a Court of Session is made, makes it over for enquiry to a second class Magistrate, before examining the complainant, such enquiry cannot be regarded as one made under the section.—4 C N 301]

2. **Condition precedent to action.**—A Magistrate can act under S 202 Cr P C and refer the case to the police for investigation only when for reasons stated by him, he distrusts the truth of the complaint.—(24) A N 105 (41) A N 47; 20 M 347 27 C 921

[Note.—Unless a complaint is duly examined, an inquiry and report under S 202 Cr P C cannot be called for, and if made, are without jurisdiction and cannot form the basis of any further action.—2 P. R. 1912 13 C 331 27 C 921 Rat 368. See 30 C 923 9 C N 199 4 C N 305 3 C N, 17 4 C L 134]

3. **Nature of the Enquiry.**—It is doubtful whether an investigation under S 202 Cr P C can be regarded as a judicial proceeding and may be used for supporting an order under S 476 C. P. C.—20 Cr 515 (P) 39 M 759 (F. B.). 21 M. J 797 See 4 C N 366 22 B 936 23 M 223 15 P R 1894. 32 A 30 7 A J 618 Con 36 C 72 1 Cr 115 (N)

4. **Scope of the enquiry.**—When it is found that there is evidence in support of the complainant's charge, the function of the officer, making the local investigation is fulfilled. Process should then be issued and the truth or falsity of the evidence should be determined in a regular manner [(10) U B—4 q 73]. It is a misapplication of S 202 Cr. P C to refer the complaint to a Magistrate for local enquiry as well as disposal.—[18 C N 93]

5. **The enquiry is no substitute for trial.**—The police enquiry contemplated by S 202 Cr P C cannot take the place of such evidence as the complainant may desire to produce before an adjudication is made of his or her complaint. Such an enquiry can be ordered before evidence is recorded, to enable the Magistrate to determine how far the complaint was *prima facie* well-founded. When the Magistrate decides to record the evidence himself, he should complete the enquiry and determine upon the evidence adduced, how far the complaint is borne out.—22 O. C 321.

[Note.—It is not competent to a Magistrate by virtue of this section to direct further enquiry to be made by the Police into a case in which the accused has been discharged under S 253 infra.—2 Weir 239]

6. **Power of Magistrate holding enquiry strictly limited.**—A Magistrate before whom a complaint is laid cannot direct another Magistrate to make a local enquiry and then dispose of the case in as much as the Cr P C does not make any provision for such a course by a Magistrate to whom the case is made over for disposal.—(18 C. N. 95. 43 C 173. 15 A. J. 612; 10 C. N. 164. The Magistrate who holds the local enquiry under S. 202 Cr. P. C. is not competent to dismiss the complaint under S 203 Cr. P. C.—18 C N. 93).

7. **Scope of the local investigation.**—The local investigation referred to in S 202 Cr. P. C. is not restricted to the investigation of physical features only, it means an enquiry into the truth or falsity of the allegations made in the petition of complaint. The word "local" is used with a view to hold investigation in the locality for the convenience of the parties and their witnesses, and it may also necessitate in certain cases, an inspection of the place of occurrence. The word "investigation" is not defined in the Code. It must be taken to have been used in its ordinary sense.—10 Cr. 126 (Pat)

8. **Magistrate's discretion not fettered by S. 202 Cr. P. C.**—A Magistrate has full power if he believes that there is truth in the complaint, to issue summons straightway. It is not necessary for him to call for an enquiry, beforehand, if he is satisfied that there are good grounds for proceeding against the person accused in the complaint.—21 Cr. 220 (Pat)

9. **Enquiry not to be ordered as a matter of course.**—When a man files a complaint and supports it by his oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed, unless there is some apparent reason for disbelieving him, and he is entitled to have the persons against whom he complains brought before the Court and tried.—17 C. N. 200 11 A J 734

9a. When the complaint is not based on personal knowledge S 202 Cr. P. C. should be followed See Note No 15 under S 200 supra.

10. **When the police after full enquiry has reported the case to be true, the Magistrate to whom the report is made, has no jurisdiction either under S 159 or S 202 Cr. P. C. to make a further enquiry into the same matter.**—(99) A N 87.

11. **Section does not contemplate a second**

J. 754

12. **Application of the section.**—S. 202 applies only if the Magistrate takes cognizance upon a complaint. There is no provision in the Code empowering the Magistrate to refer a case of which he has taken cognizance under S. 180 (c) for preliminary enquiry.—7 S 75; 24 P. R. 1689.

13. **Enquiry taken upon police**
d a judicial
aking cogni-
police report
(Pat)

14. **Case sent up under S. 476 Cr. P. C.**—S 202 Cr. P. C. has no application to a case sent up under S 476 Cr. P. C.—21 Cr 310 (N).

15. **Petty cases.**—It is an abuse of the power conferred by S. 202 Cr. P. C. to refer petty cases of assault and the like to the police for enquiry.—19 P. R. 1594.

16. After close of evidence.—Action after the close of the prosecution evidence, is not contemplated by S. 202 Cr. P. C.—(00) A. N. 189; 9 M. 282
17. After issue of process.—Reference under S. 202 Cr. P. C. after evidence had been taken for the complainant and process issued, is illegal 9 M. 282 ('96) A. N. 140
18. After accused is brought under arrest.—The previous enquiry provided for by S. 146 (=S. 202) before a complaint to taken up, ought not to be made after the accused has been brought before the court under a warrant.—21 W. R. 44; 9 M. 282. 6 S. 63
19. Departmental enquiry no substitute for. enquiry under S. 202 Cr. P. C.
 - (a) A previous departmental enquiry exonerating the accused from the accusation which formed the subject of complaint is not a sufficient substitute for the personal enquiry or the local investigation contemplated by S. 202 Cr. P. C.—33 P. R. 1887
 - (b) Where the action of the Magistrate is not taken under S. 202 Cr. P. C. but was apparently executive action in the form of a departmental enquiry which was continued by a further enquiry made under para 353 of the Police Regulations, held there was no judicial proceedings before the Magistrate and S. 476 Cr. P. C. had no application.—38 A. 32.
20. Order to show cause is not in effect an order under S. 202 Cr. P. C.—An order passed by a Magistrate calling upon a person to show cause why he should not be prosecuted under S. 211 I. P. C. is neither in form nor in effect, an order under S. 202 Cr. P. C. Such an order is not one under any provision of the Criminal Procedure Code.
21. Magistrate cannot call for a report from the accused.—See Note no 46 under S. 200 supra
22. Magistrate cannot base his order on the result of a previous enquiry.—The District Magistrate, on receiving a complaint, cannot call for and consider the papers regarding a previous petition for enquiry and the results of the local enquiry in pursuance thereof. The
23. Power to examine witnesses at the enquiry.—Under S. 202 Cr. P. C. the evidence
- 24.
25. Mesning of officer 'subordinate' to that Magistrate.—S. 202 Cr. P. C. does not apparently contemplate the subordination of a Magistrate of the first class to the District Magistrate. They are both Magistrates of the first class, and it would seem that the District Magistrate as a Magistrate of the first class, is not competent to direct another Magistrate of the first class, to make enquiry under that section P. R. 1912]. A Deputy Magistrate in charge of the District Magistrate's office, at headquarters, has no power as such, after taking cognizance of the complaint and examining the complainant on oath, to send the case under S. 202 Cr. P. C. for local investigation by the Subdivisional Officer, to whom he is by law subordinate to dismiss the complaint on the report of investigation by the latter.—[16 C. N. 855]
- (2) Procedure.
26. Magistrates duty on postponing issue.—If a Magistrate takes it upon himself to postpone the issue of process for compelling the attendance of the person complained against for any purpose at all, he is required either to enquire into the case himself or to direct a local investigation. The fact that a local enquiry has already been made, does not affect the proceedings necessary under S. 202 Cr. P. C., once process has been postponed.—[1st W. 1
27. Magistrate bound to record reasons.—Magistrate if he distrusts the statement of complainant, must record reasons before he takes action under S. 202 Cr. P. C.—21 C. N. 127 C. 141; 40 C. 111. 27 C. 631. (84) A. N. (02) A. N. 195. 11 A. J. 754; 15 A. J. 64 Pat W. 807; 6 S. 63.
- [Note.—But failure to do so is not most an irregularity and unless it occasions a failure of justice is not a ground for setting aside his order.—M. 546. 2 Weir 244; 10 M. T. 120]
28. Preliminary steps before action under S. 202. P. C.—The Magistrate is bound to examine the complainant. He can then issue summons or order enquiry under S. 202 or dismiss the complaint under S. 203 Cr. P. C.—13 C. 27 O. 621
29. Right of the complainant to be examined.—A complainant is entitled to be examined on his complaint, and if his case is found to be true to have process issued against the accused and for the attendance of his witnesses.—2410; 16 W. R. 68; Rat 934.
30. Referring complainant to the police.—It is not a proper course for a Magistrate to refer a complaint is made before him of an offence of which he has taken cognizance to refer the complainant to a police officer. He is bound, under the circumstances giving jurisdiction, to receive the complaint and deal with it according to law. A different course would defeat the purposes of the law, which is to give to the persons, who have been injured an access to justice independently of the police 12 B. 161; See Cr. R. 17 of '88.

31. Magistrate bound to take prompt action.—It is the highest degree improper for a Magistrate to put the complaint into his hutchery box and to keep it there without any orders for months—14 Cr. 271 (1).

32. Procedure when the person complained against is a police officer.—Whenever such a course is possible, upon a complaint being made against a Police officer of the rank of a Sub-Inspector of Police or of a higher rank charging him with having committed a cognizable offence, the Magistrate should hold an immediate local enquiry himself or direct that a local enquiry be made by a Magistrate of the first class and the Magistrate should proceed to the spot without delay. It is very improper to refer such a complaint to a superior Police officer for enquiry [20 Cr. 346 (Pat.), 22 O. C. 321, 21 Cr. 416 (A), 21 Cr. 649 (A), 20 M. 367, O. C. N. 109, 4 C. N. 600, (O. I.) A. N. 189]. In dealing with a complaint against a police officer, a Magistrate does not exercise a proper discretion in dismissing it under S. 203 Cr. P. C. on the mere report of a local investigation by a superior officer of the police. He should himself hear the witnesses on whom the complaint relies to establish the truth

of the complaint—14 C. 141, 3 C. N. 17 (O. I.) A. N. 47].

33. Complaint against subordinate officers.—S. 202 Cr. P. C. does not contemplate that any report can be collected from the accused, if the accused happens to be an officer subordinate to the Magistrate. A dismissal of a complaint on personal of such a report is irregular and the order of the Magistrate refusing to entertain the complaint must be set aside—14 C. 141, 13 B. 600, Rat 954.

34. Colling on the accused to show cause.—A Magistrate having jurisdiction to ascertain the truth of a complaint, may, before issuing the process under S. 202 take any preliminary steps for finding out whether the complaint is true or not. He may call upon the accused to show cause why a process should not issue against him. Accused may appear or not in obedience to this, whereas under a process issued under S. 202, the accused is bound to appear—6 B. R. 91. See 28 A. 421.

35. Magistrate holding enquiry need not hold a preliminary enquiry.—O need hunt. It is the en- r disposes in by the

36. Powers of the investigating officer.—There is nothing in S. 202 Cr. P. C. to prevent an investigating officer from making a full enquiry, by obtaining information from the complainant, and his witnesses, and the defendant and his witnesses if any—33 C. 1282; Rat 669; But See 11 C. N. 170.

37. Procedure after receiving the report.—After receiving the result of the local investigation directed under S. 202 Cr. P. C. the Magistrate is not bound to examine any witness or to hold any enquiry before he dismisses the complaint [19 Cr. 126 (Pat.)]. A dismissal of complaint after hearing the complainant and after considering the results of an investigation ordered under S. 202 Cr. P. C. amounts to a legal determination of the complaint [6 C. N. 295. See 11 A. J. 754]. When a complaint is dismissed, upon the report of the investigating officer without taking the complainant's evidence, it is improper to direct the prosecution of the complainant under S. 221 I. P. C. [21 Cr. 416 (A)].

38. Magistrate cannot defer orders in order to make private enquiry.—After the examination of a complainant the Magistrate should either dismiss the complainant at once or elect to hold a preliminary enquiry under S. 202 Cr. P. C.

39. Reference to an interested person.—Where a complaint being made against certain servants of a factory the subdivisional Magistrate referred the complaint to the Manager of the Factory for report on the circumstances of the petition, held it was highly objectionable to ask an interested party to make a report in judicial proceedings—19 C. N. 127.

40. Reference may be made to any subordinate.—The inquiry contemplated by this section may be made by any officer subordinate to the Magistrate even though he be clerk—36 C. 72.

40a. When complainant objects to the officer selected.—If the complainant protests against the investigation made by the officer selected to make the enquiry as provided by S. 202 Cr. P. C., it is better that process should issue compelling the attendance of the person complained against and that evidence adduced by the complainant be heard in his presence—11 A. J. 751.

41. Interference by District Magistrate.—A District Magistrate has no jurisdiction to order an independent enquiry under this section into a case in which a subordinate Magistrate has issued process [4 P. R. 1808; 27 C. 798. See also 30 C. 449; 27 C. 979; 4 C. N. 242].

(3) Right of audience at the investigation.

42. Right of audience at the investigation.—At 160 Cr. it to be But See

There is no law, no rule restricting a pleader from appearing for a complainant in a preliminary enquiry held by a Magistrate under S. 202 Cr. P. C. 1 S. 128.

(3) Procedure on receipt of Police charge-sheet.

11. A police report, under S 117 (1872)=S 157 would give jurisdiction to a Magistrate to enter upon an enquiry. But the Magistrate is not bound to enter upon an enquiry in all cases. He may determine, as he thinks expedient either to take no further steps, or entertain the complaint under S 190 (b) Cr P C [2 Weir 119]. Where a complaint is made by a police charge sheet, it is not necessary to examine the complainant before dismissing a complaint, as a police report is expressly excluded from the definition of a complaint in S. 1 (b) Cr P C. [2 Weir 216]

(4) The Magistrate who receives the complaint must deal with it himself.

12. The Magistrate who receives the complaint must deal with it himself under S 203 and 204 Cr P C and cannot send it to the District Magistrate for order. The Magistrate who has power to receive the complaint, has power to deal with it finally and it is his duty to do so. —10 C N 1086 9 C N 199 6 C N 813.

13. A District Magistrate cannot dismiss a complaint pending before a subordinate Magistrate.—A District Magistrate is not competent to remove a case from the file of a subordinate Magistrate to his own file, after the complaint has been made and warrant issued by the latter upon the footing of the complaint, and then suspend the warrant and dismiss the complaint. He is bound to proceed with the case from the stage at which it was, when he removed it.—10 B L (ap) 26 3 C N 490 See 30 C 419. 27 C 879, 27 C 788 4 C N 212. 12 W. R 53

[Note.—But if the Magistrate is of opinion, after perusing the record, that there was no case of a criminal character made out against the accused, he is not only competent but is bound to discharge the accused.—6 B L (ap) 6]

14. Magistrate to whom the case is transferred, cannot dismiss summarily.—A Magistrate to whom the case is transferred, cannot dismiss the complaint summarily, unless he has satisfied himself, by examining the complainant that there is no sufficient ground to proceed.—3 C N 1000 See 30 C 923, 9 C N 199; 3 C N 17.

15. The Magistrate who holds a local enquiry.—Under S 202 Cr P C is not competent to dismiss the complaint under S 203 Cr P C, 18 C N 95.

(5) Application of the section.

S 203, Cr P C, applies only to cases falling within Ch. XVI, where there has been no issue of process. Where the accused has been summoned to answer a charge, there is a proceeding within the meaning of Ch. XVII, and the complaint cannot be dismissed under S 203 Cr P C.—Bat 544; 11 A. J 431.

16. Procedure must be strictly followed.—Having examined the complainant the Magistrate must either (a) issue summons or (b) order

enquiry under S 202 Cr. P. C.; or (c) dismiss the complaint under this section.—13 C. 334. 15 C. N. 113-12 B 161.

(6) Magistrate cannot dismiss complaint on information supplied by the accused.

17. After the examination of the complainant, the Magistrate should either dismiss the complaint at once, or elect to hold enquiry under S 202 Cr P. C. before issuing process, where the Magistrate examined the complainant on the 24th April, and without dismissing the complaint then and there, adjourned the case to the 28th May, and then on that date, after making certain enquiries from the solicitor of the accused, and looking into papers which had been filed by the defence before the Police, dismissed the complaint, held that the procedure adopted by the Magistrate was wholly irregular, and that having virtually elected to hold an enquiry under S 202 Cr P C, he should not have dismissed the complaint without giving an opportunity to the complainant to adduce evidence in support of his case.—19 C N 143 Bat 363; 11 A. J. 151 21 M J 735 See 20 M. 358.

13. Where the complainant is disbelieved.—Where the Magistrate disbelieves the story of the complainant, the latter is not entitled to have all his witnesses examined by the Magistrate to whom the complaint was made.—14 C. 707 (F. B.) 21 C 921 6 C N. 293

(7) Magistrate is bound to record reasons for dismissal.

19. A Magistrate is bound to find on examining the complainant, that there is no sufficient ground for complaint, before he can dismiss the complaint.—40 C 41 27 C. 126 11 C 141; 11 C. N. 1000; 21 M. J. 192

[Note.—Under S. 203 Cr. P. C. the Magistrate must record his reasons for the dismissal of a complaint, and the reasons must appear in the order itself in order based upon police report, is sufficient if the police report forms part of the order.—[7 M. T. 175]

20. *Magistrate is bound to record reasons—*

dismiss
ch 17
unless
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11. DISMISSAL OF A COMPLAINT
5 M. T. 79

(8) What amounts to a dismissal under S. 203 Cr. P. C.

21. Refusal to issue process on a supplementary complaint.—On a complaint made against certain persons, the Magistrate proceeded against only one of them, and convicted him. The complainant subsequently appeared before the Magistrate, and asked for process against the remaining accused. This was refused, held that the order refusing process, was, to all intents and purposes, an order under S 203 Cr P C and purporting, an order under S 203 Cr P C.—29 C 457. See 12 C. N. 69; 20 Cr. 871 (F. B.)

25. **Casa sont np after enquiry under S. 202 Cr P C to another Magistrate.**—When a Magistrate sends a case to the police under S. 202 Cr P C for investigation and report, the police officer to whom the case is sent, acts wrongly in sending the papers after investigation to another Magistrate and applying to him for a *Kharid ul-voqouf* order when the case is pending in the Court of the Magistrate who referred it to the police.—33 P L 1918
26. **Order made in the Magistrate's private room.**—It is improper for a Magistrate to dismiss a complaint which sitting in his private room and without giving the complainant or his pleader an opportunity of being heard.—10 C. N. 1064

27. **General principle—the question of motives.**—In exercising his discretionary power of summary dismissal on the complaint the Magistrate should not allow himself to be influenced by considerations altogether apart from the facts adduced by the complainant in support of the charge, nor by a consideration of the motive by which the complainant is actuated the expression "sufficient ground" in S 203 points exclusively to the facts, which the complainant brings to the knowledge of the Magistrate and to their establishing a *prima facie* trustworthy case against the accused.—13 B 510 (F.B.) 23 M J 510 Rat 549
28. **Ultior considerations e.g., prospect of stirring up religious feelings.**—It is not competent to a Magistrate to refuse to take up a complaint or dismiss it summarily on the ground that if the complaint was entertained, it would tend to stir up old religious feuds and bring numerous other complaints.—Rat 562
29. **Complainant a tool in the hands of others.**—A complainant should not be dismissed on the grounds, (1) that the Magistrate believed the complainant to be a tool to be used by the complainant to stir up religious feuds and bring numerous other complaints.—Rat 562
30. **Offence committed long ago.**—A complaint cannot be dismissed on the ground that the complainant was actuated by malicious feelings against the accused, or that the offence was committed six years ago.—Rat 549
31. **Want of personal knowledge.**—A complaint should not be dismissed on the ground that the complainant had no personal knowledge of the circumstances alleged by him.—Rat 167a, Rat 70

32. No chance of conviction.—A Magistrate acts without jurisdiction in dismissing a complaint of an offence under S 303 I. P. C. on the ground that "the case was one in which no jury would convict the person complained against"—S3 C. N. 392
33.
- R. 33.
34. Complaint by low-caste man.—The fact that the complainant is of low-caste and the he charged him of S. round for W. R. 32.
35. Second or third publication of libellous matter.—The Indian Penal Code makes no exception in favour of a second or third publication

cannot dismiss a complaint on the ground that the libellous matter complained of is a mere repetition — 12 B. 167.

36. Denial by the person complained against.—When a complaint was filed regarding the conduct of a government officer the Magistrate called for a report from the officer concerned and feeling himself satisfied with it, rejected the complaint, *held* that the action of the magistrate calling for the report was improper.—*Rat* 1964 14 M C 141; 3 C N. 17; 16 W. R. 97; 29 M. 387; 10 T. 293; 10 A. 85; 21 Cr. 621 (Pt. 1).

37. **Absence of sanction.**—A Magistrate may refuse to entertain a complaint which has been filed without the necessary sanction under S 193 but he cannot dismiss it—24 M 337
38. **Death of the complainant.**—A criminal case does not abate on the death of the complainant and a Magistrate cannot dismiss the case on that ground—16 Cr 713 (M)
39. **Adverse report by the police.**—A Magist-

rate without examining the complainant passed an order directing that a copy of the petition of complaint should be sent to the police station calling for a report of the matter and on receipt of the report dismissed the complaint under S 203. Held that the Magistrate had not complied with the provisions of S 202 Cr P. C. and ought not merely on the report he had received, to have dismissed the complaint under S. 203 Cr P. C.—93 55.

IV. GROUNDS OF WHICH A PETITION MAY BE DISMISSED.

40. **Materials on which the order of dismissal may be based.**—The reasons for dismissing a complaint should be based on inferences of facts arising from or disclosed by (1) the complainant, (2) the examination of the complainant, (3) the investigation if any, made under the powers conferred by S. 202 Cr. P. C. *Nothing outside these three sources is extra-judicial and must be discarded*—9 B R 742.
41. **The three cases in which a complaint can be dismissed.**—A Magistrate can dismiss the complaint only in three cases: (1) if he, upon the statement of the complainant, reduced to writing under S 200, finds no offence has been committed, (2) if he distrusts the truth of the statement made by the complainant, and (3) if after further enquiry he holds there is not sufficient ground for proceeding—13 B. 600, 9 B 742 27 C 921 11 C 141
42. **The result of police investigation.**—The dismissal of a complaint after considering the result of a police investigation directed by a Magistrate under S 202 is authorized by S. 203
C D R 602.
43. **Delay in instituting complaint after obtaining sanction.**—A Magistrate has power to dismiss a complaint on the ground that the complainant has taken no steps to prosecute for 3 months after obtaining sanction—6 M II (app) 15
44. **Complainant not personally present in Court.**—Where a complaint under Nos 408 and 109 I. P. C was presented by the complainant's mukhtar instead of the complainant who was not present in Court, held that the Magistrate was justified in dismissing the complaint as he had no opportunity as required by S 200 to examine the complainant.—Ht 625

45. **Complaint based upon privileged evidence.**—Where a complaint is based upon some official communication whether oral or in writing, falling within the scope of S. 123, 124 or 125 of the Evidence Act, and there is no likelihood of proving the communication by primary and direct evidence, the Magistrate is fully justified in dismissing the complaint under 203 Cr P C—4 P. W. 1910.
46. **That the offender is unknown.**—Where the complaint discloses a cognizable offence against an unknown offender, the Magistrate must record under this section that there are in his judgment no sufficient grounds for proceeding. It will also be open to him to communicate with the police regarding the information supplied to him, or to leave it to the complainant either to apply to the police or take such other measures as he thinks proper for discovering the offender—Pun. Rec. Co.—No. VIII. date 27-6-84.
47. **If the complainant does not take out summons.**—A complainant, by omitting to take out a summons, cannot keep a case hanging over a man for an indefinite period. The summons is merely a means of procuring attendance, but if the accused, appears of his own accord, without a summons, he is entitled to require that the complaint shall either be proceeded with or dismissed.—26 B 532.
48. **Absence of the complainant.**—Where a Magistrate called upon the complainant to produce proof *ex parte* to justify the issue of process, and upon default, dismissed the charge, the High Court declined to say that as a matter of law, the Magistrate had acted illegally in dismissing the case—17 W R 3.
49. **That the case is one which should be a Civil Court.**—see (VI) Cases of a Civil Nature (67 92) [infra].

V. SECOND COMPLAINT ON THE SAME FACTS.

50. **Power to revive complaint.**—A Magistrate can revive, rather than re-entertain a complaint that has been dismissed under S 203 or 204 Cr. P. C., or in which the accused has been discharged, under S 213 by himself or by a Court of coordinate jurisdiction, without an order under Nos. 137 or 439, setting aside the order of dismissal or discharge—29 M 126 (F. B.) [Datta and Sankaran Nair Jcs].
Pee—28 C 622

29 1 7. (15) A. N. 86. (61) A. N. 69. 9 A 57.
5 A J 137. 3 A. J 562. 16 Cr 814 (M). 4 M T.
140. 1 H 64. 9 B R. 230. 3 Ind J 316. 21 Cr
660 (P. R). 10 P R 1911 (F. B.). 25 P. W. 1908.
5 P. R. 1902. 6 C O 202. 2 L. R. 27. 1 N 18
8 S. 196
Con—23 C 993. 24 C 296. 24 C 629. 4 C N
26. 4 C N 46. 3 C N 700. 2 C N. 290. 19 B
742. 22 H. 649. 22 A. 106. 24 M. 337. 24 M 251.
2 Weir 217. 33 P. R. 1591. (101) U. B. 24 19

51. **Note.**—Unless there are special reasons a Magistrate might not entertain a complaint for the second time [10 P. R. 1911 (P. B.)]. The first discharge of the accused under S. 219 Cr. P. C. the complainant having failed to appear on call does not bar the jurisdiction of the Magistrate to entertain a second complaint on the same facts. [28 M. 710 S. S. 1971 Sec. (79) A. N. 61, 36 A. 53. But where the complaint has been dismissed after hearing the complainant and his witnesses a second complaint will not be entertained. 21 W. R. 75.]
52. **Dismissal on technical grounds.**—8 Suter P. C. refers to the procedure of a Magistrate who has taken cognizance of an offence and S. 165 directs a Magistrate from taking cognizance of certain offences unless sanction is obtained. Where therefore a complaint is dismissed for want of sanction, a second complaint after the sanction is obtained, may be entertained. 21 M. 317 29 A. 71 Sec. (79) A. N. 67.
53. **Where the District Magistrate has refused to order further inquiry.**—There is nothing illegal in or ultra vires of a Magistrate receiving a complaint which he had dismissed under S. 203 Cr. P. C. after the District Magistrate has on application made to him, declined under S. 437 Cr. P. C. to order further inquiry

into the complaint.—36 C. 415 8 W. R. 6. But see 11 P. W. 1910

54. **Second complaint on same facts by another person.**—When a complaint by a woman charging the accused with wrongfully taking away her daughter was dismissed, a second complaint alleging the facts but suggesting a different offence for the first husband should be entertained. 29 A. 7 (79) A. N. 67.
55. **Where a part of the complaint has been reported to be false.**—The complaint to the police was for a non-cognizable as well as a cognizable offence, and the police enquired into the latter charge only and reported it to be false. The Magistrate thereupon directed the police officer to strike off the offence complained of from the list of reported offences. Held that under the circumstances, there was no bar to the complaint, so far as it related to the non-cognizable offence being taken up and proceeded with, upon an application by the complainant.—5 B. 653; Sec. 21 C. N. 575.
56. **Presidency Magistrates.**—A Presidency ^{ant case} ^{which he} ^{C. 652.}

VII. CASES OF A CIVIL NATURE.

57. **General Principle.**—Every discouragement should be given to the habit of rushing into the Criminal Court, where a Civil dispute arises.—[33 P. L. 1911.] If a Magistrate is of opinion, after perusing the record, that there was no case of criminal character made out against the accused, he is not only competent but is bound to discharge the accused. [O B. L. (ap) 10]
58. **Process cannot be refused because Civil Suit would be more appropriate.**—If a complaint is duly made before a Magistrate, and the act imputed appears to amount to an offence, ^{and that the} ^{is bound to} ^{that a Civil} ^{and appro-} ^{O W. R. 10:}
59. **Where the question relates to Civil rights.**—Where the question is one of civil rights, between the landlord and his tenant, it would be better to leave such a matter as this to be settled by the Revenue Court than that it should be taken up by a Criminal Court. 17 Cr. 406 (31).
60. **Complaint relating to excommunication**

by ecclesiastical authority.—Where the complaint was about threat of an illegal sentence of excommunication by the ecclesiastical authorities, the High Court held that the proper course for the Magistrate was to postpone the trial till the complainant had proved in a Civil Court the incompetency of the ecclesiastical authority to exercise the powers it had assumed.—8 M. 140.

61. **Pendency of Civil Proceedings.**—Where a Magistrate refused to enter upon a criminal prosecution until after the termination of the Civil proceeding, pending at the time, and connected with the criminal charge, the High Court refused to interfere.—[39 W. R. 60].
62. —

misses a complaint (e.g., one of them) after making proper enquiries and having satisfied himself the case was one which ought to be tried by a Civil Court [11 W. R. 64, 9 W. R. 21]. But if the Magistrate exercises his discretion improperly and dismisses a complaint of cognizable offences on the ground that "the case was completely for the Civil Court" without assigning any satisfactory reasons for his opinion, the High Court will interfere [29 W. R. 60].

VII. MISCELLANEOUS.

(1) Disposal of Property (subject-matter of complaint.)

63. S. 517 Cr. P. C. applies only, when an enquiry or trial in a Criminal Court is concluded. Where a complaint is dismissed under S. 203 Cr. P. C.

it cannot be said that there was any inquiry or trial in the Magistrate's Court. Where, a complaint is dismissed under S. 203 Cr. P. C. and there are grounds for believing that certain property was used by the complainant for fabricating false

evidence against the accused, the Court has jurisdiction to pass an order directing the forfeiture of such property. In such a case, even if the order purports to have been made under S 517, it should be held to be an order under S. 523 Cr P C.—24 M. J. 1; See 9 M. 448.

(2) Compensation for false complaint.

64. When a Magistrate dismisses a complaint without issuing process for the attendance of the person complained against, an order for the payment of compensation to the accused is not valid.—29 A. 137 3 P R 1896 14 P. R 1897

(3) Prosecution for false charge.

65. Final determination of complaint, condition precedent.—The original complaint must first be disposed of, i.e. dismissed or otherwise judicially determined, before proceedings under S 211 I P C can be taken against the complainant.—3 C N 758. 33 C 1. 4 O J 88. See 40 C 41
66. Complaint must have opportunity of substantiating his charge.—Before a person can be prosecuted for instituting a false complaint, an opportunity must be given to him to substantiate the charge.—16 W R 67 16 W R 37 13 W R 37 4 C L 534 2 C L 389. See 10 C N 773 27 C 921

67. What is giving opportunity.—Although a person should not be prosecuted under S 211 I P C, until he has had the opportunity of establishing the truth of his complaint, yet, so long as he has the opportunity which the Code gives him, and the dismissal of the complaint is only after hearing and taking such steps as are provided by the Code, it cannot be said that he has not been given an opportunity of establishing the truth of his complaint [6 C N 293 20 Cr 349 (Pat)] A Magistrate is competent to

8 A. 34. (77) A N 268]

68. Prosecution on police report.—When a complaint to a Magistrate is sent to the Police, and reported by the latter to be false, and the Magistrate dismisses the complaint on the basis of the report, he ought not to sanction a prosecution of the complainant without giving him an opportunity to substantiate before him, the charge contained in the petition of complaint.—6 C 496. 7 C 87. 14 C 707 (F.B.); 5 A 30 8 A 35. 10 M 232 (F.B.); See however 7 C. 208; 7 M 202 Rat 524. 22 B 590.

(4) Further enquiry.

69. See Notes under S 437 infra

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient

Issue of process

ground for proceeding, and the case appears to be one in which according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column a warrant should issue in the first instance, he may issue a warrant, or if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

Notes.

(1) Preliminary.

1. Meaning of "commencement of proceedings".—S 201 Cr. P C applies only to cases falling with Ch XVI where there has been no issue of process. Where the accused has been

summoned to answer a charge, there is a commencement of proceeding within the meaning of Ch XVII, and the complaint cannot be dismissed under S 203—Rat 544.

2. Proceedings under chapter XVI. must precede order under this section.—

(i) A Magistrate must issue process against the accused under this section, without first examining the complainant or taking note of an actual complaint. [2 W 211]

(ii) A Magistrate has no jurisdiction to issue a warrant or order of arrest in *anticipation of the offence being committed*. In a such a case the police should be directed to inquire.—[B 100]

3. Magistrate's powers to act at once.—A Magistrate has full power, upon receipt of a complaint, to issue a summons to the person accused if he believes in the truth of the complaint. If he finds there are good grounds for proceeding, it is not necessary for him to call for an enquiry, beforehand. [21 Cr 220 (1st)] To insist with a pre-conception that a complaint is false is not a sound method of procedure. If the Magistrate considers that the complainant is entitled to consideration, it is his duty *then and there* to proceed under s 204 Cr P C. [11 A J 754]

4. Process to be issued only on sufficient materials. Process ought not to be issued against a man, unless there are materials to justify the issue of process. The mere fact that a man states certain things in the petition of complaint, (which on being examined in oath, it does not substantiate), is not sufficient to justify the Magistrate in issuing process.—[18 Cr 226 (C)] The only condition requisite for the issue of process is that the complainant's deposition must show some ground for proceeding. [(61) W H 31 37]

5. Caution necessary before issue of process.—An accused person ought not to be dragged off to answer a charge merely because a complaint has been lodged against him. The Magistrate should see if there is a *prima facie* case against the accused, and if not, should refuse the summons, or direct the complainant first to produce his witnesses, or one or two of the chief of them, and should then grant or refuse the summons according as a *prima facie* case is or is not made out.—Oudh Cr Dig p 7

6. Issue of process when complainant has no personal knowledge.—In a case, where complaint is by a person not having personal knowledge of the allegations made therein (e.g., the Government pleader) the Court should, before issuing summons, satisfy itself upon proper materials that a case has been made out for issuing summons.—10 C. N. 1090

7. Refusal to issue process when illegal.—When the police has reported the case to be true, and the Subdivisional Officer passed final orders in the case, namely "enter true", he cannot decline to enter on a judicial enquiry, merely because in his opinion, there was no chance of conviction, and no useful purpose would be served by an inquiry.—20 C 410. See (701) A N 5: cf. 21 A 267

8. Process ought to issue ordinarily against all the persons accused.—It appears to be a common fault on the part of Magistrates to issue process against some of the accused, although there is no reason in the

examination of the complainant, to discriminate between the several accused. Such a procedure is without jurisdiction and in every view objectionable.—4 C N 550

9. Meaning of the expression "in the opinion of a Magistrate."—The opinion of the Magistrate referred to in the section is his own independent opinion. Where a Police enquiry is ordered, and the result reported, the opinion expressed by an Inspector of Police, will not warrant a issue of process, if without it, the Magistrate would have acted differently. [4 M H 162]

10. Process unnecessary if the accused appears of his own accord.—Where the accused appears voluntarily to answer a charge, the want of a summons or of a complaint in order to the issue of a summons, becomes immaterial. [1st, 8] Issue of process is unnecessary, if the accused were already present, when the case came before the Magistrate. [5 F. R. 1010]

11. Accused may appear without being summoned.—A complainant, by agreeing to take out a summons, cannot keep a case hanging over a man for an indefinite time. The summons is merely a means of procuring attendance, but if the accused appears of his own accord without a summons, he is entitled to require that the complainant shall either he proceeded with or dismissed. [20 B 552]

(2) Who can issue process.

12. Only the Magistrate having seizure of the case can issue process.—In a case made over by the Joint Magistrate for disposal, to a Deputy Magistrate, the latter convicted some of the accused but refused process (subsequently to the conviction) against the rest, held that a subsequent order by the Joint Magistrate for the issue of process against them was without jurisdiction. [32 C 763] A Magistrate who receives the complaint and examines the complainant, should himself pass an order dismissing the complaint or issuing summonses. [21 A 267]

issue p
[10 C 2
212]
process,
all a writ in ordering the Police to make an independent enquiry into the same case. [4 F. R. 1805].

13. Effect of refusal to issue process.—The order made by a Magistrate refusing to issue process as unnecessary amounts to a discharge. [1 Pt Henderson J in 32 C 743]

14. Effect of refusal to proceed after warrant.—If a Magistrate issues warrants against the accused, and afterwards refuses to take up proceedings against them, the termination of proceedings amounts to an order of discharge. 4 C. N. 212.

(3) Substitution of warrants for summons and vice versa.

15. Magistrate's discretion in issuing summons instead of warrant.—Magistrates should

use the discretion given them by this section, and should not issue a warrant as a matter of course, especially in cases where a petty charge of defamation, insult to provoke a breach of the peace, or criminal intimidation is preferred before them—C P. Cr. Cir. Pt. 11, No. 16; Oudh Cr. Dig. p. 8

16. Power to cancel warrant and substitute summons.—A Magistrate has a discretion, under S. 204 Cr. P. C., sufficient cause being shown, to cancel the warrants issued at first against an accused person and issue summons instead. 1 S. 69. 7 S. 40

17. Issue of warrant instead of summons does not vitiate proceedings.—If a Magistrate issues a warrant in a case in which he ought to have issued a summons, his mistake will not be a sufficient ground to quash the subsequent conviction.—1 W. R. 10 Cr. R. 10 of 18.1.06

18. Cases in which a bailable warrant ought to be issued.—See S. 76 (11) M. N. 452.

19. What does not amount to a process.—A mere notice to the person complained against, that a preliminary enquiry will be held in the matter of the complaint, does not amount to a summons. Such a notice is neither contemplated by the Code nor is it one of the forms in the Fifth Schedule—23 M. L. 1.

20. Person complained against not an accused till process is issued.—Sec. (1) Right of audience etc. (11) under S. 202 Cr. P. C.

(4) Process fee.

21. Court fees.—See Court Fees Act VII. of 1908 S. 20 and the Rules framed by the various High Courts as to the payment of Court fees for issue of process etc.

22. Petition in maintenance cases cannot be dismissed for failure to pay process fees.—An application for maintenance should not be dismissed under sub (3) for failure of the applicant to comply with an order for the payment of process fees, as the application does not relate to any offence and process fee is leviable under the Court Fees Act only for an offence—16 M. 231.

23. Default due to repeated adjournments. A complainant should not be required to repeatedly summon his witnesses on payment of the process fee, simply because the Magistrate has been unable to record the evidence on the date originally fixed for examining them. In such a case his duty is to direct the witnesses to appear on an adjourned hearing.

60 P. L. 1912

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

Notes.

1. The application of the section.—The application of S. 205 is not limited to summons cases only, but it extends to all cases in which a Magistrate may issue summons. Although the case may be one in which a warrant may be issued in the first instance, it is not necessary for the Magistrate to do so. He has full liberty under S. 76 (2) Cr. P. C. to cancel at any time a warrant and substitute summons. The section, therefore, applies to all such cases, in which the Magistrate in his discretion, has thought fit to issue a summons instead of a warrant or cancelled a warrant and substituted summons instead—G. A. 59. 21 C. 554. 20 P. W. 1508. See 18 B. R. 23 (1).

2. Section does not apply after warrant has been issued.—S. 205 Cr. P. C. applies only to a case in which the accused persons has been summoned, where a warrant is issued to compel the attendance of the accused, he cannot be exempted from personal appearance in Court, unless he is by reasons of his illness, unable to attend personally.—13 C. N. cl

3. Scope of S. 205 Cr. P. C.—Where a Magistrate has erred in issuing a warrant instead of a summons, he can, on discovering his mistake,

make an order discharging the bail bond and direct the major process of warrant to take effect as the minor process of summons. The process issued being then in law a summons, the Magistrate has power to make an order under S. 205 Cr. P. C.—1 S. 10.

4. Personal attendance should be dispensed with in the case of pardanashin ladies, unless their is strong likelihood

with having abetted the offence, and complaint was couched in vague terms, held, that the wife was not entitled to exemption from personal attendance, but as to the three others, they should be exempted at any rate, until a prima facie case is made out against them—(7 S. 181; G. A. 59; 17 C. N. 1214)

5. **Pardanashin ladies of respectable family charged with grave offence.**—Where two pardanashin ladies belonging to a respectable family, were charged with grievous hurt under S 320 Cr. P. C. the High Court passed the following order: "We direct that the two petitioners be allowed to appear at the inquiry or trial by their pleader or pleaders, subject to their having to appear before the court to test the veracity of the plea, should the case be proved against them, and the trial will in consequence be held in the case be committed to the Court of Session, the personal appearance of the ladies may be dispensed with till the Session Judge makes the order."—17 C. N. 1215
6. **The rule does not apply to complainants.**—Pardanashin women, cannot avail of their claim exemption from personal attendance in Court. The Magistrate cannot dispense with the personal attendance of the complainant, under the provisions of this section, if she is a pardanashin lady.—5 A 92.
7. **Powers under this section not confined to pardanashin women.** The power of substituting summons for warrant is not limited to the case of pardanashin women. The power should be observed in S 8, 167 be freely utilized in the Province of Sindhi, and especially in the case of female accused. 7 S. 10 S. 6 S. 203 1 S. 69
8. **[Note.**—In 1 S. 69 the Magistrate issued bailable warrants against some ladies, who were subsequently found to be pardanashin ladies. They applied before the warrants could be executed for exemption from personal appearance. The Magistrate refused the application, thinking that he had no power to do so having issued warrants in the first instance. Held that the Magistrate could substitute summons for the warrants under S 75 cl 2 and then act under S 203 Cr. P. C.]
9. **Up to what stage of the case personal appearances may be exempted.**—When an order under S 203 has been made, the provisions of this section are complied with, when the pleader pleads or refusing to plead to the charge under S 235. The terms of S 306 (2) support this view for it contemplates the absence of the accused up to the stage of the judgment and even after judgment after that stage where the judgment is one of acquittal or one awarding a sentence of fine only.—[6 S. 206.] A Criminal Court should abstain from compelling a Pardah woman to attend.
10. **The Magistrate's discretion.**—A Magistrate can excuse the attendance of an accused person as often as he pleases.—1 C. N. cxxx
11. **Right to maintain purdah in Court.**—A pardanashin lady when appearing in Court as accused, can claim to be brought into Court in a covered tonga and arraigned without showing her face.—[1 B L (S N) v.] She can also claim to give evidence from her palanquin. [93 P.R. 1857].
12. **Pardanashin witnesses.**—Pardanashin women, cited as witnesses can be examined in suitable cases, on commission but the better course would probably be to examine them in chambers.—1 S 237 1 S 5
13. **Appearance by pleader without permission, on receipt of summons does not amount to contempt.**—In a summons cases, an appearance was made on behalf of the accused on the day fixed for trial, by his Mukhtar who asked the Magistrate to dispense with the personal attendance of the accused. The Magistrate refused the application and served a notice on the accused a notice under S 174 I. P. C. for non-attendance on service of summons. Held that the accused did make an appearance though not a personal appearance, and he was not liable to prosecution for contempt.—27 C 985.
14. **Appearance by pleader must be by special permission.**—Where no special permission has been given to appear by pleader the Magistrate is not competent to take the presence of the pleader as the presence of the accused and to proceed to decide the case in the accused's absence.—21 W R. 23
15. **How far a pleader can act for the accused.**—See Note No 9 above
16. **[Note.**—In 1 S. 69 the Magistrate issued bailable warrants against some ladies, who were subsequently found to be pardanashin ladies. They applied before the warrants could be executed for exemption from personal appearance. The Magistrate refused the application, thinking that he had no power to do so having issued warrants in the first instance. Held that the Magistrate could substitute summons for the warrants under S 75 cl 2 and then act under S 203 Cr. P. C.]
17. **Does the rule apply to security proceedings?**—In 2 Weir 54 it has been held—that the Code makes a marked distinction between bonds for keeping the peace, and bonds for good behaviour. Sec 203 is not applicable to proceedings under Ch. VIII B. Therefore a person called upon to show cause why he should not be bound over for good behaviour cannot be permitted to appear by agent.
18. **[Note.**—In 1 S. 69 the Magistrate issued bailable warrants against some ladies, who were subsequently found to be pardanashin ladies. They applied before the warrants could be executed for exemption from personal appearance. The Magistrate refused the application, thinking that he had no power to do so having issued warrants in the first instance. Held that the Magistrate could substitute summons for the warrants under S 75 cl 2 and then act under S 203 Cr. P. C.]
19. **Reasons for refusing leave to appear by pleader must be recorded.**—The Magistrate the penalty. A Magistrate has no legal authority to secure the attendance of the agent by a bond taken from the agent himself.—5 B H. (C C) 64

should place on record his reasons for refusing an application for leave to appear in Court by a pleader, more particularly when the accused are *pardanashin* women.—[6 A. 69]

20. When the accused is an invalid.—A Magistrate acts unreasonably in enforcing the personal appearance of an accused person who is an invalid.—6 C. N. 115.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. (1) Subject to the provision of section 413, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Proposed amendments to the section.—In subsection (1) of section 206 of the said Code, after the words "or any Magistrate," the words and sign "(not being a Magistrate of the third class)" shall be inserted.

Notes.

1. *Scope of the section.*—The powers conferred under S 206 Cr. P. C. convey authority to carry into effect any of the provisions of Chapter XVIII of the Code. The procedure to be adopted under Ch XVIII is not confined to cases exclusively triable by a Court of Sessions, but is also applicable to cases which, in the opinion of the Magistrate concerned, ought to be tried by such court.—3 A. 477.

2. "Magistrates empowered in this behalf"

(a) In Madras—All Magistrates [Port & G Gaz 1873 p 717] except the Tashildar Magistrates of Taluks in which there are stationary sub-Magistrates [Port & G Gaz 1893 Pt 1 p 579]

(b) In Bengal—Formerly all second class Magistrates were so empowered. But the power has been withdrawn [See Cal Gaz 1891 Pt 1 p 1000]

(c) In Punjab—Second class Magistrates are not empowered to commit [See Punj Gaz. of 9.3.83]

3. *Inquisitions by coroners in Calcutta and Bombay.*—An inquisition drawn up by a Coroner, has the effect of a valid commitment on being accepted by the High Court and on the officers of the Crown drawing up a charge in accordance with it.—31 C. 1. See Ss 24-26 and 29 of Coroners Act (IV of 1871).

4. *Effect of commitment by Magistrate not empowered.*—A commitment made by a Magistrate having no jurisdiction is no proper commitment and no reference to the High Court is necessary to have it set aside.—11 C. L. 53. But See 4 L. B. 49 (301)

5. *Commitment to the wrong Court.*—

(a) *To High Court.*—The High Court in its original criminal jurisdiction, has power to try

cases committed to it by the Maffiasal Magistrate and the commitment is not void by reason of the fact that a Sessions Court in the Maffiasal has local jurisdiction in respect of the offences *Per Sadaria Aliqui J* in 42 M. 791. 15 D. 200

(b) *To the wrong Sessions Court.*—A commitment to a wrong Court—e.g.—a Sessions Court having no jurisdiction is illegal and must be quashed, 36 M. 357.

[Note—This view is opposed to that taken in S B 312 16 B 200 (201) 2 B R 394. 18 A 350 (352)—in which the High Court refused to set aside the commitment and transferred the case to the proper forum. These rulings lay down that the commitment is not to be set aside unless the error in procedure has led to a failure of justice.]

(c) *To courts of Magistrates empowered under S. 30.*—A Magistrate has no authority to make over a case cognizable exclusively by a Court of Session to a District Magistrate who is a Deputy Commissioner specially empowered under S. 30 to try such cases.—7 C. N. 457.

6. *Commitment by Magistrate not having territorial jurisdiction.*—S. 531, applies to a case, where a Magistrate, being empowered to commit to Sessions, but not having territorial jurisdiction in the place where the offence is alleged to have been committed, commits the case to a Sessions Court having jurisdiction over the place.—17 M. 402; 26 M. 640. See 30 M. 94; 7 D. T. 26

7. *Procedure, when the case is committed to a wrong Sessions Court.*—Where a Magistrate commits a case to a Sessions Judge, in which the offence was committed beyond the jurisdiction of that Judge, the latter has to enquire and ascertain whether he has jurisdiction,

and if he thinks he has none, he has to discharge the accused or report the case to the High Court for disposal under s 211 Cr. P. C.—*Est 222*.

8. **Interference by District Magistrate.**—For the purposes of commitment, a subordinate Magistrate has equal powers with the District Magistrate. A District Magistrate cannot give to the subordinate Magistrate instructions regarding the commencement of preliminary enquiry

or the desirability of commitment. If he desires to interfere, he has to withdraw the case to his own file under s 192 Cr. P. C.—*8 W. R. 61*.

9. **Analogous law.**—A District or Subdivisional Magistrate to whom a case has been submitted under s 319 *infra*, may instead of himself punishing the accused, commit the case to the Sessions—*11 B 210*

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or in the opinion of the Magistrate ought to be tried by such Court

Notes.

1. **Meaning of the expression "ought to be tried."**—The words "ought to be tried" (by the Court of Session) in s 207 and 211 Cr. P. C. must be read with s 234 of the Code and a case which ought to be tried by a Court of Session is one which the Magistrate is not competent to try or in which in his opinion, adequate punishment cannot be inflicted by him.—[4 B R 85, 24 C 429, *Est 110*, 20 Cr 97 (N), 11 S 79, 55 B 21 (O), A N 28, 6 A J 989. See 22 P R 1862]

2. **Magistrates discretion.**—A Magistrate has a discretion under s 207 Cr. P. C. to commit a case to the Sessions if he is of opinion that he cannot adequately punish the accused.—*11 A J. 439*

3. **Scope of the section.**—"Reading s 234 with s 207 Cr. P. C. it would seem that the Legislature has given to a Magistrate discretion to commit to a Court of Session only such of those cases which he is competent to try as, in his opinion ought to be tried by such Court because the offence cannot be adequately punished by himself. If a case be one which a Magistrate is both competent to try and adequately punish, then apparently he has no discretion to commit it." *Per Crouch A J C in S S. 23*

4. **Grounds on which a Magistrate may decide that a case should be tried by a Court of Session.**—In 42 M. 83, *Sadania Ayyar J* following the rulings in 3 C. 493 and 1 M 289 (F. B.) and dissenting from 21 C 129. (O), A N 28 and 6 A J 989 has held that the expression "ought to be tried" does not restrict the grounds on which a Magistrate should arrive at his opinion, to the want of jurisdiction in himself or to his inability in his own opinion, to sentence the accused adequately. If the Magistrate considers, for instance, that a complicated question of law arises, or that some connected matter is already before the Court of Session, or that the facts are such that trial with the aid of a Jury or with the aid of Assessors (who may be chosen from experts in the particular matters involved in the case) would be a more satisfactory procedure, there is nothing to prevent him from committing the case to the Sessions. [*Con C P. Cr. Cir Pt II p 39*].

5. **In Rioting Cases.**—Where there is any good cause why the case should be tried by the Court of Session, [in this case, the opposing faction in a rioting case had already been committed to the Sessions under ss. 304, 325 and 148 I. P. C., and the Magistrate was of opinion that both sets of rioters ought to be tried by that Court], the commitment should be made, and that cause is not always limited to incompetency of the Magistrate to try the case or to pass an adequate sentence.—*13 P. R. 1017*.

6. **Where one of the two charges is triable exclusively by Sessions Court.**—Where an accused is charged with two offences, one of which the Magistrate is competent to try, but not the other, the proper course is committal.—(3d) A N. 190

7. **Effect of irregular commitment.**—Though the offence of theft in a building is not triable exclusively by a Court of Session there is nothing to prevent such a court from trying a person accused of such an offence and duly committed to it for trial.—[16 M J 325. See 11 A J 439; 21 C 429, 7 M T 187.] In 15 B R 993 and 38 B 114 the High Court of Bombay quashed the commitment.

8. **Improper assumption of jurisdiction.**—When a Magistrate himself tries a case not exclusively triable by a Court of Session and commits

10 B 580 see 16 P R 1895

9. **Magistrate not to shirk responsibility.**—nature as trial and a Magis- wastes the

valuable time of the Judge and the Jury on the one hand, and causes unnecessary detention to the accused besides causing considerable avoidable

expense to the Government. A Magistrate by adopting such a course deliberately shirks the responsibilities of his office.—1 S. 103

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner herein after provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution and in such case the prosecutor may re-examine them.

(3) If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

210. (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(2) As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

211. (1) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Court a further list of the persons whom he wishes to be summoned to give evidence on such trial.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

which he is B 315]. "A the evidence was confessed, as in many cases confessions are retracted at the trial [Rat 842; 3 N P 27]. A commitment made without taking any evidence in a preliminary enquiry is illegal [Cr R. 10-1-76] It is the duty of the committing Magistrate to make a full and careful enquiry into the offence and to record, all the evidence procurable [1 Bar. S 338 Rat 812].

3.

information If such witnesses are not called, in the absence of reasonable belief that they would not speak the truth if called, an inference adverse to the prosecution may reasonably be drawn. [No such unfavourable inference will be drawn

he accused)
121 (124):
6-2 Weir
16 A 84

121 Rat 551 (552) See 14 C. 245 16 A 84 (F. B.).

Note.—A public prosecutor is not bound to call prosecution witnesses whose evidence he believes, will likely be false or is unnecessary—10 A. 84 (F. B.).

4. Evidence must be taken in the presence of the accused.—An order of commitment to the sessions, is illegal, if the evidence on which it is based was recorded while the accused was not yet arrested on the charge—[2 Weir 239 5 C N 110]. But a commitment in the absence of the accused himself, is not necessarily illegal, if the accused, has been allowed to appear by agent under S 205 *Supra*—[2 W. R. 30 17 C N 1219].

(3) Evidence for the Defence.

5. Magistrate bound to examine defence

evidence as the accused produces before him for hearing—[20 A. 264. 27 A 177; Rat 100] He is bound to do so even when he is directed by the Sessions Court to commit, if he has summoned witnesses for the defence—[196] A N. 306 See 1 C N. 514]

6. Right of accused to call witnesses.—In cases of commitment the proceedings before the Magistrate is only an inquiry preliminary to the trial, and the law in order to avoid unnecessary commitment is careful to require the Magistrate to examine any witness produced before him by the accused, and provides for the summoning and examination of defence witnesses before the charge is drawn up, and even gives the Magistrate a discretion (S. 212) to examine the witnesses for defence after the charge is framed, and then to cancel the charge and

discharge the accused (S 213) It does not compel a Magistrate to summon and examine defence witnesses after or even before the charge is framed if the Magistrate, for reasons to be recorded, deems it unnecessary to do so—36 M 321

7. Accused not entitled to repeated adjournments for calling evidence.—I cannot myself see that the Magistrate has in any way failed to observe, the provisions of that section (S 208) It is not suggested that he did not hear all the evidence produced before him and that is all that is required by the first paragraph. The fact that an application was made on the date on which the accused was committed to the Sessions for summoning of further witnesses, appears to me to introduce no condition which shows that the provisions of that section has not been observed.—Per Jenkins C J, in 42 609. But See Rat 110

(4) Examination of witnesses.

8. The practice not to allow cross examination before the charge is framed is illegal.—The practice of a Magistrate in inquiring into cases triable by a Court of Sessions not to allow any cross examination, before he frames charge sheet or until such time that the examination in chief of all witnesses for prosecution is over, is contrary to law and must be avoided. The wording of S 208 Cr P C makes it clear the intention of the Code was, that no each witness was examined he should then and there be cross examined and re-examined, and allowed to go home. The Code has consideration for witnesses and their convenience, but this consideration is not always shared by Magistrates—10 A 144 See 3 C N 110
9. Construction of s. 208 (2).—It is impossible to construe S 208 (2) Cr. P. C as conferring on the accused the right if he thinks fit, to ask for an order and to have an order recorded that the

10. Cross examination after charge.—Is an enquiry under Ch. VIII the Magistrate after having drawn up a charge with a view to commitment allowed the accused to cross-examine the prosecution witness and as a result cancelled the charge—held—it was open to the Magistrate to take that course.—39 C. 865
11. Subs (2).—Incorporates the Decision in 21 C 612, and merely re-enacts the provisions of S 155 of the Evidence Act,

(5) Examination of the accused and written statement.

12. Object of the examination.—Ss 209 and 312, which are the only provisions of the Code, authorising the examination of the accused clearly show that the object of that examination is not to obtain incriminating statements from the accused, but is only to enable him to explain circumstances against him. It is therefore improper to attempt to make an accused person

confess his guilt, before any evidence whatever has been recorded.—2 C. N. 702 O.C. 96 See I C. L. 436; 5 A. 253; 10 M. 275 (Per Keenan J) (39) A. N. 135.

13. **Examination discretionary.**—The examination of the accused prior to commitment, is in the discretion of the Magistrate. The Magistrate only examines the accused when he thinks it necessary for the purpose of enabling him to explain any circumstance appearing against him (Ss 203 and 210 Cr P C). If the accused is unwilling to submit to examination it sufficient for the Magistrate to make a note of the fact and to record it as a reason for not examining the accused in such a note the provisions of S 364 Cr. P. C. do not apply.—11 S. 52 2 W. R. 60 10 W. R. 25 See also 1 B. L. (N. V.) xvi. But See 23 M. 676.

Note.—Where the accused wants to make a statement, a Magistrate is not competent to refuse to record it.—10 C. L. 54.]

14. **Written statement by the accused.**—The filing of a written statement is not contemplated by chapter XVIII, in which S 203 occurs. The only provision which contemplates a written statement is S 250 which occurs in Ch. XXI.—2 Weir 275.

(6) *With reference to the order of commitment.*

15. **Committing Magistrate not to write judgment in Sessions Cases.**—Under S 209 Cr. P. C. a Magistrate is not authorised to write

1. R. 362

16. **Grounds Of commitment—how to be written.**—In preparing the reasons for committing the committing Magistrate should marshal the evidence, in the order in which it should come under judicial consideration. As a general rule chronological order is the best [Oudh Cr Dig. 10]. A Magistrate in his grounds of commitment should specifically note with exactness and precision, the proof against each particular prisoner, and the manner in which it is supported. [5 W. R. 6]

17. **Magistrate not to determine the guilt of the accused.**—A Magistrate holding a preliminary enquiry, has no power to pronounce definitely either upon the guilt or the innocence of the accused.—26 A. 564 (567), (70) A. N. 5; 14 M. T. 200

18. **Signing with a stamp.**—The signature of the Magistrate to the warrant of commitment should not be impressed with a stamp.—6 M. 396

19. **Failure to record reasons illegal.**—The law requires that the reasons for commitment should be recorded. [See also 24 C. 429]

(7) *Magistrate may commit at any stage of the case.*

20. S 317 empowers a Magistrate in any trial at any stage of the proceedings, when he makes up his mind to commit for trial, to stop further proceedings, and commit the accused. He may therefore do so, even after summoning defence counsel and examining only a few of the evidence. S 317 belongs to Ch. XXIV, and is not governed by the provisions of S 208 in Ch. XVIII. 7 M. 83. 30 C. 48. Con 20 A. 261; 26 A. 177.

(8) *Power to change the order of committal or discharge.*

21. **Power to try after framing charge.**—Where a Magistrate, yielding to the suggestion of the pleader of the accused, directed that the case should be tried by the Court of Session, but on a technical objection being taken, he amended the charge, and intimated his intention to try the case held that the Magistrate had merely framed the charge, and arrived at the procedure so far only as S. 210 Cr. P. C. He had not therefore divested himself of his jurisdiction to try the case himself.

12 B. R. 521 15 Cr. 16 (C)

22. **Commitment after discharge.**

23. **Discharge after commitment illegal.**—A Magistrate having committed a person cannot afterwards on the basis of a subsequent event, discharge the accused. A commitment once made can be quashed only by the High Court.—1 A. 150.

24. **Discharge after charge.**—A Magistrate, who has charged an accused person with a view to commit him, cannot discharge him without recording further evidence.—2 L. B. 141

25. **No remedy even after wrong commitment on facts.**—An Assistant Magistrate after committing the accused person to the Sessions, recorded that he had made a further enquiry and that if he had made the enquiry before the commitment he would not have committed the accused.—Held.—(on a reference by the Sessions Judge) that the High Court was unable to quash the commitment and the accused must be duly tried by the Court of Session.—(83) A. N. 53

(9) *Joint Enquiry.*

26. **Joint enquiry against several accused.**—There is no provision in the Code which requires a separate enquiry in respect of each accused person prior to commitment. An enquiry may be joint although the trial on commitment cannot be joint under the law.—7 B. R. 457; (60) A. N. 290; But see (83) A. N. 39 (86) A. N. 256

27. **Proper course when some only of several accused in joint enquiry ere**

guilty of major offence.—When two or more persons are jointly indicted and the jurisdiction of the Magistrate is ousted in the case of one of them, the proper course is to commit both or all for trial before the Court of Sessions [1 Weir 448 1 Weir 428 (129). (81) A. N. G. Wilkins 109 Outh Cr. Dig p 8] But the mere fact, that there is a connection between a former case committed to the Court of Sessions and the case in question, is no reason for commitment, when the connection is not of such a character as to embarrass or prejudice the accused if they had been tried by the Magistrate himself. [15 B. R. 998. See 7 M. T. 187]

(10) Case exclusively triable by Sessions cannot be tried by Magistrate.

28. A Magistrate should not treat a grave offence beyond his jurisdiction, as a less grave offence in order to bring it within his jurisdiction, since to do so is to take upon himself the functions of a superior Court [9 M. T. 71]. In cases where death appears to have resulted from injuries voluntarily inflicted by the accused party, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver charge and convict him of hurt or grievous hurt only [Wilkins 112 Rat 382. 13 B. 502 10 C. 85 3 P. R. 1561] Where the act of accused amounts

been caused in committing robbery, a Magistrate cannot convict the accused under S. 394 I. P. C. He is bound to commit under S. 397 I. P. C. [Rat 476] The offence of making a false charge of rape being triable exclusively by a Court of Sessions should not be tried by a Magistrate—[H. 1333]

29. When a Magistrate has committed a case to the Court of Sessions, he cannot commit the same to the Court of Sessions again.

(11) When a case triable by Magistrate may or may not be committed.

30. Case triable by Magistrate should not be committed.—This is the general rule. An offence under S. 9 of the Opium Act not being triable by a Court of Sessions, a Magistrate is not competent to commit the case [19 A. 463]. An offence under S. 30 of Madras Act I of 1866, of supplying liquor without a license, being punishable only by a Magistrate cannot be committed to

the Court of Sessions [5 M. H. 277 See also 1 W. R. 5] But the fact that an offence is shewn to be triable only by a Magistrate in the second Schedule, would not prevent the commitment of the case to the Sessions, if the Magistrate thinks that he cannot pass an adequate sentence [24 C. 129] Where a Magistrate commits a case to the Court of Sessions, he cannot shirk the committing it

31. Magistrate's duty to try the case themselves.—We must, therefore, quash this commitment and direct the Magistrate to conclude the trial himself. In so doing, we take the occasion to observe, that it is for many reasons undesirable in practice that our already overburdened Courts of Sessions should still further be burdened with the weight of cases committed to them by Magistrates, where such Magistrates are themselves competent to decide the case, and no overriding reasons exist for committing to the higher Court.—Per Batchelor and Shah J. I in 15 B. R. 998

(12) Miscellaneous Rules.

32. Accused not entitled to compensation on discharge.—All that a First Class Magistrate has jurisdiction to do, in a case of a charge of an offence triable by the Court of Sessions is to follow the procedure in Ch. XVIII Cr. P. C. In that Chapter neither S. 250, nor S. 253 finds any place. Therefore the Magistrate has no jurisdiction to award compensation to the accused, when discharging them under S. 200 Cr. P. C.—40 A. 615 Rat 901.
33. Order of discharge not in terms of S. 209 Cr. P. C. may be valid.—An order of discharge by a Magistrate under S. 209, in a case triable exclusively by a Court of Sessions or the High Court, would be a valid order, although the Magistrate uses the words used in S. 253, instead of those in S. 209, if the Magistrate has considered the evidence and is of opinion that no prima facie case has been made out.—2 Weir 235
34. Magistrate ought not to commit a case in face of fatal technical defect.—Where the indispensable conditions mentioned in S. 105 Cr. P. C. are wanting to the prosecution, the committing Magistrate is not competent to entertain the case and the commitment by him is illegal.—6 A. 98
35. Power to direct subordinate Magistrate to commit.—See S. 436 infra [Of the District Magistrate and Sessions Judge]; S. 437 and 438 Cr. P. C. [Of the High Court]
36. Power to Quash a commitment.—See Notes under S. 215 Cr. P. C.
37. Cancellation of the charge.—See (3) Framing of charges.

II. JURISDICTION.

38. Offence committed beyond British India.—When the offence has been committed beyond the limits of British India, the committing Magistrate has no jurisdiction to inquire into the

charges under S. 188 Cr. P. C. and the Sessions Judge has no jurisdiction to try them without a certificate from the Political Agent of the State, the commitment is therefore quashed.—(51) A. N. 81.

39. **Commitment by Court not having territorial jurisdiction.**—Where a Magistrate empowered to commit to the Sessions, but having no jurisdiction in the place, in which the offence is alleged to have been committed, commits the accused to a Court of Sessions which has jurisdiction over the place, it is valid and cannot be quashed under S. 312. 17 M. 492; 8 B. 312; 16 B. 209; 26 M. 387.

40. **Commitment to a Sessions Court not having jurisdiction.**—A commitment is an order of a Criminal Court which cannot be set aside unless a failure of justice has been occasioned thereby. Where a case is committed to a Sessions Court having no territorial jurisdiction, the High Court without setting aside the order of commitment transferred it to the proper sessions Court.—8 B. 312; 16 B. 209; 2 B. R. 391; 14 A. 350; Con. 36 M. 387; 9 A. 191.

III. FRAMING AND CANCELLATION OF CHARGES.

(1) Effect of framing a charge.

41. The mere framing of a charge against the accused as required by S. 210 is distinct from, and does not amount to, an order of commitment which has to be made under S. 213 Cr. P. C. 12 B. R. 621. Con. Pat. 161.

(2) Procedure.

42. **Charge when to be framed.**—Charge is to be framed only when the Magistrate is satisfied that there are sufficient grounds for committing. If the Magistrate thinks that the grounds are sufficient whatever the reason of this insufficiency may be, he may decline to frame a charge and discharge the accused.—9 B. R. 225; See 8 B. 200.

43. **Enquiry must be held before framing charge.**—A committing Magistrate is bound to make an enquiry before framing a charge. If he fails in his order of commitment to find what offence, he thinks, the accused has committed, and frames a charge without giving any reasons for the same, the order of commitment must be quashed and the inquiry should be again proceeded with before another Magistrate.—6 P. R. 1691.

44. **Procedure laid down by S. 208 Cr. P. C. must be followed.**—A Magistrate inquiring into a case triable by the Court of Sessions is not empowered to frame a charge or make out an order for commitment, until after he has taken all such evidence as the accused produces before him for hearing.—20 A. 264.

45. **Charge must be read over to the accused.**—The Magistrate, when he has prepared the charge is bound to read it to the accused and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf at the Sessions. 2 W. R. 50.

46. **Charge must be read over to the accused.**

to remit the fee payable on a copy of the charge or translation thereof, when the copy is given to the accused person.—*Unit. of Ind.*, Not No 310 of 21-1-86.

(3) Joinder of Charges.

47. **The sections of the Code relating to joinder of charges.**—i.e., Ss. 213 to 219 Cr. P. C. and the ruling in 21 M. 61 (P. C.) refer to trials only and not to preliminary enquiries under Ch. XVIII. 26 M. 592; See 7 B. R. 457; (00) A. N. 206; Rat 915; Con. Rat 925.

48. **When separate charges should be framed.**—Where several persons are charged with having given false evidence, a separate charge must be framed against each person and each person must be separately tried. 3 M. H. xxvii; (81) A. N. 83; 5 A. 17.

(4) Cancellation of Charge [S. 213 (2)]

49. Where in an enquiry under Chap. XVIII Cr. P. C. the Magistrate after having drawn up a charge against the accused with a view to his commitment to the Court of Sessions, allowed him to examine the witnesses for the prosecution

(5) Trial by Magistrate himself after framing charge.

50. Where the Magistrate, at the suggestion of the pleader of the accused, framed a charge under S. 467 I. P. C. and directed that the case should be tried by the Court of Session, but it being pointed out to him that there was no sanction as required by S. 195 Cr. P. C., amended the

himself of his jurisdiction to try the accused.—15 B. R. 521; Con. 2 C. J. xxxii.

VI. SUFFICIENT GROUNDS FOR COMMITMENT [Ss. 209, 210].

(1) Object of Ss. 209 and 210.

51. **Object of the law in providing that the inquiry shall be held by a Magistrate before the accused has to undergo a trial, in the Court of Session, seems to be to prevent the commitment of cases in which there is no reasonable ground for**

conviction. The provision of the law is calculated, on the one hand, to save the subjects from prolonged anxiety of undergoing trials for offences not brought home to them; and on the other hand, to save the time of the Court of Session from being wasted over cases in which

the charge is obviously not supported by such evidence as would justify a conviction * * * I am of opinion, that the power given to Magistrates * * * extends to the weighing of evidence and the expression "sufficient grounds" must be understood in a wide sense—*Per Mahmood J.* in 5 A 101. See (89) A N. 135 (136): Rat 740 3 M 351. 14 W. R. 16

(2) Meaning of the term "sufficient grounds."

52. There is a sharp divergence of judicial opinion centring round the term "sufficient grounds" The first group of rulings of which the leading case is 27 B 84 interprets the term as if it meant '*prima facie*' grounds. The second group takes it to mean "reasonable chance of conviction at the trial." *Bikenell J.* in 14 M T 200, attempts an interpretation which hardly carries us much further. It is as follows:—"I do not think that it is possible to fix positively the limits within which the Magistrate should exercise jurisdiction and prefer to express the rule negatively, by saying that he must not in any way encroach upon the functions of the Jury."

53. The term as interpreted in 27 B 84.—"The words in S 209 Cr P C, "sufficient grounds for committing" have been explained to mean not ground for convicting, but whether the evidence is sufficient to put the accused on his trial, and such a case arises, when credible witnesses make statements, which if believed, would sustain conviction. The weighing of their testimonies with regard to improbabilities and apparent discrepancies is more properly a function of the Court having jurisdiction to try the case. It is not necessary that the Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when the evidence for the prosecution is sufficient to make out a *prima facie* case against the accused, and he exercises a wrong discretion if he takes upon himself to discharge an accused, in the face of evidence which might justify a conviction." See also 11 B 372 14 M T 200 (*Per Benson and Dikeell J.*) 2 Weir 552 9 M T 71. 2 Weir 542 (04) A N 5. 26 A 564 (*Per Knor J.*) 21 Cr 61 (A) 21 Cr 318 (A) 3 N. P. 27 9 C N 820 21 Cr 202 (Pat) 14 P R 1903, 1 P R 1903 11 B 318

54. The term as interpreted in the Second Group.—"Under S 210, a Magistrate should commit an accused for trial, when he is satisfied that there are sufficient "grounds for committing the accused for trial." In my opinion, this does not mean that he should do so, whenever there is evidence sufficient to put the case to a jury * * * A Magistrate, in my opinion, need not make an order of committal, when in his judgment, the prosecution is clearly insufficient to justify the conviction of the accused, or the prosecution evidence is clearly untrustworthy." *Per Sivaram Aiyar J.* in 14 M T 200 See also 35 B 163 17 B R. 910 12 B R 123; 9 B R 225 Rat 746 37 A 377. 26 A. 564 21 A. 265. (01) A N. 5. 14 W. R. 16. 7 G N. 77; 12 C N. 117; 15 Cr. 373 (M); (15) M. N. 273. 2 Weir 200.

21 Cr. 328 (Pat) 14 P R 1903; 10 P R 1909 215 P L. 1910; 1 S 103

(3) The functions of the committing Court.

55. Duty to sift evidence.—"I have, for some time, felt from examination of criminal trials that many Magistrates are too hasty in making commitments, or rather that they do not make the thorough enquiry which, I think, they ought to make previous to commitment. In a case of murder, more especially, there can be no doubt that it is the duty of the Magistrate to sift every fact bearing on the case in order to ascertain whether the accused is guilty or innocent and to examine the accused on the facts which bear against him * * * I think every enquiry should have been made previous to commitment, to ascertain not only whether there was presumption of the guilt of the accused, but also whether he was innocent."—*Per Jackson J.* in 14 W. R. 16

56. English law.—Under the Indictable Offences Act. 11 and 12 Vict C 42, if the Justices of the Peace are of opinion that a *prima facie* case has not been made out against the accused, he is evidence entitled to a reasonable degree of credit; they must forthwith order him to be discharged. If they are of opinion that the evidence is sufficient or if the evidence raises a strong and probable presumption of guilt they may commit him to prison to take his trial. Although the Justices have not to try the case, yet if the evidence for the defence is such in their opinion, that there is a strong and probable presumption that the Jury will acquit the accused, if he were committed, they should dismiss the charge. See R. v. *Coleman* 5 Q B D 1 (6) *Cox v. Colvill* 1 B C 37 (50) *Malbary's Law of England* Vol IX. p 320.

57. Considerations governing a commitment.—"It appears to me that when a Magistrate comes to consider—whether he shall or shall not commit a case, he has to consider the gravity of the offence, the punishment with which in his opinion it ought to be met and the section under which he charges the accused person. He may no doubt properly consider any special difficulties in the case or that it is a matter of some peculiar public importance and no doubt other matters also might enter into his consideration such as the wish of the public. But a Magistrate must not determine this important matter, whether he is to commit the case or try it himself, solely by the wish of the parties and the terms of a Government Resolution."—*Per Heaton J.* in 42 B 172.

58. Materials on which the opinion is to be formed.—The law requires that the Magistrate should take not merely all the evidence produced in support of the prosecution, but also that in support of the defence of the accused, for the purpose of enabling him to explain any circumstances appearing in the evidence, against him and upon all these materials, he is to find whether or not, there are sufficient grounds for committing the accused for trial—(90) A N. 137.

(4) Power to accept defence evidence.

59. Discharge on merits.—It is clear from S 279 Cr. P. C. that a Magistrate is to discharge the accused, if he finds that there are not sufficient grounds for committing him for trial. Usually the Magistrate is bound to discharge the accused if he believes that he has committed no offence. A committing Magistrate does not exceed his jurisdiction, in expressing an opinion on the merits of the accused's defence, and in accepting that defence—16 Cr. 5 (C) 31 II 161 26 A 561; 37 A. 355; 17 II R 910. C. & W. C. N 829.
60. Defence extracted from prosecution witnesses.—It is well within the powers of a Magistrate to cross-examine the prosecution witnesses and to consider whether the witnesses examined on behalf of the prosecution were credible [17 II R 410]. The word "witnesses for the defence" in S 214 (2) are wide enough to cover evidence extracted by cross-examination from the witnesses for the prosecution—[P. C. 855].
61. Scope of S. 213 (2) Cr. P. C.—S 213 (2) Cr. P. C. is intended to provide for cases in which the evidence recorded after the charge is changed. The aspect of the case, as to have no reasonable doubt that a conviction is not sustainable. But that clause does not apply when the evidence for the defence merely casts some doubt on the case. A sufficient ground for a commitment is a *prima facie* case, and it still remains a sufficient ground even if to some extent weakened (but not proved beyond reasonable doubt to be false) by the evidence for the defence—1. L. II 314.

(5) Magistrate's discretion.

62. Mere fact that offence is of serious nature not sufficient.—The mere fact that the offence is of a serious nature is not a ground for commitment, if the committing Magistrate makes the finding that there is no sufficient evidence against the accused. If he does commit, it would amount amount to an error in law.—35 P. R 1878.
63. Magistrate not bound to commit in any case.—A commitment to the Sessions would not

be justifiable, unless the committing Magistrate considers that a *prima facie* case had been made out, which in his judgment ought to be tried at the Sessions.—15 M. 30 (99) A. N. 135. See 2 Weir 275.

64. Discharge before recording evidence.—Two persons were sent up by the police on a charge of murder, and the Magistrate discharged one of them, *even before recording evidence* and without recording any reasons therefor *Held* [Per Lord J.] The Magistrate certainly had power to discharge the accused as he did, but he should then and there have recorded his reasons for doing so under S 209 Cr. P. C. [11 B 362].
65. When no evidence is forthcoming.—When the accused is present and no evidence is forthcoming against him, and it is not shown that the Magistrate ought to adjourn the enquiry under S 344 Cr. P. C., he is bound to discharge the accused [15 W II 53].
66. District Magistrate cannot interfere with subordinate Magistrate's discretion.—S 210 Cr. P. C. provides that a charge should be framed and commitment made only when there are sufficient grounds for committing. That is to say not merely allegations as to the offence which may or may not be credible, but such grounds as satisfy the Magistrate as being sufficient to support a charge. A District Magistrate cannot therefore order a subordinate Magistrate to commit a case, unless it appears that the latter had no good reasons to discredit the prosecution witnesses and that their evidence was sufficient in law to form the basis of a conviction—9 B R, 225.

(6) Procedure when the major charge fails.

67. The primary object of S 209 being to make provision for the procedure in case triable by Court of Session or High Court, the Magistrate in a case in which in his opinion there is no evidence to warrant a charge exclusively triable by a Court of Session, cannot proceed to act under the latter part of subs (1) of S 209, until he has "discharged" the accused under the former part of the section—21 M 136. But see 23 M 215 20 C 633.

V. WITNESSES

(1) Magistrate's discretion in summoning witnesses.

68. It is not incumbent on a Magistrate to summon every person named as witness by the complainant S 208 Cr. P. C. vests a discretionary power in the Magistrate—23 W. R. 9.

(2) All witnesses produced must be examined.

69. S. 208 (3) applies—to the course that may be taken before not after the issue of summons

their attendance in the manner provided by S 355 Cr. P. C.—4 M 320.

70. Note.—It should be noted that there is a current of rulings to the effect that an accused person cannot be discharged in a warrant case under S 253 Cr. P. C. without examining all the witnesses produced on behalf of the prosecution—See 3 C. 389 2 A. 447 (81) A. N. 145 (82) A. N. 179; 4 M 329 8 M II 4].

71.

(3) *List of witnesses for defence.*

72. **Duty of Magistrate under S. 211.**—A Magistrate is, under S. 211 (1) of the Code, bound to require the accused to give a list of witnesses he desires to call. It is not enough to put the question "Have you any evidence?" since the question is ambiguous and might suggest to the accused only an enquiry as to whether he had witnesses ready in Court.—7 B R 723.

[Note.—Though the language is imperative, there is nothing in it, which leaves it open to a Magistrate to prevent a prisoner from reserving his defence for the Court of Session [4 B. L. (1p) 1]. The accused is entitled to refuse to furnish the list, but in that case he would not be entitled as of right to have the assistance of the court to compel the attendance of his witnesses.—[14 A 212 19 A. 302]

73. The accused is entitled as a matter of right to have any witness named in the list summoned and examined.—23 W. R. 56 15 W R 7. 3 W. R. 35. 2 W. R. 6.

73A. *See* *supra*.

matter of right, yet the Judge has an inherent

power, if he thinks proper, to exercise it, to sanction the summoning of other witnesses than those named in the list delivered to the committing Magistrate.—Per *Straight J*—8 A 668

(4) *Power to examine witnesses named in the list [S. 212.]*

74. *See* *supra*.

committing Magistrate is not precluded from exercising his discretion under S. 212, and from summoning and examining the witnesses named for the defence. The law does not require that he should record his reasons before exercising such powers. He is given a discretion which he may be trusted to use properly, and it will be for the person impugning his order, to satisfy the High Court that judicial discretion has not been used before that Court can interfere.—18 A, 380 *See* 4 B. L. (ap) 1.

75. Witnesses must not be threatened.—It is illegal of a Judge to threaten a witness with the penalties of the law, unless and until he has shown by his evidence that he is wilfully saying what is false, or is persistently refusing to give evidence of facts which must be within his knowledge.—14 A 242

VI. IRREGULAR COMMITMENTS.

76. **Commitment by Magistrate not empowered.**—A commitment made by a Magistrate not duly empowered, may be accepted by the Court to which the commitment is made, if the accused is not prejudiced.—*See* s 532 Cr. P. C 9 B 100. 2 A 398. *See* 11 C L 52

77. **Commitment by Court not having territorial jurisdiction.**—*See* (2) Jurisdiction (39) *Supra*

78. **Commitment to wrong Sessions Court.**—*See* (4) Jurisdiction (40) *Supra*.

79. **Joint commitment of two opposing factions.**—In a riot between two factions the negroes were accused under Ss. 117 and 301 I P C and the other party under S 143 I P C. The Magistrate committed both the parties to the Sessions. *Held* that though the Magistrate might and should have tried the party accused under S 143, himself, the commitment to the Sessions was not illegal and should not be set aside, and that the Court of Sessions had jurisdiction to try the accused. (44) A. N. 236. 26 M 592 *see* 8 W R 47 9 W R 33. 6 C 60 14 C 358. 20 C 337 8 C. N 150

80. **Committal made without following the procedure laid down in Ss. 212 and 213**

Cr. P. C.—A charge under S 302 I P. C was under inquiry by a Magistrate of the 1st class. The evidence for the prosecution had been summoned; the Magistrate at the request of the accused had consented to make a joint inspection, when the Sessions Judge directed the Magistrate to commit the accused to the Sessions. He did so without examining any of the witnesses for the defence, and without making the intended local inspection, *held* that the commitment should be quashed.—141 915.

81. **Committal without recording reasons is illegal.**—The law requires, that reasons for a commitment should be recorded. Where the Magistrate commits a case, which may either be tried by the Magistrate or the Court of Sessions, the reasons for commitment must include not merely reasons for not discharging the accused, but reasons for sending him before the Court of Sessions. To commit without giving reasons amounts to illegality.—38 B 114

82. **Commitment under orders of the Sessions Judge.**—An order of commitment is none the less valid, because it is made in pursuance of the direction given by the Sessions Judge.—7 P. R 1012.

VII. MISCELLANEOUS.

(1) *Revision by the High Court.*

83. **Power to quash at any stage.**—The High Court can quash an illegal commitment at any stage of the case.—6 C. 544

84. **Power to go into facts.**—The High Court has got power to go into questions of fact, but it does so merely in order to see whether the Magistrate's order is proper.—15 Cr 373 (M). 30 M. 224.

85. **S. 215 as a bar to revision.**—S. 215 bars the revision by the High Court of an order of commitment made under S. 213, 214, 477, 478 Cr. P. C. except on a point of law. But where a commitment has been made under S. 436 Cr. P. C. the High Court has full jurisdiction to enter into facts and to consider the propriety of the order of commitment—12 C. N. 117.

(2) *Altered section—S. 347 Cr. P. C.*

86. **S. 347 is not to be read as subject to S. 208 Cr. P. C.**—S. 347 is not to be read as subject to the provisions of S. 208 Cr. P. C. and it is not therefore imperative on the Magistrate, after he has decided to commit the accused, to allow the accused to cross-examine the witnesses for the prosecution or to call witnesses in his defence—36 C. 18, Bat. 173, Bul. Sec. 36 M. 321 G. L. 121 (F.B.).

87. **S. 212 does not govern S. 347 Cr. P. C.**—The discretion given to a Magistrate to commit a case to the Sessions under S. 347 *infra* is neither restricted nor taken away merely because he issued summons to defence witnesses under S. 212 and examined them—17 M. T. 83.

88. **The discretion to stop further proceedings.**—The discretion in S. 347 to stop further proceedings does not justify a Magistrate in disregarding the directions in Ss. 208 to 210, but only requires him to stop proceedings with the case as a trial and instead to commit the case to the Sessions for trial by that Court—36 M. 321.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject, who is about to be committed for trial, or to be tried before the High Court on a

Person charged outside presidency towns jointly with European British subject.

similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

215. A commitment once made under section 213 or section 214 by a competent Magistrate or by a Court of Session under section 477, or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law

Quashing commitments under section 213 or 214.

Arrangement of Notes.

S. 215 (1898)=S. 197 (1872)

I. Scope and Application of the section.—

(1) Commitment once made can be quashed only by the High Court

(2) *See* *infra*

(3) *See* *infra*

(4) *See* *infra*

(5) *See* *infra*

II. Essentials of a valid commitment.

III. Grounds for quashing commitments—what are not.

(3) *Sessions Judge cannot remand the case after commitment.*

80. The Code of Criminal Procedure, nowhere authorises the return of a case committed to the sessions to the Magistrate. Where the accused reserved the cross-examination of the prosecution witnesses before the committing Magistrate, the Sessions Judge has no power to remand the case for such cross-examination—2 Weir 260.

(4) *Pardanashin witnesses.*

80. The attendance of Hindu Ladies of secluded habits and respectability as witnesses should not be insisted upon when no distinct charge is made out—3 W. R. 46.

(5) *S. 250 Cr. P. C. does not apply to Sessions Cases.*

91. *See* (1) General Rules of procedure (32) *supra*.

(6) *Meaning of "Sessions Court"*

92. The term "Sessions Court" in S. 213 means only one having jurisdiction to try the case under S. 177 *supra*—10 M. T. 503.

(7) *Courts of Session in British Beluchistan.*

93. Can try European British subjects as well as natives of Baluchistan under S. 3 of Reg. VIII of 1896—5 P. R. 1007.

IV. Grounds for quashing commitments—what are.

V. *See* *infra*

IV. *See* *infra*

VII. *See* *infra*

(1) Commitment by a single Judge sitting on the Original Side of the High Court.

(4) S. 215 governs Cl. 15 of the Letters Patent.

(5) Quashing no bar to second trial.

I. SCOPE AND APPLICATION OF THE SECTION.

(1) *Commitment once made can be quashed only by the High Court.*

1. A Magistrate after committing an accused person cannot quash his order of commitment and discharge the accused because the complainant states that he has compounded the case.—4 A 150; 1 B 311 41 B 147 5 P. R 1919. 16 M. J 525. 2 Weir 262

[Note. — A commitment once made by a Magistrate to the Sessions Court cannot be annulled by his allowing the prosecution to file a compromise — 2 W R 57]

2. Magistrate cannot cancel his order after committing the accused.—A Magistrate who has once committed the accused to the Sessions has no power to cancel his order and try the accused himself. Any order of the Magistrate to this effect is *ultra vires*.—7 Bur 269
3. Commitment can be quashed only on a point of law.—A commitment order can be quashed only on a point of law, e.g. want of territorial jurisdiction in the committing Magistrate.—7 Bur. T 26 13 B R 201. 11 A J. 439; (59) A N 60 36 A 4

(2) *Scope of the section.*

4. S. 215 and 439 compared.—S. 215 refers to a commitment *actually made* in which case the High Court cannot interfere except on a point of law. But it is open to the High Court to consider whether the Session Judge has or has not exercised a proper judicial discretion under S. 439 in setting aside a Magistrate's order of discharge of the accused and directing his commitment.

(3) *Where the section does not apply.*

5. The section is inapplicable except to commitment made under any of the four sections specified therein. An order of commitment under S. 436 or 526 *infra* cannot therefore be set aside under this section.—27 M 54 See 31 C 1 8 M T. 205; 12 C N 117 See 2 A 398. But See 312 P. L 1913 15 M J 373

(4) *At what stage a commitment can be quashed.*

6. The dictum in G C 584, that "the High Court can quash an illegal commitment at any stage of a criminal proceeding" has no application when the accused has been put on his trial and has pleaded to the charge [18 G. 2 Weir 262; 12 C L 129]

(5) *Procedure.*

7. Commitment cannot be annulled in part.—If the commitment of a European British subject is quashed on the ground of any irregularity of proceedings, the commitment of a person jointly charged with him should also be quashed.—9 B 258 (200)
8. S. 537 Cr. P. C. applies in principle.—Though S. 537 Cr. P. C. applies in terms to orders made in appeals or revision, the principles con-

grounds for quashing a commitment.—12 A 320 (8)

9. Commitment made by Magistrate not having territorial jurisdiction.—Under the old Code, no orders from the High Court were necessary to set aside a commitment made by a Magistrate not having jurisdiction, at it was *ipso facto* void [See 11 C. L. 55; 56] But such a commitment is now only voidable and will not be set aside as a rule, unless there has been a failure of justice thereby. [See Note No 6 under S. 206 *supra*].
10. Commitment made by a Magistrate not having jurisdiction over the offenders.—If the illegality affects the jurisdiction of the Sessions Judge he may discharge the accused notwithstanding the commitment. If it does not, he should refer the case under S. 215 Cr. P. C. to the High Court for disposal.—Nat 921
11. What a Sessions Judge should do.—If in the opinion of the Sessions Judge a commitment to his Court is illegal he should refer the case for the orders of the High Court, but the insufficiency of evidence against the prisoner is no ground for such a reference.—1 W. R. 8.
12. Power to quash commitment to High Court Sessions *quere*.—Whether the High Court in the exercise of its ordinary criminal appellate jurisdiction has power to quash a commitment made to it for trial under the ordinary original criminal jurisdiction.—36 C 48
13. *Examine* advis
case
the
trial
law, and instructions issued by the Sessions Judge in connection. This should be done immediately in receipt of the record so that it may be at once returned to the committing Magistrate to supply the deficiencies, if there are any.—(Crim Cr. 10; p 10 See 2 Weir 200 [as to power to remand for further evidence])

II. ESSENTIAL OF VALID COMMITMENT.

14. Pendency of application in a superior Court challenging validity of proceedings.—The fact that an application is pending in a Superior Court praying that the proceedings

of the Magistrate's Court may be declared illegal does not, where there has been no order to stay, of itself render a commitment illegal.—8 C N. 829

15. It is illegal to pass an order of commitment in the absence of the accused.—*5 C N 310*

16. Commitment made after order of transfer. An order of commitment made after the case was ordered to be transferred from the Court of the committing Magistrate is *in fact* void. It is illegal that a Magistrate is not competent to proceed with a case which has been duly transferred or withdrawn by competent authority.—*Cr R 3 of 21 1 62*

17. Commitment by a Magistrate not empowered. A commitment made by a Magistrate having no jurisdiction is no commitment and is altogether void.—*11 C L 55 (64)*

18. Commitment by a Magistrate not having jurisdiction may be cured unless a failure of justice has been cured (*S 337*).—*7 Har T 26 231 C 178 15 Cr 270 17 M 432 (80) A N 60*

19. Magistrate being of opinion that he cannot punish adequately. Where the Magistrate is of opinion that he can not adequately punish the accused and commits him to the Court of Sessions the commitment is legal [*11 A J 130*]. A commitment by a Magistrate competent to try and pass sentence in a case punishable under *S 166 I P C* is illegal section 251 (supra), in mandatory terms, imposes on the Magistrate the duty of trying any warrant case which he is competent to try and which in his opinion can be adequately punished by him. Reading this section with section 207, it would seem that the Legislature has given to a Magistrate discretion to commit to a Court of Sessions only such of those cases which he is competent to try as, in his opinion, ought to be tried by such Court, because the offence can not be adequately punished by himself. Though the fine which can be imposed under *S 166* is not limited, the Magistrate has not suggested that a year's imprisonment and such fine as he has power to impose would not be adequate punishment" [*S 21*]. It is not illegal for a magistrate to commit a case, in which he cannot award adequate punishment, to the Sessions, though the case is exclusively triable by him. Therefore the commitment of a case under section 147 I P C by a Deputy Magistrate is not illegal.—[*21 C 429*. But see *19 A 161*]

20. Commitment after fresh evidence even though the order of discharge has not been set aside by the High Court.—*24 C 211*

21. Commitment of a summons case is illegal. Where a Magistrate committed for trial at the Sessions Court a person charged with offences under *S 352* and *447 I P C*, held that there was no warrant in the Code for the commitment of summons cases to the Sessions and that the magistrate could have himself awarded

adequate punishments for the two offences.—(*66*) *A N 283*

22. A commitment for an offence under *S. 9* of the Opium Act is illegal.—*19 A 165*

23. Magistrate bound to state reasons for commitment.—If a Magistrate thinks that a case not exclusively triable by the Court of Sessions must be committed, he must state his grounds in the order to enable the High Court to judge whether the commitment is made in the sound exercise of the discretionary power vested in him by law.—*11 B R. 18; 15 B R 909; 38 B. 111*

(II) Essentials of a Valid commitment.

24. Commitment at the direction of the District Magistrate is illegal.—A commitment made by a subordinate Magistrate, not in the exercise of his discretion but in consequence of a suggestion of the District Magistrate is illegal.—*15 M 34*

25. A commitment based on evidence recorded while the accused was not arrested is not valid.—*2 Weir 219*

26. A commitment made without examining the witnesses for the prosecution is illegal.—[*4 M 227, Con. 2 W. R. 60*].

27. Commitment without taking defence evidence is illegal.—So also a commitment made without examining the witnesses which the accused wanted to produce.—*20 A 261; 26 A 177. See 23 W. R. 56 (66) A. N 306 Con 2 W. R. 60.*

28.

29. Commitment in face of fatal technical defect is illegal.—In the case of offences referred to in *S 185 supra* a commitment would be illegal when the preliminary conditions required by that section are wanting.—*6 A 68; 22 C 176. (18-700) 1. B 377; But See 27 M J. 593*

29. When the charge is not proved.—When there is no clear proof that the accused knew the property to be stolen, a commitment for an offence under *S. 411 I. P. C.* is illegal.—(*73*) *A. N. 14*

30. Commitment not illegal because prosecution started on police report.—A commitment for an offence under *S 211 I P C* is not illegal merely because the Magistrate has not made a judicial enquiry into the complaint but has proceeded solely on the report of the police that the complaint is false.—*6 C. 592 See 14 C. 707 (71)*

31. When commitment is undesirable.—Where a Magistrate commits a person for trial before the Sessions Court for the offence of giving false evidence before the same Sessions Judge, the commitment is not illegal. It is however desirable that the Magistrate should try the case himself, and if the sentence which the Magistrate was competent to pass was not sufficient, the Sessions Judge should refer the case to the High Court for enhancement of sentence.—*1 B 311 (313).*

I. SCOPE AND APPLICATION OF THE SECTION.

(1) Commitment once made can be quashed only by the High Court.

1. A Magistrate after committing an accused person cannot quash his order of commitment and discharge the accused because the complainant states that he has compounded the case.—1 A 159; 1 B 311 43 B 147 5 P R 1919 16 M J 525. 2 Weir 262

[**Note.**—A commitment once made by a Magistrate to the Sessions Court cannot be annulled by his allowing the prosecution to file a compromise.—2 W R 57]

2. Magistrate cannot cancel his order after committing the accused.—A Magistrate who has once committed the accused to the Sessions has no power to cancel his order and try the accused himself. Any order of the Magistrate to this effect is *ultra vires*.—7 Bur 269
3. Commitment can be quashed only on a point of law.—A commitment order can be quashed only on a point of law, e.g. want of territorial jurisdiction in the committing Magistrate.—7 Bur T 26 13 B R 201; 11 A J 439; (48) A N 60 36 A 4

(2) Scope of the section.

4. S. 215 and 439 compared.—S. 215 refers to a commitment *actually made* in which case the High Court cannot interfere except on a point of law. But it is open to the High Court to consider whether the Session Judge has or has not exercised a proper judicial discretion under S. 136 in setting aside a Magistrate's order of discharge of the accused and directing his commitment, and for this purpose the High Court may consider the facts as well question of law involved.—[30 M 224 7 C N 77 12 C N 117 7 C N 327 See also 27 M 34]

(3) Here the section does not apply.

5. The section is inapplicable except to commitment made under any of the four sections specified therein. An order of commitment under S. 436 or 526 *infra* cannot therefore be set aside under this section.—27 M 51 See 31 C. I. 8 M T. 205 12 C N 117 8a 2 A 398 But See 312 P. L. 1913 15 M 1 373

(4) At what stage a commitment can be quashed.

6. The dictum in 6 C. 384, that "the High Court can quash an illegal commitment at any stage of a criminal proceeding" has no application when the accused has been put on his trial and has pleaded to the charge [1 S. 6. 2 Weir 262. 12 C L 129]

(5) Procedure.

7. Commitment cannot be annulled in part.—If the commitment of a European British subject is quashed on the ground of any irregularity of proceedings, the commitment of a person jointly charged with him should also be quashed.—9 B. 288 (300)

8. S. 537 Cr. P. C. applies in principle.—Though S. 537 Cr. P. C. applies in terms to orders

grounds for quashing a commitment.—12 C 320 (8)

9. Commitment made by Magistrate not having territorial jurisdiction.—Under the old Code, no orders from the High Court were necessary to set aside a commitment made by a Magistrate not having jurisdiction, at it was *ipso facto* void [See 11 C. L. 55; 58] But such a commitment is now only voidable and will not be set aside as a rule, unless there has been a failure of justice thereby [See Note No 6 and S. 206 *supra*]

10. Commitment made by a Magistrate not having jurisdiction over the offences or offenders.—If the illegality affects the jurisdiction of the Sessions Judge he may discharge the accused notwithstanding the commitment. If it does not, he should refer the case under S. 215 Cr. P. C. to the High Court for disposal.—Rat 922

11. What a Sessions Judge should do.—If in his opinion of the Sessions Judge a commitment to his Court is illegal he should refer the case for the orders of the High Court, but the insufficiency of evidence against the prisoner is no ground for such a reference.—1 W. R. 8.

12. Power to quash commitment to High Court Sessions *quere*.—Whether the High Court in the exercise of its ordinary criminal appellate jurisdiction has power to quash a commitment made to it for trial under the ordinary criminal jurisdiction.—35 C. 19

- 13.

further evidence]

II. ESSENTIAL OF VALID COMMITMENT.

14. Pendency of application in a superior Court challenging validity of proceedings.—The fact that an application is pending in a superior Court praying that the proceedings

of the Magistrate's Court may be declared illegal does not, where there has been no order to stay, of itself render a commitment illegal.—8 C. 329

15. It is illegal to pass an order of commitment in the absence of the accused.—*5 C N, 110*
16. Commitment made after order of transfer.—An order of commitment made after the case was ordered to be transferred from the Court of the committing Magistrate is *void* fact and it is held that a Magistrate is not competent to proceed with a case which has been duly transferred or withdrawn by competent authority.—*Cr R 31 f 21 1 '02*
17. Commitment by a Magistrate not empowered.—A commitment made by a Magistrate having no jurisdiction is no commitment and is altogether void.—*11 C L 55 (56)*
18. Commitment by Magistrate not having territorial jurisdiction. Commitment made by a Magistrate having no territorial jurisdiction is liable to be quashed but the irregularity may be cured unless a failure of justice has been caused (*S 537*)—*7 Har T 26 231 C 178 15 Cr 270 17 M 492 (54) A N 60*
19. Magistrate being of opinion that he cannot punish adequately.—Where the Magistrate is of opinion that he can not adequately punish the accused and commits him to the Court of Session the commitment is legal (*11 A J 139*) A commitment by a Magistrate competent to try and pass sentence in a case punishable under *S 160 P C* is illegal (Section 251 *infra*), in mandatory terms, imposes on the Magistrate the duty of trying any warrant case which he is competent to try and which in his opinion can be adequately punished by him. Reading this section with section 207, it would seem that the Legislature has given to a Magistrate discretion to commit to a Court of Session only such of those cases which he is competent to try as, in his opinion, ought to be tried by such Court because the offence can not be adequately punished by himself. Though the fine which can be imposed under *S 160* is not limited, the Magistrate has not suggested that a year's imprisonment and such fine as he has power to impose would not be adequate punishment" [*S 23*] It is not illegal for a magistrate to commit a case, in which he cannot award adequate punishment, to the Sessions, though the case is exclusively triable by him. Therefore the commitment of a case under section 117 *P C* by a Deputy Magistrate is not illegal—[*24 C 429*. But See *19 A 165*]
20. Commitment of a summons case is illegal.—Where a Magistrate committed for trial at the Sessions Court a person charged with offences under *S 352* and *417 I. P. C.*, held that there was no warrant in the Code for the commitment of summons cases to the Sessions and that the magistrate could have himself awarded

adequate punishment for the two offences—(*96 A N 283*).

22. A commitment for an offence under *S. 9* of the Opium Act is illegal.—*19 A 165*.
23. Magistrate bound to state reasons for commitment. If a Magistrate thinks that a case not exclusively triable by the Court of Sessions must be committed, he must state his grounds in the order to enable the High Court to judge whether the commitment is made in the sound exercise of the discretionary power vested in him by law—*11 B R 18 15 B R 998-35 B 111*

(II) Essentials of a Valid commitment.

24. Commitment at the direction of the District Magistrate is illegal.—A commitment made by a subordinate Magistrate, not in the exercise of his discretion but in consequence of a suggestion of the District Magistrate is illegal—*15 M 39*
25. A commitment based on evidence recorded while the accused was not arrested is not valid.—*2 Weir 259*.
26. A commitment made without examining the witnesses for the prosecution is illegal.—[*4 M 227. Con 2 W. R. 50*]
27. Commitment without taking defence evidence is illegal.—See also *117*
28.
29. Commitment in face of fatal technical defect is illegal.—In the case of offences referred to in *S 165 supra* a commitment would be illegal when the preliminary conditions required by that section are wanting—*6 A 95, 22 C 176 (18 '00) 1 B 377, But See 27 M J 593*
29. When the charge is not proved.—When there is no clear proof that the accused knew the property to be stolen, a commitment for an offence under *S 411 I. P. C.* is illegal.—(*84 A N 14*)
30. Commitment not illegal because prosecution started on police report.—A commitment for an offence under *S 211 I. P. C.* is not illegal merely because the Magistrate has not made a judicial enquiry into the complaint but has proceeded solely on the report of the police that the complaint is false—*6 C 582 See 14 C 705 (711)*
31. When commitment is undesirable.—Where a Magistrate commits a person for trial before the Sessions Court for the offence of giving false evidence before the same Sessions Judge, the commitment is not illegal, it is however desirable that the Magistrate should try the case himself, and if the sentence which the Magistrate was competent to pass was not sufficient, the Sessions Judge should refer the case to the High Court for enhancement of sentence.—*1 B 311 (313)*.

fresh evidence even though the order of discharge has not been set aside by the High Court—*28 C 211*.

21. Commitment of a summons case is illegal.—Where a Magistrate committed for trial at the Sessions Court a person charged with offences under *S 352* and *417 I. P. C.*, held that there was no warrant in the Code for the commitment of summons cases to the Sessions and that the magistrate could have himself awarded

32. ...
33. ...

it includes a charge under S 193 I P. C. of an offence not exclusively triable by a Court of Sessions.—(This ruling was made under the Code of 1872)—2 A 398.

34. **Effect of irregular procedure.**—Where a Magistrate has not carried out the imperative provisions of law laid down in S 208 before committing the accused, the case comes before the Sessions Court in a manner not contemplated by law and the commitment is illegal—[6 L B. 129 (F. B.)]—But where, as under S. 208 (3) and Ss 212 and 213 Cr P. C. the law allows a Magistrate a discretion and does not compel him to summon and examine witnesses for the defence and a Magistrate refused to summon certain witnesses for the accused on the ground that the application for summons was filed too late, the commitment is valid [23 M J. 363]
35. **Commitment of approver with other accused illegal.**—It is illegal for a Magistrate to commit an approver who has broken the conli-

tions on which pardon was tendered to him, along with the other prisoners in the case—23 B 492

36. **Initialling in stead of signing the warrant is not material.**—A commitment is not illegal merely because the Magistrate has merely initialled the warrant of commitment instead of

37. ...

38. ...

two sets of accused on the ground that one or

39. ...

7 M H (Appx) v.

40. **Commitment by courts in British Beluchistan.**—A commitment of an European British subject to the Court of Sessions by the Extra Assistant Commissioner of Quetta is proper, as the Courts of Sessions in Beluchistan have by Regulation VIII. of 1860 jurisdiction to try European British subjects duly committed.—5 P R 1905

III. GROUNDS FOR QUASHING COMMITMENT—WHAT ARE NOT.

41. (a) Where a Magistrate after enquiry had found reasons for committing for trial on the merits, the High Court declined to quash the commitment—Rat 718
42. (b) It is not a ground, for quashing a commitment to the Court of Sessions upon a charge of murder, that the evidence does not on a perusal of the record appear to the Sessions Judge to prove an offence other than an offence punishable by a Magistrate 1st class. 22 P. R 1882 But see 17 W. R 14
43. (c) The commitment for trial in one and the same case of the accused, some for robbery and the rest for receiving stolen property, (not being illegal though undesirable) Rat 913. See (100) A N 206
44. (d) It is no ground for quashing a commitment that the Magistrate after commitment had made further enquiry into the case and was of opinion that it furnished sufficient reasons for not committing the accused. (85) A N 53.
45. (e) The fact that there is "no evidence in the Committing Magistrate's record to sustain the charge, is not alone a ground for quashing the commitment." 13 B R 201 27 M J. 593; Con 6 A. 18; ('84) A. N. 11; 2 C J. 46; 9 C N. 629 5 C. N. 411.
46. (f) If the charge is not made good by the evidence, it is no ground for quashing the commitment, though it may be a ground for acquitting the accused. ('84) A N. 31; But see 9 C. N. 829
47. (g) A commitment can not be quashed on the

ground that the Magistrate has improperly exercised the discretion given to him by law. (86) A N. 256.

48. (h) A commitment order can not be quashed merely on the ground that the evidence was doubtful. The proper course would be for the District Magistrate in such case to instruct the Public Prosecutor to withdraw under S 404 Cr P. Code 7 Bnr. T. 26

49. (i) When there is no evidence to justify commitment, High Court will not quash the commitment 27 M J. 593

50. (j) A commitment order cannot be quashed on mere ground that the punishment which the Magistrate could have awarded would have been sufficient—11 A. J. 439.

51. (k) A commitment cannot be quashed by the High Court because it is inconvenient or indiscreet—15 A. J 756

52. (l) A commitment made without direct evidence and merely on presumption is not erroneous in point of law and cannot be quashed—4 C N 401

53. (m) A prima facie valid commitment should not be quashed on the grounds that the accused are not British subjects and that the offences are not committed within British India—Rat 922.

54. (n) An order of commitment made by a Magistrate on the ground that the accused are not British subjects is not invalid for that reason alone.

it points to the exercise of an improper discretion on the part of the Magistrate, does not constitute such an illegality as will justify the High Court in quashing the Commitment.—Rat 110.

55. (a) Where a Magistrate committed a person for trial before the Sessions Court for the offence of giving false evidence before the same Court, the commitment cannot be quashed, as there was no irregularity in it.—In such a case, as the Sessions Judge cannot under S 473 try the case himself, it should be transferred in the absence of an Additional or Assistant Sessions Judge to another sessions Court.—11 J 311
56. (i) A commitment of a public servant for an offence committed by him but not in his official capacity can not be quashed for want of sanction.—13 O P 126.
57. (j) A commitment should not be quashed after the prisoner has pleaded "not guilty" and has been tried.—2 Weir 262 *Contra* 6 C 581
58. (j) Where a Civil Judge has committed a person to the Court of Sessions under S 474 for using a forged document, the mere fact that the party has filed a civil suit to establish the genuineness of the document is no reason to quash the commitment (or to order the adjournment of the trial pending the disposal of the suit)—18 B 531
59. **Note.**—But in 2 Weir 260 it has been held that criminal proceedings on a charge of forgery should

be postponed until the decision of a suit in which the genuineness of the document is in dispute, if such suit is pending.

60. (c) But a commitment though based on evidence recorded in the absence of the accused cannot be quashed after the prisoner has been put upon his trial and has pleaded to the charge.—12 C L 121. *But See* 6 O 584
61. (c) The fact that the Magistrate instead of making a joint commitment of all the accused (charged with the same offence) has adopted a different course.—2 Weir 258
62. (i) A commitment should not be quashed as illegal merely because the Magistrate held proceedings against the two accused jointly. "The section of the Cr P Code relating to joinder of charges (viz 213, 239 etc.) refer to the trial of the accused. The ruling of the Privy Council in *Srinawania I R* (25 M 61) followed recently by the High Court of Calcutta in *Gobinda Koor I R* (29 C 345) cannot be extended to preliminary enquiries held by committing Magistrates so as to render the commitment itself illegal because there was misjoinder of offences or offenders in the preliminary enquiry"—26 M 502 *See* (90) A. N. 206 7 B R 457 *Contra*—Rat 925
63. (c) The mere fact that the offences disclosed by the evidence taken at the preliminary enquiry are not exclusively triable by the Session Court is no ground for quashing the commitment.—7 M. T. 186

IV. GROUNDS FOR QUASHING COMMITMENT—WHAT ARE.

64. (i) Disobedience of express provision of law—e.g.—in a sanction proceeding under S 193 there was no preliminary enquiry, the sanction was granted by a Court having no jurisdiction to grant it and it omitted to specify the Court in which and the occasion on which the offence was committed.—6 A 98 (83) A N. 223.
65. (b) That the accused was charged with offences under S 203 and 109 P C but no separate grounds of commitment had been drawn up with regard to the latter charge—*held*—the commitment in it present state was incomplete and should be quashed.—17 W R 44
66. (c) Commitments can be quashed only when illegal.
See—Powers of the High Court
67. (i) A commitment was quashed, first because there was no warrant for such commitment, the case being a summons case and secondly because the Magistrate could adequately punish the offender.—(66) A N 28 8 S 23 38 B 114 15 B R 998
68. (c) That the commitment has been made at the instance of the Session Judge before the preliminary enquiry is finished.—(66) A N 306
69. (f) That the accused has been committed to the Sessions in a summons case.—6 C N 116
70. () committing process accused an
al and must
But See 26

71. (b) The fact that there is no evidence from which guilt may be legally inferred is a ground for quashing the commitment.—9 C N 829 *But See* (84) A N 414
72. (i) Insufficiency of evidence has never been treated as a ground for quashing a commitment but this Court following the principle laid down by the Courts in England has held that the absence of evidence to warrant a commitment is a point of law and may furnish a good ground for quashing the commitment.—5 C N 411 *Contra*—27 M. J. 393
73. (i) A commitment by a Magistrate for an offence under S 215 I P C without obtaining proper sanction under Sec 193 supra (N B the *proposed*
- the session judge. *misquoting* *reference* to
to the High Court.—(1893 1900) L B 377
74. (k) That a Magistrate held a joint enquiry in the case of four accused persons who were charged with different offences under Ss 211, 214, 465 and 103 I P C, *held* that the procedure was illegal and so much to the prejudice of the accused, that the commitment must be quashed Rat 925, *Contra* 26 M 592
75. (i) That the only grounds on which an accused person was committed upon charges of abetment of offences under Ss 193, 196, 471 I. P. C. were (i) that a servant in the employ of the accused

gave false evidence and produced forged documents at the trial, (2) that the accused was present actually prosecuting those suits, (3) that the evidence, if believed, would have supported the accused's case, (4) that the accused had sometimes made collections and tested *jambunias*, held that the commitment was not proper and was liable to be quashed.—5 C. N. 829.

76. (m) That the conditional pardon tendered to an accused person was forfeited and he was committed to the Sessions Court for trial along with the others charged with the same offence. The commitment was quashed, because he had no opportunity of cross-examining the witnesses.—20 A 529
77. (n) That the commitment of an approver was

made before the completion of the trial of the principal offenders, the commitment was quashed. 14 A. 336

78. (o) The High Court can set aside an order of commitment which rests upon a misapprehension there being no evidence upon which the order can be supported.—2 Weir, 262
79. (p) Commitment duly made could be quashed when the evidence stopped short of a case which could be properly left to a jury.—5 C. N. 411
80. (q) That an order of commitment was made by the District Magistrate in contravention of S. 46 (a) Cr P. C. without giving the accused an opportunity of showing cause why the commitment should not be made.—15 M. J. 873; 312 P. L. 1913.

V. POWERS OF THE HIGH COURT.

81. The High Court can quash an illegal commitment at any stage of criminal proceeding.—6 C. 54 But see Note no 6 supra

82. Where accused has pleaded to the charge.—Where the accused has been put upon his trial and has pleaded to the charge, he is entitled to have the trial proceeded with. The commitment cannot be quashed.—12 C. L. 120 1 S. 6

83.

But see 6 A. 94, (84) A. N. 14, 2 C. J. 46 9 C. N. 829 5 C. N. 411.

84. Where the High Court has full jurisdiction to enter into facts when the commitment is under S. 436.—S. 215 bars revision by the High Court of an order of commitment made under Ss. 231, 214, 477 and 478 Cr P. C. except on a point of law. But where a commitment order has been made under S. 476 Cr P. C. the High Court has full jurisdiction to enter into the facts and to review the propriety of the order of commitment. 12 C. N. 117 7 C. N. 327 30 M. 224 28 P. W. 1913.

Note.—It is doubtful if the Criminal Appellate Bench of the High Court has jurisdiction to quash a commitment made to the High Court for trial under its ordinary original criminal jurisdiction 36 C. 48. A commitment can be set aside only by the High Court. 10 M. J. 535 1 Cr. 99

85. When High Court will not interfere—

(a) "As a Magistrate after enquiry found reasons for committing for trial on the merits, the Court declines to quash the commitment"—Cr. L. 43 of 81

(b) High Court will not interfere, where a Magistrate in his discretion commits an accused, though of opinion that the accused can not be adequately punished by him.—11 A. J. 440

(c) Though a commitment to a Session Court

86. Delay in moving High Court.—Where the accused waited for a month after the case had been committed and took the objection only in the case being called on at the Sessions, held he was not entitled to any great sympathy and his application under S. 215 Cr. P. C. ought not to be entertained.—12 C. 608

VI. POINT OF LAW—MEANING AND CASE.

87. Meaning.—The High Court has power to interfere only if the Magistrate has ignored or contravened an express provision of the Code or some other provision of the law. [(84) 2 Weir 255] It will interfere if the Court below has not adopted the procedure laid down by law but has followed a procedure of its own. [10 A. J. 144] It has been held that where the order of commitment rested upon a misapprehension and there was no evidence upon which the order could be supported, the High Court had jurisdiction to set aside the order. (2 Weir 262).
89. Insufficiency of Evidence.—Want of evidence to connect the accused with the alleged offence is a defect in law sufficient to justify the

quashing of the commitment [6 A. 94, (80) A. N. 14, 2 C. J. 46; 9 C. N. 829, 5 C. N. 411] 11 C. 740 (P. C.), 9 L. B. 208 Con. 13 B. R. 291 7 Bur. T. 26 27 M. J. 593]

89. Note.—In 14 C. 740 (P. C.) [their Lordships of the Privy Council held that when there is no evidence to go to a jury that does not raise a question of fact such as arises on the issue itself but a question of law for the consideration of the Judge
90. The contrary view.—In 13 B. R. 291 (Chandrasekhar and Hewson JJ. were of opinion that the High Court cannot quash a order of commitment on the ground that there is no evidence in the

committing Magistrate's refusal to sustain the charges. The same view was taken in 27 M J 501 by *Stacy v. Nizant & Taylor JJ*. See also 1 C N 501, 7 Bar T. 26.

91. The test to be applied.—The test which should be applied to decide whether a commitment ought or ought not to be made on the facts is this: assuming that the whole of the evidence against the accused is true, is there a case fit to go to the jury? If the answer is no—then a commitment is improper and ought not to be made. 9 C N 521.
92. The rule applies only when the com-

mittal is under the four sections specified in the Section.—See (1) Scope and application (1) *Supra*.

93. The want of territorial jurisdiction in the Magistrate who holds the enquiry is a point of law—7 Bar T. 26.
94. Commitment in a Sessions Case.—Where a Magistrate finding that there was a *prima facie* case against an accused person under Ss 352 and 117 I P C committed him to the Court of Sessions, held that the commitment was wrong on a point of law—(66) A N 29.

VII. MISCELLANEOUS.

(1) What is sufficient evidence for commitment.

95. When there is evidence that a forged document was used on behalf of an accused person with his knowledge or under his instructions or with his approval which might be proved by the conduct of the accused, it can not be said that there is no evidence on which a commitment can be made [4 C N 501]. When an approver fails to net up to the condition of his pardon, the Magistrate can commence the enquiry as against the approver and commit him to take his trial along with the other accused—42 C 579.

(2) Powers of a Session Judge.

96. The Session Judge has no power to quash a commitment even if it is illegal and to direct the Magistrate to try the case himself—16 M J 325.

(3) Commitment by a single Judge sitting on the Original Side of the High Court.

97. No appeal lies against an order of commitment made under S 474 Cr P C by a Judge presiding on the Original Side of the High Court in the course of the trial of a suit except under S 215. Cr P C—37 M J 652.

(4) S. 215, Governor, Ct. 15 of the Letters Patent.

98. Ct 15 of the Letters Patent is controlled by the specific provisions of S 215 Cr P C—37 M J 652.

(5) Quashing no bar to second trial.

99. The quashing of a commitment, will not at present the accused from being charged again with the offence—27 M J 593.

216 When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before him.

summons to witnesses for defence
if accused is committed

witnesses included in the list, as have not appeared before him.

If, to appear before the Court to which the accused has been committed
Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly :

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

refusal to summon unnecessary
unless deposit made

purpose of vexation or delay, or of defeating the ends of justice,
the Magistrate may require the accused to satisfy him that there

are reasonable grounds for believing that the evidence of such witness is material, and, if he is not satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

Notes.

S 216—S 339 (1872)—S 228 (1881)

1. Procedure on application for summons.—
Where an application has been made for summoning defence witnesses the Magistrate is bound to

pass an order on it, either granting the prayer or refusing it. To merely pass the order "file" is improper—6 C N 514.

2. **Procedure, when summoned has been disobeyed.**—Where witnesses summoned by a party have neglected to obey the summons, he has a right to call upon the Court to compel their attendance [6 C N. 548] Where a witness cited on behalf of the accused was summoned to attend on the day fixed for the hearing of the case, and owing to some delay in the service of the summons the witness did not attend, held that the Magistrate was bound to make a further attempt to secure the attendance of the absent witness—[4 A 53].
3. **Right of the accused to cite witnesses.**—A prisoner is entitled as a matter of right to have any witness named in the list he delivers summoned and examined.—[23 W R 56]
4. **The only ground on which Magistrate may refuse summons.**—The only ground on which a Magistrate may refuse to summon a witness for the defence under S. 216 is when he thinks that the witness has been included in the list for the purpose of vexation and delay. He will not be justified in refusing to summon such witness merely on the ground that his testimony would not be material or reliable—(32) 2 Weir 263 See 3 C 573
5. **Magistrate cannot enquire into the nature of the defence by virtue of the second proviso.**—The second proviso does not at all enable a Magistrate to enquire generally into what the defence of the accused is to be, and to consider whether he is absolutely to abstain from summoning the whole of the witnesses cited by the accused—Per Jackson J—3 C. 573. See 8 A 668
6. **Court cannot condemn a witness before hearing his evidence.**—It is not open to a Court to decide on the credit to be attached to the evidence of a witness before it has an opportunity of hearing it. A Sessions Judge exceeds the discretion given to him by S 216 Cr. P. O. in refusing to adjourn a case in order to obtain the evidence of two absent defence witnesses, on the ground that they are persons of very ordinary

status and their evidence would not carry much weight.—19 M. 375 6 B. L. (1p) 65

7. **Magistrate bound to record reasons for refusal.**—Under S. 216 when a Magistrate refuses to summon a witness included in the list of the accused, he must record his reason for such refusal and such reason must show the evidence of such witnesses is not material. The fact that the Magistrate thought that the reasons assigned for summoning a witness were not sufficient is not a sufficient reason for refusing to summon him—Per Pidge C J in 8 A. 668 See 6 C. 714.
8. **Power to refuse summons must be sparingly used.**—An order by a Magistrate refusing to summon witnesses for the defence without their expenses being paid by the accused, though legal, should be pressed very sparingly, and is improper in a case in which the accused is unable or unwilling to deposit money, and the result is that he is convicted without his witnesses being heard, especially if the case is one in which a severe sentence is inflicted—7 P. R. 1895
9. **Magistrate bound to fix the amount of deposit.**—Although a Magistrate is competent to refuse to summon the witnesses required by the defence, if the accused declines to satisfy him that there are grounds for believing that they are material witnesses, unless expenses are deposited, he is bound to fix the amount which he considers necessary to defray the cost of the attendance of the persons summoned and to intimate his readiness to issue summons on that amount being deposited—4 M. H. 81.
10. **Cost deposited under the section cannot be forfeited.**—In the absence of any provision authorising a forfeiture to the Government, an order directing the forfeiture of a deposit made by a prisoner under this section is erroneous. The deposit should be returned to the jailor in trust for the depositor, or paid to any person authorised by the depositor to receive it—6 M. H. (1p) 9

217. (1) Complainants and witnesses for the prosecution and defence, whose attendance

Bond of complainants and witnesses, before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bond, binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

(2) If any complainant or witness refuses to attend before the Court of Session or High

Defendant in custody in case of refusal to attend or to execute bond Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Notes.

1. Magistrate's power to bind every

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evidence is material for the prosecution and It is for the Magistrate to decide as to the necessity for the attendance of the witnesses for the prosecution.—(83) A. N. 37.

2. Witnesses cannot be required to furnish sureties.—A Magistrate, under this section, has no jurisdiction to call for bonds and sureties nor has he the power to require recognizance from such defence witnesses who have never appeared before him.—2 W R 57.
3. Effect of withdrawal after commitment.—The complainant is not at liberty to withdraw from the charge after the commitment. If he does so, he will forfeit his recognizance.—2 W R 57.

- 4 Medical witnesses.—The attention of Magistrates is called to S 109 Cr. P. C and they are informed that a committing Magistrate, should not, except for some special reason, bind over a medical witness, whose evidence he has taken to appear in the Sessions Court. It is very undesirable that medical men in the districts should be taken away from their dispensaries, more frequently, or for a longer period than is absolutely necessary.—*Bank H C Cr.* p 18.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge.

and shall send the charge, the record of the enquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

(2) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Notes.

1. Record must be complete.—A committing Magistrate is bound to make his record complete, if he fails in the first instance to get all the necessary evidence down, he should discover his own mistake when he is preparing the calendar.

and if he has made the order of commitment under S 213, *supra*, he can still take further evidence under S 219 *infra*, without any order from the Sessions Judge.—*Punj Cr Ch LIV*, para 11.A, p 235 Oudh Cr Dig p 10

219. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner heretofore provided to appear and give evidence.

(2) Such examination shall, if possible be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost

Proposed amendments to the section.—In sub-section (1) of section 219 of the said Code for the word "The Magistrate" the words "The committing Magistrate or, in the absence of such Magistrate, any other Magistrate" shall be substituted

(1) In sub-section (2) of the same section, for the words "if the accused so require, be given to him free of cost" the words "be given to the accused free of cost" shall be substituted

Notes.

- 1 The stage at which action may be taken under S. 219 Cr P C.—The Magistrate's authority under this section to examine supplementary witnesses ceases with the commencement of the trial. After that, the Sessions Judge can cause witnesses to be summoned before himself, or under certain circumstances, have them examined by a commission. He cannot direct

the Committing Magistrate or any other authority to call additional witnesses and hold an inquiry.—29 F R 1855

- 2 Sessions Judge may ask Magistrate to act under S 219 Cr. P. C on receiving order of commitment.—If on receiving the order of commitment, a Sessions Judge in view of Magistrate's recorded opinion, thinks that

2. Procedure, when summons has been disobeyed.—Where witnesses summoned by a party have a right to be attended, on behalf of the accused was summoned to attend on the day fixed for the hearing of the case, and owing to some delay in the service of the summons the witness did not attend, held that the Magistrate was bound to make a further attempt to secure the attendance of the absent witness—[4 A 53].

3. Right of the accused to cite witnesses.—A prisoner is entitled as a matter of right to have any witness named in the list he delivers summoned and examined—[23 W R 56].

4. The only ground on which Magistrate may refuse summons.—The only ground on which a Magistrate may refuse to summon a witness for the defence under S 216 is when he thinks that the witness has been included in the list for the purpose of vexation and delay. He will not be justified in refusing to summon such witness merely on the ground that his testimony would not be material or reliable—(82) 2 Weir 203 See 3 C 573.

5. Magistrate cannot enquire into the nature of the defence by virtue of the second proviso.—The second proviso does not at all enable a Magistrate to enquire generally into what the defence of the accused is to be, and to consider whether he is absolutely to abstain from summoning the whole of the witnesses cited by the accused—Per Jackson J—3 C 573 See 8 A 668.

6. Court cannot condemn a witness before hearing his evidence.—It is not open to a Court to decide on the credit to be attached to the evidence of a witness before it has an opportunity of hearing it. A Sessions Judge exceeds the discretion given to him by S 216 Cr P C in refusing to adjourn a case in order to obtain the evidence of two absent defence witnesses, on the ground that they are persons of very ordinary

status and their evidence would not carry much weight.—19 M. 375 6 B. L. (ap) 65.

7. Magistrate bound to record reasons for refusal.—Under S. 216 when a Magistrate refuses to summon a witness included in the list of the accused, he must record his reasons for such refusal and such reason must show the evidence of such witnesses is not material. The fact that the Magistrate thought that the reasons assigned for summoning a witness were not sufficient is not a sufficient reason for refusing to summon him—Per Fidge C J in S. A. 606 See 6 C 714.

8. Power to refuse summons must be sparingly used.—An order by a Magistrate refusing to summon witnesses for the defence without their expenses being paid by the accused, though legal, should be passed very sparingly, and is improper in a case in which the accused is unable or unwilling to deposit money, and the result is that he is convicted without his witnesses being heard, specially if the case is one in which a severe sentence is inflicted—7 P. R. 1805.

9. Magistrate bound to fix the amount of deposit.—Although a Magistrate is competent to refuse to summon the witnesses required for the defence, if the accused declines to satisfy him that there are grounds for believing that there are material witnesses, unless expenses are deposited, he is bound to fix the amount which he considers necessary to defray the cost of the attendance of the persons summoned and to intimate his readiness to issue summons on that amount being deposited.—4 M. H. 81.

10. Cost deposited under the section cannot be forfeited.—In the absence of any provision authorising a forfeiture to the Government, an order directing the forfeiture of a deposit made by a prisoner under this section is erroneous. The deposit should be returned to the jailor in trust for the depositor, or paid to any person authorised by the depositor to receive it—6 M. H. (ap) 9.

217. (1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary and who bind themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Notes.

1. Magistrate

evidence is material for the prosecution and it is for the Magistrate to decide as to the necessity for the attendance of the witnesses for the prosecution—(81) A. N. 37.

2. **Witnesses cannot be required to furnish sureties.**—A Magistrate, under this section, has no jurisdiction to call for bonds with sureties nor has he the power to require recognizances from such defence witnesses who have never appeared before him.—2 W. R. 57.
3. **Effect of withdrawal after commitment.**—The complainant is not at liberty to withdraw from the charge after the commitment. If he does so, he will forfeit his recognizance.—2 W. R. 57.

4. **Medical witnesses.**—The attention of Magistrates is called to S. 509 Cr. P. C. and they are informed that a committing Magistrate, should not, except for some special reason, bind over a medical witness, whose evidence he has taken to appear in the Sessions Court. It is very undesirable that medical men in the districts should be taken away from their dispensaries, more frequently, or for a longer period than is absolutely necessary.—*Domb H. C. Cr. Cr.* p. 18.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge,

and shall send the charge, the record of the enquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

(2) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Note.

1. **Record must be complete.**—A committing Magistrate is bound to make his record complete, if he fails in the first instance to get all the necessary evidence down, he should discover his own mistake when he is preparing the calendar,

and if he has made the order of commitment under S. 213, *Swan*, he can still take further evidence under S. 219 *infra*, without any order from the Sessions Judge.—*Punj. Cr. Ch. L.V.*, para 11-A, p. 235. *Oudh Cr. Dig.* p. 10.

219. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Proposed amendments to the section.—In sub-section (1) of section 219 of the said Code for the word 'The Magistrate' the words 'The committing Magistrate or, in the absence of such Magistrate, any other Magistrate' shall be substituted.

(ii) In sub-section (2) of the same section, for the words 'if the accused so require, be given to him free of cost' the words 'be given to the accused free of cost' shall be substituted.

Notes.

1. **The stage at which action may be taken under S. 219 Cr. P. C.**—The Magistrate's authority under this section to examine supplementary witnesses *craves with the commencement of the trial*. After that, the Sessions Judge can cause witnesses to be summoned before himself, or under certain circumstances, have them examined by a commission. He cannot direct

the Committing Magistrate or any other authority to call additional witnesses and hold an enquiry.—23 P. E. 1858.

2. **Sessions Judge may ask Magistrate to act under S. 219 Cr. P. C. on receiving order of commitment.**—If on receiving the order of commitment, a Sessions Judge in view of Magistrate's recorded opinion, thinks that

further evidence should be taken, the proper course is to point out to the Committing Magistrate that he could summon, and examine any supplementary witnesses who could give evidence, and bind them over under this section to appear at the trial, and not to send the case to the Magistrate after the conclusion of the trial and the opinions of assessors have been taken [4 P R 1892]. Where the committing Magistrate, did not take all the available evidence,

on the ground that the accused had confessed, the High Court declined to quash the conviction but directed the Magistrate to act under this section [Hart 842]

3. Copies of evidence to be given free of cost to accused.—Under 835 of the Court Fees Act (VII of 1870), copies of the evidence of witnesses given to an accused person, under this section are exempt from Court fee [F.R. Govt. of Ind. Not, dated 21-1-56]

220 Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

(7) If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(1) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general

exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception apply to it.

(i) A is charged, under section 329 of the Indian Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 325 of the Indian Penal Code, and that the general exceptions did not apply to it.

(ii) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or, theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of these crimes contained in the Indian Penal Code, but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(iii) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Proposed amendments to the section. In sub-section (7) of section 221 of the said Code, for the words "has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award," the following shall be substituted, namely:—

"having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence,"

and for the words "is omitted" the words "has been omitted" shall be substituted.

Arrangement of Notes.

S 221—S 439 (1873)—S 231 (1861)

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| 1. Scope of the Section. | 4. Previous Conviction. |
| 2. The charge with reference to specific offences. | 5. Proof of previous conviction. |
| 3. Inaccuracies in the charge. | 6. Miscellaneous. |

I. SCOPE OF THE SECTION.

1. **Meaning of the word "charge"**—A charge may be defined as a precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage. [See 5 C N 615] The word "charge" in the Criminal Procedure Code means a whole series of counts or heads of charge for various offences. [9 S 37] "The charge—I take to be first a notice to the prisoner of the matter whereof he is accused, and it must convey to him with sufficient clearness and certainty that which the prosecution intends to prove against him and of which he will have to clear himself, and second, it is an information to the Court which is to try the accused, of the matter to which evidence is to be directed." *Per Jackson J* in 21 W R 72 (52) See Cr R 8 of 22.11.02] The word "charge" in the Cr P C, is generally used as the statement of a specific offence and not as the aggregate of all the separate offences for which the prisoner is being tried—*Sargent C J* and *Bayley J* [see *Scott J* *Contra*], in 8 B 200 [Except in the heading of the form No 28 of sch IV infra, where the term is used as containing several heads of offences—See (92-96) U B I 32, 5 W R 77]
2. **Charge should ordinarily follow the language of the statute.**—A charge of an offence under the I P C should be drawn up in the words of the section defining the offence [5 C P 18] If the statute sets fully and without uncertainty or ambiguity the elements necessary to constitute a statutory offence, a charge in the language of the statute is sufficient [R v Rowlands (51) 17 Q B 671 see 16 C N 1077] It is a wholesome rule that the Court should adhere to the language of the statute as far as practicable, when a charge is drawn up, nothing is gained by a paraphrase, while opposi-
3. **One count charging each specific offence and**
3. **"**

2 Rawlings v Leach (11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100) but the Indian rules as to charge have expressly been

framed to steer clear of merely technical objections. "The English rule as to what ought to be set forth in the indictment is modified in Indian by Ss. 225 and 537 Cr. P. C. [See *Sankaran Muv J.* in 32 M. 384 (S. B.)]

4. **Accused entitled to know the exact value of the charge.**—An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him, for unless, he has this knowledge, he may be seriously prejudiced in his defence. This is true in all cases but it is more especially true in cases, where it is sought to implicate an accused person for acts not committed by himself, but by others with whom he was in company.—[11 C 106, 42 C 957 See 31 C 295] When the accused was summoned for storing wool, he cannot be charged with storing cotton.—[Rat 529]
5. **Charge ought to refer to the section I. P. C.**—A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable. [9 W R 33 See 111 (C)], but omission to comply with the requirement will not invalidate the commitment [1 I J (N S) 43].

6. **The Object**—The object of Ss. 221, 222 and 223 Cr. P. C is clearly to enable the accused to know the substantive charges which he will have to meet and to be ready for them before the evidence is given.—[17 Cr 411 (V)] It is the duty of the Courts to draw charge sheets accurately, and where they fail to do this, the persons convicted are entitled to the benefit of any material omission [139 P. L 1911]

7. **Charge should not be vague.**—The best that can fairly be allowed in favour of one criminally convicted is that when a charge has been expressed in vague terms the prosecution on appeal should be limited to the particular sense in which the charge has been understood in the actual trial. [2 B. 142]

8. **Useless details should be avoided.**—A common fault in the framing of charges is the insertion of useless details. It should be remembered that nothing which is not essential to the offence should be included in the charge, except such details of time and place as are sufficient to give the accused notice of the matter with which he is charged.—C. P. C. Cr. Pt. II, No 12

II. THE CHARGE WITH REFERENCE TO SPECIFIC OFFENCES.

9. **In cases of rioting and unlawful assembly.**—In cases of rioting it is necessary that the common object of the unlawful assembly should be set out with precision [11 C 106] In a trial for rioting, the charge is bound to state the common object of the assembly, but if it does not, the omission is not fatal to the conviction, if the accused has been in no way prejudiced by the omission. [38 P. W. 1907 4 C N 599] Where a charge is defective and does not specify the property, the taking possession of which is supposed to be the common object of an unlawful assembly, the accused are thereby prejudiced and S. 537 Cr. P. C. should not be had recourse to, specially when the specification of the property would alter the whole complexion of the case [33 C 295] See Notes under S. 223 Cr. P. C. *infra*.
10. **Note.**—Where a Judge in his charge to the jury propounded two different common objects of an unlawful assembly, the accused being charged with one of them only, held that the conviction of the accused should be set aside and a retrial ordered in as much as it was impossible to say which of the two common objects the jury accepted, and if they had accepted the one on which he had not been charged, he had no opportunity of meeting it [22 C 276 See 6 M. T. 17, 36 C 695] But the omission by a Judge to state correctly the common object of an unlawful assembly in the charge to the jury, does not vitiate the trial, if such omission has not in any way prejudiced the accused in their defence. [1 C N 194, (1905)]
11. **Offences of which guilty intention is an essential ingredient.**—A conviction under S. 135 I. P. C. would not be had for want of specification of the intention in the charge, though one under S. 177 could not be sustained without such

specification [22 C 391]. A charge under S. 407 of the Indian Penal Code is valid if the intention is not set out [17 C N 334 But see 6 M. T. 266]. A charge which sets out an intention on the part of the accused to commit an offence, but of which intention, there is no evidence on the record, is defective and a conviction based thereon is illegal. [23 P. W. 1911] In an indictment for criminal trespass the particular intent with which the act is committed must always be stated in a charge when a particular punishment is provided for it, if committed with a particular intent [16 W R 63 22 C. 391] In a case of mischief by fire with intent to destroy a dwelling house, the intention to cause destruction of a house simply but a house used as a human dwelling must be set out [8 W R 30].

12. **The charge in conspiracy cases.**—The indictment in all cases of conspiracy must, in the first place, charge the conspiracy but in stating the object of the conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed [42 C 977 See 17 P. R 1915. *Key v Gill* 2 B & Ald 204; *Key v. Kendrick*. (183) 5 Q B 49 *Key v. Blake* (41) 6 Q B 126. *Key v. Aspinall* (70) 2 Q B D 18 (60)] So in respect to a charge under Ss 4, 5 and 6 of the Explosive Substances Act (VI) of 1905. *Moukjee and Richardson J. held* "we are clearly of opinion that the conspiracy charge is not open to objection on the ground that it does not specify the explosive substances for the preparation or possession whereof the alleged conspiracy was formed" [42 C. 957] *R. v. Eccles* 13 East P. C. 28 (N). But see, *R. v. Boulton* 17 Q. B. 671. *R. v. Port* 9 A. & E. 658 *R. v. Richardson* 1 Mand. R. b 402; *R. v. Stuart* 1 A. and E 709.

3. The charge with reference to the conspirators.—In a conspiracy case the accused can be charged with conspiracy with persons unknown, but if they are charged with persons known, then such persons must be named in the charge.—*See* *Jenkins C. J.* in 39 C. 559; *See* *Per. v. Stoddart* 23 T. L. R. 612; *R. v. Ex parte I F.* and *F.* 213; *Con People v. Mathar* (30) 4 Wend 229].

4. Cheating Cases.—An indictment for obtaining property by a false pretence must not only expressly allege that the pretence was false but must set out the false pretence sufficiently [R. v. Mason 2 East P. C. 837; R. v. Oates 6 Cox C. C. 340; R. v. Hencham 9 Cox. C. C. 472 But see R. v. Compert 2 Q. B. 624; *Sunderoff v. R.*—11 Q. B. 245 See S. 223 *alt.* (h) *infra*]

5. Charge of extortion (384 I. P. C.)—Where any charge involves consequences which may be stated in a general form such as may arise in a case of arson, where a man by one act of arson sets fire to and destroys several stacks of several persons no particular is required, the nature of the offence being sufficiently stated by the date, time, and place of the setting of fire, but extortion or obtaining money from persons by unlawful means, to my mind, involves stating with some approach to accuracy the approximate amounts alleged to have been obtained from each person and the nature of the extortion against each person. It is not sufficient to say that at the close of the evidence, the accused knows what is alleged against him—17 Cr. 411 (A)

6. Cases of sedition.—If an offence under S. 124 of the Indian Penal Code, is committed by means of words spoken, the requirements of the law are satisfied if the charge gives such a description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is charged, that is, if the charge states the words used with *substantial*, though not absolute

accuracy. [*Per Benson and Wallis J. J. Sankaran Nair J. contra.* in 32 M. 394; *See* 32 M. 3] where the accused was charged and convicted under Ss 124=A and 153=A, I. P. C. in respect of each of the two articles published in his newspapers without the specification of particular passages.

Scheverell's case—15 St. Tr. 464 *Zenobia G. T. R.* 162 *R. v. Feltier* 28 St. Tr. 420 *Bradlaugh's case* 3 Q. B. D. 607 *R. v. Popplewell* 2 Str. 686 *R. v. Sparling* 1 Str. 497 *Archibald's Crim. Practice* (23rd

17. such as are falling under S. 39, I. P. C. which provides a minimum punishment for the offence

18.

to pay a fine, and in default of payment to whipping, held the judgment should set out the ground of the liability to the charge should state the liability and the ground of liability to punishment under that Act, when that punishment is imposed—5 M. 158 2 Weir 207 2 Weir 205 (72-92) L. B. 337

[Note.—Where previous conviction of theft is not mentioned in the charge the award of the sentence of whipping in addition to imprisonment illegal—2 Weir 265]

III. INACCURACIES IN THE CHARGE.

19. Effect of inaccuracies in the charge.—In one charge two persons were charged with causing hurt to two others with a *dao* but there was no case of hurt by *dao* by one of the accused and he was convicted under S. 352 for using a *lathi* against two of the complainants held that this was an irregularity which might have prejudiced the accused in their trial and that a retrial by a new Magistrate must be held on charges properly framed [17 O. N. 419] Where the charge against the accused was to the effect that he, on or before the 21st January, 1907, committed breach

of trust in respect of some deeds which he took from the complainant but at the trial he was convicted of embezzling not the deeds but amounts obtained by dealing with those deeds—held—that the conviction was bad [12 C. N. 577]

19A. Duty of Magistrates to frame accurate charges.—Magistrates cannot exercise too much care when they proceed to frame a charge. The charge-sheet is a very important document and the drawing up of it a very important act in a criminal trial—11 A. J. 163

IV. PREVIOUS CONVICTION.

20. Meaning of previous conviction.—A previous conviction for the purpose of affecting the punishment which a Court is competent to award is a conviction the penalty following which had been undergone by the accused (in whole or in part) at the time when he committed the offence for which he is being tried—C. P. Cr. Cir. Pt II No. 19

21. The procedure.—Where it is intended to prove a previous conviction for the purpose of affecting punishment it should be entered in the charge and the accused should be called on to plead thereto: his mere admission that he has been in jail once is insufficient to show that he pleaded guilty to a previous conviction—13 P. L. 1911. 4 B. R. 177. 21 W. R. 40 22 W. R. 39; Rat 70; 2 Weir 206; 2 Weir 205.

22. **Note.**—Where it is intended to prove the previous conviction for the purpose of affecting the punishment which the Court is competent to award, Criminal Form No 79 should invariably be used—[8 L B 461] If a prisoner is to be tried under S 75 I P C a separate charge must be framed and recorded [9 M 284]

23. **What the charge should contain.**—In cases of previous conviction the charge should as required by S 221 Cr P C state the fact, date and place of previous convictions *severally*. An omission to do so may prejudice the accused—(83) A N 110 See 7 M. T 77 8 L B 461, 21 P. R 1879 (81) A N 144

24. **Charge for previous conviction may be added at any time before sentence.**—The previous conviction if not stated in the charge cannot be used for the purpose of enhancing the punishment. If it is omitted it may be added at any time before the sentence is passed, but not afterwards—19 W R 11 10 B L (tp) 36, Rat 52 and 70

25. **Liability to whipping and to enhanced punishment must be set out separately.** The liability to whipping as an additional punishment under S 3 of Act VI of 1864, and the liability to enhanced punishment under S 75 I P C are distinct liabilities and either or both liabilities must be set out in the charge, according as they arise or not in the circumstances of each particular case—2 Weir 267

26. **Effect of omission to draw up separate charge for previous conviction.**—The failure to include a charge under S 75 I P C though an irregularity in view of the provisions

1917: 7 M. T. 77]. A Magistrate is bound by S 221 (7) Cr. P. C to state the fact, date and place of previous conviction in the charge. An omission to do so, however, will be cured by S 537 Cr. P. C, where the previous conviction has been put to the accused and admitted by him, before the judgment is passed [8 L B 461] Where the sentence passed is one which the Magistrate is competent to pass for this, the omission is not fatal to the charge against the accused with

Where the previous conviction is stated in the charge, the omission to state the fact, date and place of previous conviction in the charge is not fatal to the charge against the accused with

action held, that the omission to state the fact, date and place of previous conviction in the charge led in no way prejudiced the accused [(81) A N 32]

Note.—The omission to draw up a formal charge is not held to be fatal in the following cases—(81) A N 110; 19 W R 41; 21 W R 40; 22 W R 39, 9 M. 284; Rat 70; 4 B. E. 177].

V PROOF OF PREVIOUS CONVICTION.

27. **Proof of previous conviction.**—The question of proof of previous conviction is one of fact which ought to go to the jury and must be determined by a jury [21 W R 40] The prosecution is bound to prove the previous conviction and the identity of the accused with the person previously convicted—[2 Weir 266] The previous conviction should be entered in the charge and the accused should be called on to plead thereto. His mere admission that he had been in jail once is insufficient to show that he pleaded guilty in a previous conviction—[1 B. R. 177]. A previous conviction should be proved in the ordinary manner, although the Magistrate does not consider it necessary that an enhanced sentence should be passed, and desires to obtain information as to the antecedents of the accused in order to determine the duration of the sentence to be imposed on him—[(81) 2 Weir 205].

28. **Note.**—If the accused admits previous conviction, no further proceedings are necessary [(88) A N 144 See 8 L B 461] But if he denies, his

conviction should be proved by the certified extract of the record of the Court by which he was convicted, and also by evidence of identity that he and the person named in the record are one and the same, and a specific finding on the point should be recorded by the Court—[(88) A N. 144]

29. **When a previous conviction should be proved.**—Evidence of previous conviction can not be allowed except where, after the accused has been found guilty, it is necessary for the purpose of giving character

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ing on his own S 221 (7) Cr. P. C to the effect that he is not a previous convict—4 N. 180

VI. MISCELLANEOUS.

31. **Duty of Police regarding previous convictions.**—It is the duty of the Police in conducting the investigation to take proper steps to establish the identity of an accused person, and to obtain and produce evidence of previous convictions against him [1909 Cr. P. 314] He should be asked for when the particulars of the

32.
justified by the evidence and the facts of the case

- to in S. 35 Cr. P. C. If the Magistrate thinks that the accused deserves an enhanced punishment, the best course for him is to commit the accused for trial to the Court of Sessions.—11 A. 391.
33. S. 221 (7) does not apply to an order under S. 505 Cr. P. C.—The provisions of S. 221 (7) Cr. P. C. does not apply to an order under S. 505 Cr. P. C. and such an order can be legally passed without the previous conviction on which it is based, having been mentioned in the charge.—8 N. 85
34. The High Court.—Evidence of previous convictions *discovered after the trial*, does not justify

the High Court in enhancing a sentence in the exercise of its revisional power.—Rat 457: See Rat 458

35. American Law.—Under the N. Y. Code, the time and place when and where a crime was committed *must be stated with certainty* in the indictment but it is not necessary to prove them as stated unless they are necessary ingredients of the offence [*People v. Stocking* 50 Barb 573] the doctrine is general, that where time is material it must to the extent of such materiality be alleged correctly and proved as laid

222. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 231.

Provided that the time included between the first and last of such dates shall not exceed one year.

Notes.

(1) General,

- Particulars as to time place etc.—A committing Magistrate is bound under S. 222, 223, to insert in the heads of charges, *sufficient particulars of time, place person and circumstances* as would give each of the accused notice of the matter with which he is charged [15 B. 491: 17 Cr 411 (A)] In the absence of anything to show that all the accused acted in concert, an omission to specify in the charge, the particulars as to the time and place of the commission of the offence as alleged against each of the accused, must seriously prejudice their defence and amounts to a gross violation of the provisions of Ss 221 and 222 of the Code.—See Judgment of Naper J in 25 M T 379.] In an indictment under S. 403 I P C. the charge should specify the person to whom the property belonged [14 W R 13]
- Effect of omission to specify particulars.—In a case in which the charge did not contain such particulars as to time and place as were reasonably sufficient to give notice to the accused of the matter with which he was charged, the High Court set aside the conviction and acquitted the accused.—25 W R 46 See 7 B L (sp) 66
- In a charge under S. 37 I. P. C.—The only fact proved against the accused was that he habitually wore woman's clothes and exhibited physical signs of having committed the offence, *held* that the conviction could not be sustained, as the charge did not specify the time when, the place where and any known or unknown person with whom the particular act charged as an offence under S. 377 I. P. C. was committed.—6 A 204.

- Charging.—In a case of an attempt to cheat, the omission in the charge to specify the person upon whom the alleged attempt to cheat was made, and also the manner in which it was intended by the accused to influence the conduct of that person is a serious defect.—9 C N 278

- Criminal breach of trust.—Where the charge against the accused was that he, on or before the 21st day of Jan'y 1907, committed breach of trust in respect of certain deeds which he took from the complainant but, at the trial he was convicted of embezzling, not the deeds, but amounts obtained by dealing with those deeds, *held* the conviction under S. 406 I P C. was bad and must be set aside.—12 C N 577

- Defamation.—A charge of defamation should set forth the *particular statements* on which the defamation is said to have been committed.—30 C 402

- Offences of which guilty intention is an essential ingredient.—See Note No 11 under S. 221 Cr P C *Supra*

- The principle as applied to appeals against acquittal.—In an appeal from an order acquitting a person of a specific offence, the Court will not convict that person of an offence entirely different from that charged against him in the grounds of appeal. Where therefore, the grounds of appeal, were clearly directed against the acquittal of the respondent on a charge of murder, and it was nowhere suggested that he had committed an offence under S. 201 I P C, the Chief Court declined to convict him of the latter offence.—[63 P. L. 1911]

9. The test of sufficiency of particulars specified in the charge.—The test of the sufficiency of the particulars as to time and place mentioned in the charge, is whether the accused has reasonable notice of the accusation against him. No general rule can be laid down, for while in some charges, it may be necessary to specify the time and place, it may be unreasonable to require the prosecution to do so in others [Rat. 659]. Courts have a wide discretion in the matter and no general rule, as to the particulars required can be laid down [1 B 610]. But where an accused was convicted under S 406 read with S 116 I, P. C. without any specified charge being framed against him, but it appeared that he had knowledge, of the charge as he put in a written statement denying it, held that his conviction was valid and should be set aside [12 C N 577 See 17 Cr. 411 (A)].

10. Omission to specify common object.—In an indictment charging the accused with being members of an unlawful assembly, the omission to specify the common object in the charge, though a defect, will not vitiate the trial, unless, it has really prejudiced the accused. (18) M. N 129 See Note No. 1, under S 223 Cr P. infra.

(2) Embezzlement Criminal Misappropriation etc.

11. Charge in the Law.—By enacting subs (2) the Code of 1898 has superseded the rulings under the former Codes [vide (96) 24 C. 193 (98) 2 C N 341 (343)] which laid down that an accused person could not be charged with, and tried at the same time for Criminal misappropriation of a sum which was not the subject of a single act of misappropriation but represented a general deficiency consisting of a series of separate defalcations spread over a length of time. The conflict of rulings [See 19 B. 749 17 A. 161] has now been set at rest by subs (2)

12. The object and effect of Subs. (2).—"It seems difficult to conceive that the Legislature should have intended that under S 222, the prosecutor should be at liberty, to prosecute for a gross sum misappropriated during a particular period, consisting of certain items more than 3 in number, and obtain a conviction for the same, and then choose another gross sum consisting of three different items, alleged to have been misappropriated during the same period, and have a separate trial for the second group of items. Where (therefore) a person has been tried and convicted for the misappropriation of a gross sum of money, during a certain period, S 103 Cr. P. C. will be far to the second prosecution, of the sum for certain items of misappropriation during the same period"—Per Abdul Rahim and Aylmer J.J. in 17 Cr 30 (N); See however 12 B R 225

13. Does subs (2) apply to a single accused only?—In P. C N. 600. Muhammad and Sharfa Khan J. J. lay down that the "wording of S 222 Cr. P. C. refers to a single accused, and it must be so, because it is impossible to hold that two persons can be guilty of misappropriation of the

same parcel of money. S 239 has no application to such a case. This view has been expressly dissented from in 17 Cr. 30 (M) by Abdul Fahn and Aylmer J. J. who hold that there is nothing in S. 222 Cr. P. C. compelling the inference that it contemplates the trial of one person only at a time.—[See also 30 B. 49.]

14. S. 222 () an exception to the general rule.—S. 222, is an exception to the general rule that at a trial for an offence certain particulars must be given in the charge. Cl. (2) of S 222 modifies the rule as to charges for criminal breach of trust, but does not restrict in any way the scope and object of S 234 Cr. P. C.—[12 B R 226] The section clearly admits of the trial of any number of acts of breach of trust committed within the year as amounting only to one offence. It does not require any particular formulation of the accusation, but only enacts that it is sufficient to show the aggregate offence without specifying the details: e. g. the particular items of which the gross sum is composed—30 B R 29 M 558 See 16 P. W. 1907]. S 222 Cr. P. C. provides for the charge being framed in respect of gross sums misappropriated within 12 months from the first to last, and enacts that a charge so framed shall be deemed to be a charge within the meaning of S 234 Cr. P. C. but it does not follow that the acts so charged shall be deemed to be one transaction within the meaning of S. 235 Cr. P. C.—[30 M 328]

15. Cases.—Where a charge of Criminal misappropriation consisted of three counts, alleging misappropriation on three different occasions, two of those items being made up of three smaller sums of money each, held that such a charge was a valid charge under S. 234 Cr. P. C.—[37 A 9 Fd in 29 M 558 (561) 24 A. 231, 33 A 36 1 S 38 31 C. 928] Where an accused person is convicted on charges of criminal breach of trust in respect of two cheques and also on another charge in respect of a gross sum made up of three different items, which might have been but were not specified, the trial is, in fact not on two distinct charges but is only for three offences, and is therefore legal under S 234 Cr. P. C.—[29 M 558] Where a person was put upon his trial for each element of three sums in one year and one charge was drawn up, in which all the three sums and the persons from whom he collected them were

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P. C. [32 C. 1085]

16. Application of Subs (2) S. 222 Cr. P. C.—

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but are not, specified.—29 M. 558.

(b) The second clause of S 222 refers to cases of Criminal breach of trust or dishonest misappropriation of money. This subsection cannot be applied to S. 177 I. P. C.—[41 C 722; 35 C. 430]

26 C 569] The trial of three charges of Criminal breach of trust and three of falsification of accounts, at one and the same trial, is opposed to Ss 222 and 274 Cr. P. C. [11 C 722. 30 M 328. 30 A. 351. 13 A. J. 1054. 17 Cr. 269 (U) (11) M. N. 536. 17 M. J. 141]

(c) A charge of cheating relating to a sum total consisting of 26 different items is not justified by this subsection and a conviction on such a charge cannot be upheld—1 A. J. 529

(d) The joinder of three charges of theft or misappropriation of specific articles committed at different times, with a charge of misappropriation of the aggregate of ten items of money (the cost price or proceeds of those articles) amounts to a misjoinder vitiating the trial [14 Cr. 310 (C)]

(e) A person cannot be charged and convicted at one trial of the offences of mischievous and criminal misappropriation in respect of a large number of trees cut by him at different times in one year, when there is nothing to show that all the fellings are so connected as to form one transaction under S 235 Cr. P. C.—(11) M. N. 467

17. General Rules.

(1) Charge to be confined within a period of one year.—A trial held on a charge referring to items which extend over a period of more than one year is illegal—14 P. R. 1905. See 11 C 106

(2) Charge should not be vague.—In a case of criminal breach of trust, a general charge of embezzlement mentioning the gross sum misappropriated as laid down in suba (2) is sufficient, but it is defective and must fall through, when the accused appear to have been prejudiced by not having any definite charge to answer—16 P. W. 1937. 17 C N 479

(3) Charge how to be framed where several persons are implicated.—Where two persons are implicated in a case of criminal mis-

appropriation, or breach of trust, with respect to a certain sum of money, the charges against them are of misappropriation in one case and of abetment in the other. It is also open to the Court to frame the charges against each individual accused in the alternative, i. e. of misappropriation or of abetment—16 C. N. 600

18. Rules as to charges of falsification of account.—A series of alterations in accounts made to cover a defalcation might all be charged in one charge under the provisions of S 477-A, and there are not three distinct offences committed by an accused person, merely by reason of the fact that he makes more than one false entry to cover one defalcation. It is impossible to take a series of false entries referring to three different defalcations in the same trial although it might be possible to try three defalcations in one charge or to try a whole series of falsified accounts in one charge [41 C 722]. As the law stands only three offences of misappropriation can be joined at the same trial. The combination of 120 items in the absence of anything to show that it was a case of making a number of false entries in various books etc., to conceal one misappropriation was illegal [38 A. 42. See 26 C 560. 4 B. R. 433]

19. Effect of inaccuracies.—Where the accused was charged with embezzlement committed between 17th Aug 1909 and 15th Aug 1910, but the evidence did not disclose any completed act of breach of trust between these two dates and it appeared that most part of the money criminally misappropriated by the accused were received by him before the 17th Aug 1909, held—that the error in the charge and the discrepancy between the dates specified and actual dates on which the offence appeared to have been committed was not a mere irregularity which might be cured by S 537 Cr. P. C. It vitiated the whole trial.—17 C. N. 479.

223. When the nature of the case is such that the particulars mentioned in sections 221 and,

When manner of committing offence must be stated

222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars

of the manner in which the alleged offence was committed as will be sufficient for that purpose

Illustrations

(i) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected

(ii) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B

(iii) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false

(iv) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions

(v) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Notes.

1. **Rioting and unlawful assembly.**—The offence of rioting can be legally described by its specific name, and the question whether any particulars are necessary under S 223 Cr. P. C. must be a question of discretion according to the circumstances of each case. But, as a matter of law it is otherwise with a charge under S 149 I. P. C. There is no specific name of the offence, and the fact that any offence is committed in prosecution of the common object is of the essence of the case, and there could be no conviction for any offence committed with a different common object. It is therefore obligatory to set out the common object in a charge under S. 149, unless it has been already specified in the main charge under S 147. [39 C 781 See 22 C 276; 7 C N. 512 (513)]

2. **Resent of omission to set out the common object.**—The general rule has been stated thus in the leading case of *Behari Mahtan* 11 C 169 "In a charge of rioting it is necessary that the common object of the unlawful assembly, should be set out, as an accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him." [See 26 C 630] Where the charge is defective as not specifying the property the taking possession of which is supposed to be the common object, S 537 Cr. P. C. will not cure the defect particularly when the specification of the property would alter the whole complexion of the case. [33 C 205. See 3 C N 605.] The rule may be reduced to the form of a question. "Is the omission material? that is to say, has the failure to specify the common object, in fact, prejudiced the accused?" If it has, the omission is fatal [See rulings quoted above also 36 C 865.] If it has not, or in other

about the 15th April 1871, gave false evidence not sufficient. [3 N. P. 314] Where the charge was that "you on or about the 7th May 1904, at gave false evidence in a judicial proceeding namely in a case under S 133 I. P. C. and there committed an offence punishable under S 133," was held that the charge was vague and defect and the conviction was set aside. [10 C N 194] The charge should set out in direct narrative the exact words alleged to constitute the false evidence and not a paraphrase—[1 L B. 268, 7 N 137.]

Note.—Where precise words need not be given.—Where in a proceeding for perjury, the Court stated that the whole of the evidence of the witnesses convinced him of the existence of a conspiracy on their part to make it appear that a certain date, a certain person was a partner in a firm and that all they had said material to the issue was a tissue of deliberate falsehoods, held that the having regard to the nature of the charge, the Judge was making against the witnesses, it did not amount to being formulated in a series of separate allegations and that the gist of the evidence was that they were guilty of perjury. (P. C.) See 2 W. R. 51.

(d) **Occasion.**—State of the judicial proceeding.—It is essential to a charge under S 191 I. P. C. that the prosecution should make out that on a day stated in the charge a judicial proceeding was pending and that the prisoner in the course of the proceeding made the statement alleged to be false. The particular stage of proceeding should be mentioned in the charge.—1 B. L. (ap) 13 13 W. R.

5. **General rule applicable to charges of perjury.**—Charges of perjury should contain a distinct assertion with regard to each statement intended to be characterised as perjury, that was made, that it is untrue in fact and that the accused knew it to be so, when he made it. The investigation of the Court should be directed to each of these points singly.—9 W. R. 54

6. **Where it is doubtful which of the two contradictory statements is false.**—Where it is impossible to decide which of the prisoner's two contradictory statements is false, which is true, he should be charged in general nature, and convicted on the alternative charge. 1 W. R. 15, 12 W. R. 23, 23 M 544 See also 10 B. 124. Rat 336 (337). Rat 503 24 B 531

7. **Each accused to be separately charged and tried.**—In prosecutions for giving false evidence under S 133 I. P. C. the case of each accused should be stated separately.

55; 2 N. P. 21.

- 7A. **Charges cannot be multiplied.**—making of any number of false statements

384 21 C 527 14 C. N 412 9 C N 590 4 C N 136 (193). (1918) M N 129. 38 P. W. 1907.]

3. **What must be set out in a charge of perjury.**

(a) **Date.**—The charge should disclose the exact date on which the offence was committed.—7 B. L. (ap) 66

(b) **Place.**—The Court or officer before whom the false evidence was given should be specified [Idem]

(c) **Exact words of the statement.**—Charges of perjury ought to be based strictly upon the exact words which were used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—[21 W. R. 28 7 B. L. (ap) 65. 8 W. R. 45. 5 W. R. 71. See 9 W. R. 11. 9 W. R. 25; 17 W. R. 32. 17 W. R. 33; 36 C. 608; Rat 172; 1 L B. 208; 36 P. R. 1869] A person called upon to answer a charge of false evidence, should know exactly what is the false evidence imputed to him. A charge "that he on or

the same deposition is one aggregate case of giving false evidence, charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition—6 M. H. (11) 27.

8. **Attempt to cheat.**—See Note No. 4 under S 222 *supra*

9. **Sedition.**—(S 124—A. I. P. C.) See Note No. 16 under S. 221 *supra*.

10. **Conspiracy.**—See. Notes Nos. 12-14 under S 221 *supra*

11. **Effect of charge being vague.**—Where the accused was charged under S 217 I. P. C. and the charge did not distinctly state what the direction of the law was which he had disobeyed, and how he had disobeyed the same, held that the charge having been expressed in vague terms, the prosecution, on appeal, should be limited to

the particular sense in which the charge was understood at the trial.—2 B. 112.

12. **Charge of arson and extortion.**—Where any charge involves consequences which may be stated in a general form, such as may arise in a case of arson, where a man may, by one act of arson set fire to and destroy, several stacks of several persons, no particular is required, the nature of the offence being sufficiently stated by the date, time and place of the setting of fire, but extortion or obtaining money from persons

the close of the evidence, the accused knows what is alleged against him—*Per Walsh J* in 17 Cr 411 (A)

224. In every charge words used in describing an offence shall be deemed to have been

Words in charge taken in sense of used in the sense attached to them respectively by the law under which such offence is punishable

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless

Effect of errors

the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error

(d) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial

(e) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was not misled and that the error was material

Notes.

1. **Test of prejudice.**—Where the accused persons fully understood the nature of the offence with which they were charged, it was held that the mere omission of the word "dishonestly" in a charge of theft, could not possibly have

prejudiced them in their defence [10 B. H. 373; see 32 M. 3]. Where the error in the charge, could not in fact mislead the accused, who were all defended by counsel and were fully cognizant of the nature and particulars of the case which

each of them had to meet, it could not be regarded, at any stage of the case, as material. [17 P. R. 1915] The mere absence of any formal charge of using insulting language in addition to the charge of criminal trespass, will not justify an annulment of the proceedings, when the said language was complained of from the very first by the complainant [3 W. R. 25]. An omission to frame a separate charge of theft in addition to the charge of murder was held not to have caused a failure of justice, even though the accused was acquitted of murder but convicted of and sentenced for theft [(85) A. N. 95]. If the charge is drawn up in a somewhat informal manner but is sufficiently explicit to give the accused notice of the charge, the irregularity is cured by this section [13 B. 77].

2. When a failure of justice may be inferred.—Where the accused was charged, and convicted in the alternative either under S 152 or under S 193 (1) P. C., held that the charge was bad in law, being an alternative charge in a form forbidden by S 233, and the accused, should be held to have been prejudiced by the course adopted [10 B 124. See Rat 336 401; 503; 21 C. 955; 24 B 533 78 96 1 L. B 101] Where the charge was that the accused, had committed criminal breach of trust in respect of certain deeds entrusted to him, but he was convicted of embezzlement

of certain amounts of money obtained by a fraudulent use of those deeds, held that the conviction was bad. [12 C. N. 577] When a case is tried as a warrant case, and a charge drawn by any offence which is triable only as a warrant case with which it is sought to charge the accused should form a part of the charge, as otherwise the accused would be misled in his defence [29 C. 481]. It is illegal to convict an accused person of the offence of rioting with a common object other than that specified in the charge as it is manifest that the accused had no opportunity of defending themselves with reference to the same. [27 C. 990; 2 C. J. 516. See *Sankaran Nair J.* in 6 M. T. 17. 40 C. 168.] An Appellate Court is bound to acquit the accused if it disbelieves the common object found by the Lower Court. It cannot convict the accused on the basis of some other common object [27 C. 99]. The question in each case is whether the common object found agrees in essential particulars with the common object as stated in the charge. If the difference is only slight, the accused cannot be held to have been misled or prejudiced [35 C. 384; 36 C. 405. See 30 C. 158 22 C. 391].

3. Defective charge under S. 124—A.—See Note No. 16 under S. 221 Cr. P. C.

226. When any person is committed for trial without a charge, or with an imperfect

Procedure on commitment without charge or with imperfect charge

erroneous charge, the Court, or, in the case of a High Court the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Illustrations.

1. A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.
2. A is charged with forging a valuable security under section 467 of the Indian Penal Code. A charge of fabricating false evidence under section 193 may be added.
3. A is charged with receiving stolen property knowing it to be stolen. During the trial it is established that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Indian Penal Code cannot be added.

Notes.

1. Meaning of the word "charge."—See Note No. 1, under S. 221, *supra*.
2. Meaning of "without a charge"—The words "without a charge" not only refer to the words "without a charge" but also to the fact that the charge has not been framed, and ought to be

3. The stage at which a charge may be altered.—On a trial by Jury, the Court of Session has no power after a charge after the delivery of the verdict [5 B H. (C.C.) 9]. A Sessions Judge acts without proper discretion, when he adds a new and grave charge after the close of the defence and continues the trial without adjournment [6 C. N. 72].

4. Limits within which the power to add or alter charges may be exercised.—The Sessions Court is not a Court of original jurisdiction, and though vested with large powers of amending or adding to charges, it can only do so with reference to the immediate subject of the commitment and prosecution, and not with regard to matter not covered by the indictment [22 C. 22; 20 P. W. 1109]. The addition of a charge which is not supported by the evidence before the committing Magistrate is *ultra vires* and is merely an error of procedure. [3 M. 31 32 C. 22 11 B H. 274.] Three persons were jointly committed for trial before the Sessions Judge, two of them charged with culpable homicide not amounting to murder, and the third with abetment of the same. At the trial, the Sessions

the Judge suddenly added a grave charge like *dacoity* and proceeded with the trial without even granting an adjournment and convicted the accused on the newly added charge, *held* that the Judge had altogether failed to exercise a proper discretion [6 C. N. 73]

- (b) **Magistrate**.—It is certainly not the intention of this section that a Magistrate should cancel a charge and substitute an entirely different charge as that would amount to an evasion of the provisions of other sections of the Code. [(97-'01) L. B. I. 64]
2. **The section is not intended to cure illegality.**—Where a person is charged with, and tried for four offences committed in the same year, it is not under and contrary to the words of the section to warrant a Court in altering a charge, by striking out one of the charges, at any time before judgment, but the section does not seem to warrant the striking out of a charge, for the purpose of curing an illegality which has been committed. Disobedience to an express provision as to the mode of trial cannot be regarded as a mere irregularity, within the meaning of S. 537 Cr. P. C.—20 M. 509 25 M. 61 (P. C.). 20 P. W. 1009
3. **What the term "alter" signifies and includes.**—The words "or add" which were introduced by the Code of 1898 have removed the doubt of decisions with regard to the scope of the term "alter". The amendment confirms the view of S. at 1 in S. B. 200 (F. B.), that the word "alter" in S. 227 must be taken to be equivalent to the words "add to or otherwise alter" as used in S. 226. Therefore the addition of a new head of charge is alteration within the meaning of the section [See also 9 A. 525, 3 N. P. 337 & 1 603]. In the same case, *Sargent v. C. J.* and the majority of the Full Bench (See at pp. 211, 214) held that the word "alter" did not include the addition of a new charge. [4 B. 200 (F. B.)] The word alter includes withdrawal by the Sessions Judge of a charge added by him to the charge on which the commitment was made.—[12 A. 551]
4. **Limits within which a charge may be altered or added to.**—As a matter of general principle, an alteration of or addition to a charge is permissible only when the amendment, has not the effect of changing the whole complexion of

for individual acts on all persons who were members at the time of the assembly. [16 Cr. 737 (M.)]. Where the accused was committed on the specified charge that he had given false evidence before Sessions Judge, but the Sessions Judge, at the trial, added a charge of giving false evidence by reason of contradictory statements, one before the Magistrate under S. 104 Cr. P. C. and the other when giving evidence before the Sessions Judge. *Held* that the accused was prejudiced in as much as he had no notice until the new charge was added, that he would have to meet the charge of making contradictory statements [(99) A. N. 39]. Where a complaint for rape is preferred, it is illegal on the part of the Magistrate to add a charge of adultery. [5 A. 233]. Where a complaint is made to a Magistrate that a husband is necessary to enable the Court to take cognizance of the latter charge [29 C. 415]. A Court after drawing up a charge of an offence compoundable without the sanction of the Court and having recorded the accused's plea, should not alter the charge to a non-compoundable offence [29 P. R. 1914].

6. **Stage at which the charge may be altered or added to.**—Under S. 227 Cr. P. C. the alteration in the charge is only permissible up to the time of taking the opinion of the assessors. An alteration of the charge after the assessors' opinion has been taken is illegal [30 P. R. 1916]. On a trial by jury the Sessions Judge has no power to alter the charge after the delivery of the verdict [5 B. 11 (C. C.) 2]. The words "return of

the defence evidence recorded [31 B. 218]

one of robbery, *held* it was improper for the Sessions Judge to thus alter the character of the charge before hearing evidence [16 C. N. 235]

Procedure.

7. **Procedure for amendment.**

defence set up by him through his counsel the prisoner is likely to be prejudiced in his defence on the merits. [6 B. 11 (C. C.) 76].

8. **Cases in which the amendment has been held to have caused a failure of justice.**—The addition of a charge under S. 145 I. P. C. to charges under Ss. 451 and 426 I. P. C. on which appellants were tried in the Lower Court, is not permissible, as such addition would have the effect of imposing a constructive responsibility

6. (b) **Amendments how to be made.**—Amendments in the charge ought to be made formally and should appear on the face of the record [D. W. R. 14]. Whenever a Sessions Judge may see cause to amend a charge, a statement that such amendment was found necessary should form a part of the record. [1 Ag. Ct.] When a

Magistrate amends the charge, he should not write over the original charge, but should write the amended charge on a separate sheet. The original charge should remain on the file for reference, if necessary [16 Cr 2 (L. B.)]

9. (c) Additional charge should be read over and explained.—But where the accused is defended and his counsel is present in Court, the omission to read out and explain the additional charge is an irregularity which, unless it has prejudiced the accused in his defence, does not affect the validity of the trial—S B 200 See also 7 C 93 H M 61.

10. Certificate under S. 88 Cr. P. C. no bar to alteration or addition.—The certificate granted under S 184 Cr P C in respect to a certain set of facts will cover every charge which the facts disclosed, and the Magistrate is not restricted to the particular section I. P. C. mentioned in the certificate [33 A 514]. The mere fact that extradition was demanded, in relation to the offence of dacoity alone does not necessarily limit the discretion of the Judge, who could if the graver charge of dacoity could not be sustained on the evidence, alter it to one of theft [17 B 367] See Rat 773 (774)].

228. If the charge framed or alteration or addition made under section 226 or section 227

When trial may proceed immediately after alteration

is such that proceeding immediately with the trial is not likely, in the opinion of Court, to prejudice the accused in his defence

or the prosecutor in the conduct of the case, the Court may in its discretion, after such charge or alteration or addition has been framed or made proceed with the trial as if the new or altered charge had been the original charge.

Note.

1. Where the newly added charge is closely related to the former charge.—A and B were tried at the same trial, A for murder and B for abetment. A confessed to having committed the murder at the instigation of B. The Sessions Judge subsequently amended the charge against

A to one of abetment. B, who was represented by a Vakil did not object to the amendment or ask for a new trial, held that since the two charges were so nearly related and there was no material prejudice, no new trial could be considered as necessary [11 B. II 278]

229. If the new or altered or added charge is such that proceeding immediately with the

When new trial may be directed, or trial suspended

trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either

direct a new trial or adjourn the trial for such period as may be necessary.

Notes.

1. Now trial may be waived.—Where a new charge was read aloud to the jury, but was not explained to the prisoner and he was not called upon to plead to that charge, but his counsel, on being asked, did not require a new trial, held that the accused was not prejudiced by the addition of the new charge or the omission to hold a new trial [8 B 200 (F. B.) : See 11 B II 278]. But if the trial itself is illegal, the waiver is of no avail. [20 M. J. (S N) 1].

2. Procedure on new trial being ordered.—Where a former trial has been set aside and a new trial ordered, the Magistrate holding the second trial is not justified in referring to the former record as a whole but he may refer to particular depositions which are specially put in evidence before him.

7 C. L 183.

230. If the offence stated in the new or altered or added charge is one for the prosecution

Stay of proceedings if prosecution of offence in altered charge require previous sanction

of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same

facts as those on which the new or altered charge is founded.

Notes.

1. The rule as applied as to alternative charges.—When it is intended to charge a person with having made a false statement in the Court of Magistrate or (alternatively) a

in false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. 11 B. II. 31.

2. When the new charge is one of abetment

—The Inspector General of Registration wrote a letter to the District Registrar directing that the accused a Sub-Registrar should be prosecuted Under Ss 417 and 468 I. P. C., but the accused was tried and convicted for the offence of abetment of forgery for the purposes of cheating (SS 469 169 I. P. C.) held that no fresh sanction was necessary, as the charge of abetment was founded on the same facts as those on which the original sanction was given—30 C 905.

3. The General Principle explained.—If the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained. Unless sanction has already been obtained for a prosecution on the same facts as those on which the new or altered charge was founded 21 Cr. 230 (P.); 11 P. R. 1911: 30 C 905

231. Whenever a charge is altered or added to by the Court after the commencement of the

Recall of witnesses when charge altered

trial, the prosecutor and the accused shall be allowed to recall or re-examine, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

Notes.

1. "Shall be allowed."—When a charge is altered or added to, the Court is bound under S 231 Cr. P. C. to allow the prosecutor and the accused to recall or re-examine and examine with

reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material—30 P. R. 1916

232 (1) If any Appellate Court, or the High Court in the exercise of its power of revision

Effect of material error

or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by

the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence, under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Notes.

1. Application of the Section.—If in consequence of material errors in the charge, the accused has been misled, the High Court is bound to direct a new trial to be had upon a charge framed in the proper manner—30 P. R. 1916

2. This section interpreted.—The language in Ss 231 and 232 Cr. P. C. shows that the omission to frame a charge is not a ground for revision unless there has been a consequent miscarriage of justice. An omission to frame an alternative charge comes under the very comprehensive words "error or irregularity in any enquiry or other proceedings" in S 537 Cr. P. C.—*Per Salim Ali J.* in (1916) 2 M. N. 247: See 24 B 123

3. Scope of the Section.—There is nothing in the language of S 231 (b), to limit the power

of an Appellate Court to direct a retrial, to cases in which the trying Magistrate has not jurisdiction. A Sessions Judge has power also under S. 232 Cr. P. C. to direct a retrial to be had upon a charge framed in whatever manner he thinks fit, on the ground that the accused has been misled in their defence by the absence of a charge or by a defect in the charges—7 C N. 301.

[Note.—In this case the Sessions Judge thought that the omission to insert the words "or their Agents or Managers" in a charge framed under Ss. 154 and 155 I. P. C. had seriously prejudiced the accused in their defence.]

4. Where S. 232, instead of S. 423 should be applied.—The complaint against the accused was originally under Ss 471 and 491 I. P. C. but the evidence at the trial was directed towards

a charge under S. 471 I. P. C. only. The Magistrate after charging the accused under S. 471 I. P. C. eventually convicted him under S. 400 I. P. C. for defamation contained in the document *Held* (1) that the Sessions Judge on appeal acted wrongly in ordering a new trial for defamation under S. 473 Cr. P. C. He should have acted under S. 232 Cr. P. C. and (2) as there was nothing on the record to show that any valid charge could be preferred against the accused, the conviction ought to be quashed, under subcl (2)—[28 C. 63 of 30 C. 492].

5. **Conviction for entirely different offences by the Appellate Court.**—The accused were charged with and convicted of rioting under S. 147. On appeal the Sessions Judge set aside the conviction under S. 147 but convicted the accused under Ss. 145 and 323 I. P. C. they having never been charged with those offences. *Held* that conviction under those sections should be set aside, as they were distinct and separate offences which should have formed the subject of separate charges and that the accused had been prejudiced within the terms of S. 232 Cr. P. C. by the omission of those charges. [30 C. 288 : See 9 Cr. 406 (M)]. Where the accused were charged under S. 323 read with S. 149 I. P. C. they were called upon to answer a charge of grievous hurt only by implication. It amounted therefore to serious prejudice, when they were acquitted of rioting but convicted of the specific offence of causing grievous hurt [18 C. N. 1077 : See S. C. N. 344]. But where the case

against the accused was that he had instigated the lodging of a false complaint, a conviction for the substantive offence (S. 211 I. P. C.) instead of abetment was held not to have prejudiced the accused [7 C. N. 556].

6. **High Court may proceed under S. 423 instead of S. 232.**—Where the charge of murder was defective and incorrect with reference to the 2nd and 3rd clauses of S. 300 I. P. C., the High Court instead of ordering a new trial under S. 232, set aside the conviction of murder but convicted the accused of grievous hurt (under S. 323 I. P. C.) on his own confession and the evidence of two witnesses—S. C. 211.
7. **Where the accused was held to have been "misled in his defence."**—Where the accused was charged with storing wool but convicted of storing loose cotton,—*held* that he had no proper opportunity of answering the charge [Pat 529]. Where one of the accused was charged under S. 324 I. P. C. with having voluntarily caused hurt with a *dao*, but convicted of using a *lathi*, the conviction was set aside on the ground of misleading [17 C. N. 419]. Where the charge of perjury was framed in these words : "You on or about the 7th day of May 1904, at Leshe, gave false evidence in a judicial proceeding namely, in a case under S. 133 of the Code, and thereby committed an offence punishable under S. 193 I. P. C. within my cognizance"—it was held that the prosecution could not proceed on such a vague charge [10 O. N. 1009].

Joinder of charges.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Arrangement of notes.

S. 233 (1898)=S. 452 (1872)

1. **General Remarks as to Joinder of charges.**

(1) The general scheme of the sections relating to joinder of charges.

Joinder.

(1) object of the rule and its variations

2. **The effect of Misjoinder on the validity of the trial.**

(1) The rule as laid down by the Privy Council in *Subrahmanya's case*.

(2) The rulings as distinguished and explained in later cases.

(3) Failure of accused to object to misjoinder

(4) Illegality is not cured by the failure of or striking out of the additional charges.

(5) Cases in which irregularity has been held to be cured by S. 537 Cr. P. C. or otherwise condoned.

3. **The rule in S. 233 (1st part) explained and illustrated.**

(1) General Principle explained

(2) The Rule illustrated by examples

4. **Several Acts constituting only one offence.**

(1) The practice of law incorporated in S. 233 Cr. P. C.

(2) The principle explained and illustrated.

(3) Other cases.

5. **Misjoinder of charges.**

(1) The rule as to joinder of charges.

(2) Incompatible offences.

(3) Misjoinder of the principal and subsidiary offence.

I. GENERAL REMARKS AS TO JOINDER OF CHARGES.

- (1) *The general scheme of the sections relating to joinder of charges analysed.*—The provisions of S 233 Cr P C and the following sections of the Criminal Procedure Code require to be considered together. They occur in a subdivision of the Code headed "joinder of charges". The general principle that there shall be a separate charge and a separate trial for every distinct offence of which any person is accused is first laid down in S 233 Cr P C. Then follow a number of sections specifying possible exceptions. In these sections, where a Court is empowered to try offences jointly or accused persons jointly, the word "may" is used in this case and not the word "shall" as used in S 234, where the general principle is laid down. These are therefore empowering sections which in principle need not discretion and in suitable cases—[14 A J 477, 12 B R 220]. A Court cannot in this case be treated as a case before it is in violation to the general and broad rule unless it is satisfied that in the case before it, the charges should be brought within one of the four exceptions—[11 A J 168, 17 A J 614, 40 C 314, 41 C 722, 29 M J 381].
- (2) *The section should be strictly construed.* A definite rule of law such as that contained by S 233 Cr P C cannot be disregarded to accelerate or facilitate the disposal of a case, against several offenders. [13 N 33, 29 M J 101, (F B) 41 C 722, 40 C 840]. S 233 Cr P C is intended and for every distinct offence, there should be a separate charge which should, except in certain cases specified be tried separately [40 C 108, 25 M J 381]. A trial in contravention of S 233 Cr P C, unless justified by the exceptional provisions is not a mere irregularity but it is an illegality [25 M 61 (P C), 15 A J 168, 38 A 12, 71 B 68, 6 M 306, 25 M J 381, 24 M J 197]. The violation of a plain provision of the law is not a mere irregularity and is therefore not curable by S 537 of the Code [25 M 61 (P C), 41 C 722, 41 C 602, 29 C 355, 14 C N 1007, 10 C N 51, 8 C N 180, 6 C J 77, 2 C J 614, 1 C J 475, 30 M 324, 26 M 125, 16 C 645 (M), 16 Cr 294 (M), 6 B R 723, 1 B R 411, 4 B R 140, 4 B R 53, 25 A 195, 6 A J 477, 14 B R 1905, 4 B R 1905, 101 P L 3994, 6 P R 1002, 15 C F 63, 17 C P, 150, 1 L B 361, 50 C 243].
3. 25 M. 61 (P C) the leading case explained. What their Lordships of the Privy Council in 25 M 61 have prohibited, is, that if the law expressly provides a particular mode of trial, disobedience of that law vitiates the whole trial. It is doubtful if the framing of charges is a mode of trial, but joint trial of charges as to distinct offences would be a mode of trial and if the accused is tried jointly on several charges not coming under Ss. 234 to 236 and 239, that trial would be null and void. Therefore a charge will be contravenes the first part of S. 233 is an irregularity covered by S. 537 Cr. P. C. [Per, *British India Steam Navigation Co. v. The Eastern Steam Navigation Co. Ltd.* (1914) 110 C. N. 972, 41 C. 603; See also 40 C. 712, 25 M. T. 570, 12 P. R. 1918].
- (3) *The application of the law relating to joinder of charges.*
4. *The exceptional sections.*—Ss. 234, 235, 236 and 239 of the Criminal Procedure Code referred to as exceptions to S 233 are not mutually exclusive, otherwise the provisions of Ss. 236 or 237 can never be invoked to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under S 234. The Legislature hardly intended that a joint trial of three offences under S. 234 should prevent the prosecution from establishing at the same trial the minor or alternative degrees of criminality involved in the acts complained of. Ss 235 and 236 may be resorted to in framing additional charges, where the trial is under S. 234, of three offences of the same kind committed within a year. —Per *Scott C. J.* and *Butcher J.* in 10 B. R. 973; See 33 B. 221; 33 B. 77; 32 A. 219.
 5. *S. 233 Cr. P. C. does not control proceedings before the Committing Magistrate.*—As regards misjoinder, Sec 233 Cr. P. C. no doubt prohibits the joint trial of separate charges, with respect to separate transactions. But an enquiry before a Committing Magistrate is not a trial and does not come within the prohibition contained in S. 233 Cr. P. C.—35 M J 250, 26 M, 592, 7 B. R. 457.
 6. *S. 233 Cr P C does not apply to miscellaneous proceedings.*—The law, as to the joinder of charges, against a person accused of definite offences has no application to an inquiry under S 110 cl (3) [11 C N 789].
 7. *Does Ss. 233 to 239 apply to summons cases?*—A charge is an essential element in any trial and if the provisions as to joinder of charges do not apply to summons cases there are no other provisions of law to guide Magistrates. In a summons case, it is not necessary to have a charge embodied in writing, but none the less the section applies to summons cases also; so also when an accused person is charged with several distinct offences, even in a summons case, the trial is illegal and a retrial will be ordered [3 L B 52 (L. H.), 3 L B 113]. It has been held therefore by *Munroe and Deane* *vs. J. J.* in 41 C. 691, 3 L. B. 52 (L. H.) that the fact that a case under the Bengal Excise Act (I of 1904) has taken place as a summons case, does not exclude the application of this section. In (1912) M. 60, the rule was held to be applicable to a trial for levy of excess toll under S. 10 of Act II of 1890 each levy of excess toll, being held to constitute a separate offence.
 8. *The rule as to misjoinder does not apply to trial of cross-cases on "parallel lines."*—Where two cross-cases of rioting were tried separately but for all practical purposes, simultaneously, the accused in one case being examined as witnesses for the prosecution in the other, held that as the charges were framed on different days and separate judgments were delivered, though on the same day, the mode of trial and the procedure adopted did not vitiate the trial as the accused

- 1 P. O for the possession of stolen articles which were not shown to have come into his possession on different occasions though it was proved that they were stolen from several persons at different times, held that it was not shown that the accused was prejudiced on account of a defect in the charge and the Court of appeal could not interfere.—36 F. L. 1100 See 9 C. J. 142 (150). 13 C. N. 415. 11 C. N. 1128.
21. Nine separate items of falsifications of account.—Where an accused, a public servant, was charged with nine separate falsifications of account, held that the non-specification of the alleged false entries in the charge did not vitiate the trial, as the accused knew the subject of the charge and was not prejudiced in his defence and

did not object to it in the Court of Sessions.—(12) M. N. 345

32. Forgery of eleven receipts.—When a person was charged with forging 11 rent receipts and using the forged documents on three different occasions (in three sets in three different suits pending against him) and three charges were framed against him one for each set of forged receipts, held that as the nine charges were merely the putting in of each set of documents in each suit simultaneously together with the written state-

III. THE RULE IN S. 233 (1ST PART) EXPLAINED.

(1) General Principle explained.

23. The General principle.—It is illegal to frame one charge for two distinct offences. For each offence a separate charge ought to be made (though several charges may be tried together) [40 C. 841 10 C. N. 529] The joinder in one charge of two distinct offences, though arising out of the same transaction is an illegality fatal to the trial [10 C. N. 63 See 37 C. 292] A joinder in one charge of two offences of attempting to cheat committed on two successive dates, is an illegality which vitiates the trial, and is not cured by S. 537 [10 C. N. 529 Fd. in 13 C. N. 1067 (Per Jenkins J. and Moncrieff J.): 6 C. J. 757. but see 27 B. 135] Three separate offences not of the same

offence, a separate charge must necessarily be made against each prisoner and a separate trial must be held on such charge [3 M. H. (ap) xxvii See 5 S. 129 But See 14 B. R. 972] False evidence given by several accused in the same trial being distinct offences should be separately charged and tried. [4 A. 293, 5 A. 17 10 C. 405. 4 B. R. 38 4 B. R. 63, 39 P. R. 1888 Rat. 31] Every breach of the conditions of a license or permit is a distinct offence and under S. 233 Cr. P. C. should be made the subject of a separate charge and tried separately [2 L. W. 933] Where a servant's servants levied excess toll, held that each individual levy of excess toll constituted a separate offence and ss. 233 and 234 Cr. P. C. would apply. [(12) M. N. 69] Even though offences constituting the same transaction (three droppings in the same night) can be charged and tried at one trial, yet they should be separately charged. A violation of this rule amounts to illegality and a conviction on such a defective

phone servant and the two, held that the two statements being irreconcilable, that is to say, the first being made only once to a public

Charges. [10 B. 124].

should frame the charge so as to contain a separate head for each offence [7 W. R. 8. 11 A. J. 168] So two distinct offences of criminal breach of trust ought not to be included in one charge [17 C. N. exhn.]

(2) The rule illustrated by examples.

24. Procedure.—Charges against three persons, though not for the same offences, should not be single and joint but several and specific [5 A. 17.] Each act of giving false evidence being a separate

IV. SEVERAL ACTS CONSTITUTING ONLY ONE OFFENCE.

(1) The practice of law incorporated in S. 233 Cr. P. C.

25. Different felonies constituting only one charge.—"It is a well established rule of practice that if different felonies, not being different ways of committing the same act, are charged in separate counts of an indictment, the Judge will put the prosecutor to his election to proceed and offer evidence on one charge only."—Lord Halsbury's Laws of England: Vol IX. p. 342.

(2) The principle explained and illustrated.

26. The point to be considered.—When the offence is directed against several persons or in effecting it the accused, commits felony in respect of several things or items, the most important point to be considered is, was the offence as a whole committed in the course of the same transaction or not? It has been held that community of purpose or design and continuity of action are

essential elements of the connection necessary to link together different acts into one and the same transaction [See 23 M. T. 230; 27 B. 135; 30 B. 4; 16 B. 411; 15 B. 491; 26 M. 125]. If the component parts of the offence are divisible and can be regarded as consisting of several distinctly separate counts not interdependent on each other, and not referable to one single and indivisible aim or object, they cannot be treated in a lump as one single offence, forming the subject of one indictment. But where they are indivisible and interdependent, the aggregate of all the items forming the subject of the charge will be regarded as one offence [See 25 M. T. 379. (Per Napier J.)]

27. Illustrations of the rule.—Where the charge against the accused was that he had made an attempt to cheat a number of men by speaking to them in a *body*, held that a joint charge was valid as only one offence was in fact committed [10 C. N. 520; *Per Rampani and Mookerjee J.J.*] Where the accused (a sub Registrar) was convicted of the attempt to obtain a bribe of Rs 14 from seven persons as a motive for registering seven sale deeds created in their favour by one R held that whether this amounted to seven offences was a question of fact. If the accused attempted to obtain Rs 2 separately from each of the seven purchasers, and was willing to register any one purchaser's sale deed on getting from that purchaser Rs 2 the contention that there were seven offences ought to prevail. But if on the other hand, the Registrar treated this as one transaction and was not willing to register any one of the documents, until all the several purchasers had paid Rs 2 each, that would be one offence only and there would be no misjoinder [13 C. N. 1082]. Where certain sums of money were collected from the landholders of several villages and were paid in the case of each village as a *lump sum* as bribe to a Zilladar in the irrigation department to induce him to show favour in his official capacity to each village as a whole, and the accused was charged and convicted in respect of one of the lump sums, held that the charge as framed was legal and correct. It was not necessary to charge the accused with an offence under S 161 P. O. in respect of every item, contributed by the various landholders and consequently there was no misjoinder of offences or charges [11 P. R. 194; *Con.* (14) A. N. 223]. The accused in collecting the first instalment of the loan from 23 persons who had borrowed from Government on a joint bond, made a misrepresentation to each borrower of the amount due by him and thus made an excess collection in each case, held that the misrepresentation being in each case the same and the offence having all been committed at the same time and place and in pursuance of the same conspiracy could be tried together [48 C. 712]. Where eleven rent receipts were forged by the accused for the purpose of defending three separate rent suits against him, and a certain number of them was filed along with a separate written statement in each case and on three different occasions, held that it was not necessary to frame a charge in respect of each of the eleven receipts but that one charge in respect of each set

of receipts, filed in each of the 3 cases was sufficient [20 C. 413, *But See* 14 C. J. 65]. A police servant was charged with receiving one single bribe in two instalments on two successive days, held that the offence was a continuous one and the separate convictions for offences under Ss 161 and 163 P. C. was bad in law [6 C. N. 332]. Where a police officer prepared several incorrect documents (a *rukna* addressed to the *Magistrate*) for the purpose of obtaining a *Writ* for the

recovery of a *share*—the same purpose, viz, screening of H from punishment running through them all, so they could form the subject of one trial [12 P. R. 1918]. It has been held the theft of several *blankets* from the same prison at the same time, is in reality only one offence [181 A. N. 151]. When in the same night the accused stole the property of two different persons from the same house, held that he could be convicted only of one offence [11 W. R. 38]. The making of any number of false statements in the same deposition, is only one distinct offence of giving false evidence and charges cannot be multiplied [9 C. J. 690]. Housebreaking by night to commit theft and theft are in reality only one offence and can be included in one charge [Rat 95. Rat 79]. By a parity of reasoning, therefore it would be illegal to try an accused person for eight separate and distinct offences in one and the same trial [7 A. J. 19]. In the absence of anything to show that it was a case of making a number of false entries in various books to conceal one misappropriation, the combination of 120 items in the same trial was illegal. The fact that there was a continuity in all the acts and all the illegal acts took place within 8 days was immaterial [35 A. 42]. The mere fact that two calendar cases of cheating under S 420 P. C. were instituted against the same accused by the same complainant by the presentation of only one complaint, will not render the joint trial legal, in the absence of anything to show that the formed parts of the same transaction [See the Judgment of *Oldfield J* in 29 M. J. 101 (F. B.)].

(3) Other cases.

28. Making a number of false statements in the course of a single deposition.—The making of any number of false statements in the same deposition is one aggregate case of giving false evidence, and charges of false evidence cannot be multiplied according to the number of false statements in the deposition. Separate statements in a deposition are not to be separately charged for under S. 234 Cr. P. C.—*Per Sir L. Jenkins C.J.* and *Mookerjee J.*, in 36 C. 809. *Fy 6 M. H. (p) 27. See 26 M. 65 [Per Benson J.]*
29. Receiving properties stolen from different persons.—Where the accused were charged with receiving two separate items of stolen property, which were received on one and the same occasion, held that it was wrong to convict the accused of two separate offences, as there was no evidence to show that they received the stolen property on two distinct occasions—

7 B R 457 - 36 F. L. 1010: See 9 C. 371 (a case of housebreaking) - But see 13 C. N. 115 which F. L. C. N. 1124.

Misappropriation of several sums.—Where the accused (a Ky-hingyi) having no authority to collect, collected, Cputation tax from three different persons and after collection paid over to the thugyi only a portion of his collection from each tax payer, and misappropriated the balance, held that in the absence of any evidence to show that there were three separate and distinct acts of misappropriation he could not be punished for three different offences. [1 Bar S 405] The accused was charged with criminal breach of trust in respect of three separate sums of money, the third charge with regard to a sum of Rs 105 consisting of two separate sums of Rs 150 and 45, held that the entries in the account books did not clearly show that the misappropriation of Rs 195 took place on two dates or consisted of two distinct transactions. Under the circumstances the offence in regard to Rs 195, was really one offence and could be included in one charge. [14 C 124. See 29 M 559 7 A J 897 21 A. 251]

Criminal breach of trust in respect of a number of books of account. The accused was charged with having committed the offence of criminal breach of trust in respect of certain books of account between July 11 1910 and Aug 15, 1910 He was called upon to produce them on Aug 15 1910 Held as those books, forming one set of account books, were found together in two locked boxes, the keys being with the accused, they may fairly be regarded as one item of property, with which the accused was dealing in one particular way, therefore the objection that the charge was bad, (as there was a separate charge as regards each

book), and the accused could not be tried for more than three of such offences was untenable.—17 C N 479

32. Theft of two bullocks belonging to two different persons at the same time.—The stealing of two bullocks belonging to two different persons at the same time, from the same custody is only a single offence, and should be punished only once (81) 1 N 151

33. Offence under the Bombay District Municipalities Act (III of 1901).—A shopkeeper affixed to his shop a board which projected into the public street. The shop was divided into two portions one of them was occupied by the shopkeeper himself and the other was let out by him to a tenant. The shopkeeper was tried separately under S 422 of the Act for two projections, and convicted separately, held that the offence related to one single board and could not be split up into two distinct offences 4 B R 212

34. Alternative charge in cases of perjury.—Alternative charge is permissible, only when it cannot be established with certainty as to which of the two contradictory statements is false. In such a case the conviction can proceed upon an alternative finding [See 13 B L 324. 13 B L 325 N 6 W R 65 Rat 26 4 M 11 (51)], though of course, every presumption in favour of the possible reconciliation of the statements ought to be made [13 B L 325 N 7 A 44] The two charges (in the alternative) relating to contradictory statements in a single deposition, is in fact in respect of one offence only. There is therefore no necessity to find which of the contradictory statements is false, it is sufficient if it is established beyond doubt that both cannot be true [See Judgment of Wilson and Tottenham JJ. No 113 J dubitantibus]

V. MISJOINDER OF CHARGES.

(1). *The rule as to joinder of charges.*

35. The rule illustrated.—Where the first charge of criminal breach of trust (S 405 1 P C) could be joined with the second one of falsification of the cash book (S. 477 P C) and the second charge could be amalgamated with the third charge under S 477 1 P C but the first charge did not form with the third, the same transaction, held that the joinder of the three charges at one trial must (See S 233 Cr P. C) be brought within S 231 or S 235 or 236 or S 239 Cr P C but as there was nothing in any of those sections to justify the joinder of the third charge with the first, the three charges could not be tried together —40 C. 318 See 41 C 722 28 M J 381

(2) *Incompatible offences.*

36. Theft and receiving stolen property.—A joinder of the charge of theft with that of receiving stolen property, not in the alternative but cumulatively is not countenanced by the Code. —28 M J 341 1 C N 35 28 C, 10 G O L 245 3 F. R. 1905. but See 6 B R 517 The same remarks apply to Ss 350 and 411 1 P. C [6 B. L.

725] But there is no misjoinder of charges under Ss 391 and 412 1 P C when the charges under S 411 and 412, are based on an incident which was part of the evidence on the charge of S 395 [Per Jenkins C J and Mackenzie J. in 11 C. J 182]

37. Theft (S 380) and receiving on charge from lawful custody (Ss 224 225 1 P C)—3 L B. 224: 11 M 111 13 C N 501.

38. Theft (S 380) and receiving stolen property for restoration of the stolen property—11 Bar R. 67.

39. Ss 350, 461 and 457 1 P. C—15 C P. 53 (11)

39. Absent of Criminal breach of trust with an alternative charge of offences under Ss 380 and 411 P C entirely unconnected with the indictment.—5 C N 291

40. Stealing certain articles and assaulting the owner who went to demand them [14 C N 131111]

41. The offence of receiving or retaining stolen property (S 411) and of fraudulently receiving or dealing in such property (S. 413)—5 C. 634.

42. Offences under S 111 and 199 (c) I. P. C.—[29 O 387] or offences under Ss 411 and 457 P. L. [4 P. L. 1905]
43. Offences under Ss 411 and 457 cannot be tried together—49 P. W. 1916; 35 P. R. 1905; 61 P. R. 1905.
44. Three distinct offences of *Criminal breach of trust* (S 409) and three distinct offences of *falsification of account* (S 477—A)—11 C 722, 26 C 560; 30 M. 328 (11) M. N. 536; 26 M. 125
45. Three distinct offences of *Criminal breach of trust* (S 409) and three offences of *forgery* (S 467) [32 A 219] or three offences of *criminal misappropriation* (S 406) and two offences of *forgery* (S 467) [30 A 331].
46. Criminal misappropriation [S 409] and cheating [S 420] 13 C N 1089
47. Charge of *voluntarily causing hurt* (S 323) *wrongful restraint* (S 341) and *putting a person in fear of injury* in order to commit extortion (S. 385 P. C)—19 Cr 445 (M)
48. Charges under Ss 434 and 325 of the Penal Code, 5 Bui T 101 2 L B 19
49. Charges under Ss 392 and 434 or 397 and 434 P. C. cannot be properly tried together—(77) A. N. 208
50. The offences under Ss 372 and 373 I. P. C. (buying and selling minor girl for purposes of prostitution)—Per *Muthuram Aiyar J* in 12 M 274.
51. *Kidnapping a child* (S 363) and *assaulting the child's mother* on a subsequent day when she demanded the child—26 M 451
52. Offences under Ss 107 and 106 of the Penal Code.—S C 450
53. *Forgery of a loan bill* (S 467 and ⁴⁶⁷/₁₀₉ and S 468 and ⁴⁶⁸/₁₀₉ I. P. C.) and *presentation of a forged mortgage bond to the loan office to raise a loan*, (Ss 467, 467, 471, and ⁴⁷¹/₁₀₉ I. P. C.)—[30 C 822, See 2 P. 1105] A person cannot be tried at the same trial for offences under Ss 471, 468, 477—A I. P. C. [3 B R 440]

54. Offence under, S 125 of the Railway Act and S 225 I. P. C.—29 C. 287; 24 C. 385..

55. *Murder*, and *causing grievous hurt* while removing the dead body,—10 P. R. 1906.

56. Offences under S 290 and 291 I. P. C.—5 M. 20

(3) *Misjoinder of the principal and subsidiary offence.*

57.

be definitely determined on the evidence on record. Thus an accused can no more be charged as an abettor as well as a perpetrator of the offence abetted not in the alternative but cumulatively, than he can be charged with an attempt to commit an offence and the commission of that very offence—[24 M. 523 (147)] A person, who is the principal or actual offender charged with murder, cannot be charged also with the offence of causing disappearance of the evidence of his own crime (S 201 P. C.) [8 A. 252; 7 A. 749, 2 A. 713, 7 W. R. 52; 22 C 634; 27 M. 271; 8 D. R. 633]

under S. 201 [6 C 789 See 6 P. R. 1002] though the mere fact that there is reason to suspect that the accused is possibly or even probably the principal offender would not make S 201 inapplicable [See 1 L B 318 1 P. R. 1904, Rat 794]. On the same principle a thief cannot be charged with offences under S 379 (theft) as well as under S 215 I. P. C. (receiving gratification for restoring the stolen property [12 Cr. 72 (8), 14 Bui R. 67]. The principle has been given effect to in S 35 Cr. P. O. A person convicted of two or more offences which form part of one and the same transaction can only be punished for the principal offence [7 W. R. 13; M. H. C. Pro 1882, 1363]

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last year may be charged together of such offences he may be charged with, and tried at one trial for, any number of them not exceeding three

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law.

Proposed amendments to the section.—In section 234 of the said Code

(a) In sub-section (1) after the words "such offence" the words "whether in respect of the same person or not" shall be inserted

(b) In sub-section (2), the following proviso shall be added, namely,—

"Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 350 of the said Code, and that an offence

punishable under any section of the Indian Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

(1) Preliminary.

1. Interpretation of S. 234 Cr. P. C.—S. 234, Crim. Proc. Code, does not say that, at the most, a trial must be limited to three charges; and that the offences must be of the same kind. The "offence" as defined by the Code itself is the act or omission made punishable. Publication of two seditious articles on different dates amounts to two offences, but these are punishable under the same sections (124 A and 124-A) of the Penal Code and are therefore offences of the same kind. The word "section" in the second clause of S. 234 is not invariably to be read as singular. It is not the intention of the Criminal Procedure Code, either express or implied, to exclude the operation of S. 234 from an offence, because it is made the subject of more than one charge. [Per Heaton J.] There is nothing in the Crim. Proc. Code which directs that where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Penal Code, the section or sections in either case being the same, the joinder of the charges under those sections is illegal. Substantially, the acts amount in such a case to offences punishable under the same sections of the Penal Code and therefore they are offences of the same kind. [Per Chaudhri J.]—33 B 77

2. S. 234 does not exclude operation of Ss. 235 and 236 Cr. P. C.—The Legislature hardly intended that a joint trial of three offences under S. 231 should prevent the prosecution from establishing at the same trial, the minor or alternative degrees of criminality involved in the acts complained of. Ss. 235 and 236 may be resorted to in framing additional charges, where the trial is, under S. 234, of three offences of the same kind, committed within a year.—33 B 221

3. Note.—Twiball J. in 32 A 219 held that cl. (1) S. 235 and S. 234 Cr. P. C. are mutually exclusive so that three offences under S. 408 I P C. and three offences of forgery under S. 467 I C could not be tried together merely because they were committed in the course of three similar but separate transactions. A person was charged with three separate acts of criminal misappropriation committed within a year, and two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation, held that there was a misjoinder of charges. [30 A 351 (F. B.) See (11) M N 136]

The joint trial of three charges of Criminal Breach of trust and three of falsification of accounts at one and the same trial is opposed to S. 234 Cr. P. C. [30 M 328, 17 Cr 360 (M), 41 C 722 30 A 351]

4. Offences must be committed within the space of twelve months.—Where the accused was charged with having altered and mutilated certain accounts between the years 1907 and 1909, held that the charge was bad in as much as he should have been tried at one trial, only for three separate offences committed within the space of twelve months from first to last.—[32 A 57] A series of acts of criminal misappropriation covering a period of two years cannot be charged and tried at one trial, [11 F R 1905]

5. Does S. 234 refer to the case of a single accused?—The leading case for the affirmative is 33 C 292 which laid down in 1905 that S. 234 does not apply where several persons are jointly accused but refers to the case of a single accused person. The rule that words in the singular shall include the plural [see S. 13 of General Clauses Act (X of 1897)] was held not to apply, being repugnant to the subject and context of the provisions of the section. The same view was adopted in 168 F. L. 1911 and 122 F. L. 1911 17 P. L. 1917 4 N. 71 (73) and 20 Cr. 7 (N) Companion 33 C 1256. The case for the negative has been enunciated as follows by Sankaran Nayan J. in 25 M. T. 379 "I am satisfied in my mind that S. 13 (2) of the General Clauses Act which says that the word in the singular shall include the plural and vice-versa, unless there is anything repugnant in the subject or context, is applicable to the construction of those sections (234 to 236). I can find nothing repugnant in the subject or context of S. 234 to 236 in holding that the words "a person" include a set of persons acting together.—This view has also been taken in 34 A 157 (460) 3 Pat J 121 See 11 C N 1124

[Note.—But the joint trial of two persons on two charges, theft in a building (S. 392 I P C.) and theft of paddy in a field, (S. 379 I P C.) the property in the building and the paddy belonging to one and the same complainant and committed on two successive days, is illegal under S. 231 O P C.]—20 C N 672]

(2) Scope and application of the section.

6. Scope.—S. 234 refers to offences and not to sections. It does not provide that all offences committed within a year in three different transactions may be tried in one trial.—10 S. 192, [30 M. 325 (Ed.)]

7. Not more than 3 offences can be joined in one trial.—Accused was sent up for trial

under Ss. 218, 219 and 404 I P C. on eight counts and convicted on two counts under Ss. 403 and 404, held that having regard to the provisions of S. 234 Cr. P. C., the accused could only be tried on three counts in one trial.—[20 Cr 784 (N)] A person felling 10 trees in a Reserved Forest is guilty of as many offences under S. 27

(b) of the Forest Act (VII of 1878) and the trial of the accused on three charges for 69 offences is bad in law—[19 Cr. 161 (V)] An accused person who committed 5 murders in one day, three in one village in the forenoon and two in another village in the afternoon and was tried on a single charge, held that the charge framed contravened the provisions of Ss 233 and 234 Cr. P. C.—[17 A. J. 614]. See also 1 B. 610; 8 C. 430 and 25 M. 61 (P. C.); But see 1 L. B. 315 where the irregularity was overlooked.

8. **Meaning of the expression "offences of the same kind."**—Under cl (2) of S 234 of the Code, offences are of the same kind, when they are punishable with the same amount of punishment under the same section, and when this is not the case, neither S 236 nor S 237 can be read with S 234 Cr. P. C.—29 Cr 751 (N) [15 C P 53 Fd] See 33 B 77

Note—Therefore three separate complaints laid against the accused by the same complainant for cheating 3 different tenants while engaged in the collection of rents on behalf of the complainant could be tried together under S 234 Cr. P. C.—[41 C 66] But the offence of murder and the offence of voluntarily causing hurt are not of the same kind as defined in cl (2) of S 234 [15 B 491-16 B 414 referred to]—11 A. J. 188

9. **Does S. 234 apply to offences committed against different persons?**—S. 234 Cr. P. C. is not limited to cases where the offences have been committed against the same person. S. 234 is taken from S 5 of the statute 24 and 25 Vict. C 66 but the word against the same person which appear in S 5 of the statute do not appear in S 234 Cr. P. C.—[43 C. 13. 9 C. 371 13 C N 507 38 A 458 Rat 331-11 A. J 700 Con & A 147. ('83) A. N. 12. ('83) A. N. 89 11 O N 1128, 13 O N. 418. 2 Weir 299 3 L B 214] When a public servant dishonestly misappropriated sums of moneys placed in his hands by three different persons on three different occasions in one year, held that the offences of which such person is accused, being the dishonest misappropriation of public moneys (for they lost their private character on coming to the hands of the accused), such offences were "of the same kind" and that such person might be charged with and tried at one trial for all the offences [7 A 174 (F. B)] The conviction of an accused person at one trial for three acts of misappropriation committed against three different

persons, is not illegal—[29 Cr. 71 (N); See also 2 Pat J 209; 20 M. J 234]

10. **Procedure when the accused has committed more than 3 offences of the same kind.**—The ordinary course for the prosecution in cases in which an accused has committed numerous offences of the kind is to select a small number of typical cases, to frame their charges accordingly and to prosecute them before the Magistrate. If the result of those proceedings is to penalise the accused and the sentence of fine inflicted is considered sufficient to meet the ends of justice, remaining need not 1 hand, thron, carriage at the trial, the accused is acquitted of those charges, then it is open to the prosecution to proceed with the remaining charges.—Per Nalath J. in 19 Cr. 161 (A)

11. **The section does not lay any limitation on the liability of the accused.**—"I do not see any reasons for the suggestion that if a person commits 50 different offences within 12 months of the same kind, you can only try him three and must necessarily abandon the trial of all charges in respect of the remaining 47 offences. In the case referred to as *Fujures v. Dononjoy Barot*—[3 C 540], the learned Judges considering S. 453 of old Code of Criminal Procedure which is almost word for word the same as section 234 of the present Code say:—"S. 453 of the Cr. P. C. modifies S. 452 (=S. 233 of the present Code) which requires a separate charge and a separate trial for every distinct offence by allowing three charges of three distinct offences of the same kind, and committed within one year of each other, to be tried at the same time, but this does not mean that if at one time or within one year a man commits fifty distinct offences of the same kind, he shall not in one day be prosecuted for more than three such offences"—Per Atkinson J. in 4 Pat L W. 105

12. **Offence constituted by an aggregate of several acts.**—S. 234 Cr. P. C. has no application to a charge under S. 401 I. P. C. as the gist of the offence under the latter section is association for the purposes of habitually committing theft or robbery and habit is to be proved by the aggregate of acts, though the charge may be of a single offence—21 Cr 356 (C). See 6 M. H. 120.

(3) Misjoinder of charges,—instances.

13. **Examples**—Charges under Ss 379 and 380—It is illegal with reference to S. 234 Cr. P. C. to charge a person in the same trial and to convict him of offences under S. 379 and 380 I. P. C.—[20 Cr 751 (N)] or under Ss 380, 454 and 457 I. P. C. [15 C P. 54] or under S. 395 P. C. and S. 20 of the Indian Arms Act (XI of 1878) [44 P R 1917] or on three charges under S. 409 I. P. C. and another charge of an offence under S. 210 I. P. C. [22 C. N. 506]

14. **Other instances.**—The following offences have been held not to offences of the same kind, and

as such a joinder of them has been held to be illegal—

- (a) Adultery (S. 195) and bigamy (S. 494)—Rat 4
(b) Theft and the charge of rescuing from lawful custody—13 C N 804
(c) Receiving stolen property (S. 411) and habitually committing theft—33 B 77

See—For other instances See Notes under S. 233 supra.

15. Some typical cases.—The joinder of six charges—one under S. 231 and two under S. 193 I P. C. relating to the report and evidence about the death of one person and three exactly similar charges relating to the report and evidence about the death of another person is illegal. [1 B L 294 (F. B.).] Where a woman, a member of the dancing-girl caste, who obtained from another woman a minor girl, who was employed by her for the purpose of prostitution, and who subsequently took in adoption another girl of the same caste with the same object, was charged and tried together with the parents of the second girl on charges relating to both the girls under Ss. 372 and 373 I. P. C. held that the joinder of the two charges was clearly erroneous [12 M 273 Cf 11 C. N. cclxxiv: 4 L. H. 315 (F. B.).] Where the Sessions Judge tried at one trial all the

accused on charge under S. 401 P. C. three sets of the accused on three different heads of charges under Ss. 324 and 340 and one of the accused on a charge under S. 411, held that the joint trial of all the accused on all the heads of the charges was opposed to S. 214 I P. C. [Nat 509.] Where a person was charged in respect of one offence and another in respect of another offence, and the joinder of the charges was illegal [5 C. N. 294.] The joinder of three different offences of forging certain cheques, (2) three offences of cheating committed in respect of those cheques, (3) and the offence of falsifying accounts to conceal the forgery, cannot be lumped together in one charge and jointly tried.—[2 P R 1905]

(4) The section in relation to S. 222 Cr. P. C.

16. S. 234 is to be read as subject to S. 222 Cr. P. C.—On a criminal breach of trust or dishonest misappropriation of money, it is sufficient under S. 222, to specify the gross sum, in respect of which the offence has been committed, without specifying the particular items of which the gross sum is composed, and the charge so framed shall be deemed to be a charge of one offence, within the meaning of S. 234.—[29 M. 558 31 C 428 32 C 1083 24 A 254 27 A. 69 33 A 36—See 7 A J 597: Rat 659. 9 M T (Suppl) 17. 15 Mys 271]

17. [Note. Per contra.—S. 222 Cr. P. C. is an exception to another general rule that, at a trial for an offence, certain particulars must be given in the charge. Clause 2 of 223 modifies that rule as to charges of criminal breach of trust, but does not restrict in any way the scope and object of S. 234 of the Code.—Per Chandimarkar and Knight JJ. in 12 B H 226 In 10 P W 1907 it was held that the charge will be set aside if the accused has been prejudiced for not having definite charge to answer by reason of the omission of details

18. Charges of falsification of account.—Every act of falsification of a book of account would amount to an offence under the Code under S. 234. An accused can only be charged and tried at one trial for any number of offences of the same kind not exceeding three committed within the space of one year. The explanation attached to S. 477-A does not purport to override S. 234 Cr. P. C. [26 C 560 See 4 B R 473 (34).] So when a person is tried for criminal breach of trust in respect of 17 sums of monies received by him between the 16th March 1901 and 6th May 1901 and he was also charged with 17 falsifications of account under S. 477-A, I P. C. held that the joinder of charges was illegal.—1 B R 433: See

also the following cases.—32 A 57, 30 A, 331, 30 M 328 2 P R 1905, 33 A, 36, 12 B R 226.

19. Note.—In 40 C. 318, the accused was charged under S. 408 I P C with criminal breach of trust in respect of a sum of Rs. 500 and two items of falsifications of account books, the first on 18th November 1910 and the second on 9th February 1911 to conceal the embezzlement of this sum. Held that the 2nd and 3rd charges under S. 477-A were made triable together by S. 234 Cr. P. C. [40 C 318.] Where all the six false entries were made in the course of one transaction, held that a single count in respect of all the six separate

Mys 29]

20. Cases in which there was no misjoinder.—Where some of the accused charged under S. 395 I P C were also charged under Ss. 411 and 412 I P C on the strength of an incident which was part of the evidence against them on the charge under S. 395 I P C held that there was no misjoinder [11 C J 182.] Three offences under Ss. 178 and 179 I P C can be charged and tried together at the same trial, the trial being a summary one, before the Presidency Magistrate where no charge-sheet need be drawn up, and the facts having been admitted there was no trial in the sense of investigation of facts [35 C 161]

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Trial for more than one offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(4) Nothing contained in this section shall affect the Indian Penal Code section 71.

Illustrations.

to sub-section (1)—

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code.

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 132 of the Indian Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to sub-section (2)—

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(f) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 166) and 170 of the same Code.

o sub-section (7) =

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 322 and 391 of the Indian Penal Code.

Arrangements of Notes.

S. 235 Cr. P. C. = S. 151 (1872)

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| <ol style="list-style-type: none"> 1. Object and application of the section. 2. Practice and Proceduro. 3. The same transaction—meaning and cases. | <ol style="list-style-type: none"> 4. Sentences in a trial for more offences than one. 5. Joinder of Charges. 6. Autrefois Acquit. 7. Miscellaneous. |
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I. OBJECT AND APPLICATION OF THE SECTION.

1. **Object of the Section.**—The Section provides for the joint trial of offences so connected together as to form essentially and strictly the same transaction. The object is to prevent the accused from

different matters and tending by mere accumulation to induce an undue suspicion against the accused.

15 D. 431. 16 B 414. Sec 1 S. 73.

2. **The Section is an enabling one.**—Section 235 is not an imperative but only an enabling Section [Nat 307] S. 235 Cr. P. C. allows a number of offences, even if exceeding three, and extending over a period of more than twelve months, being tried at one trial, if they are committed in the same transaction. As to the cases in which it is applied, see 28 M. J. 121. Cited for 6 A. 121.

3. **Scope of the Section widened by the Codes of 1882 and 1885.**—By Ss 452 to 459 of Act X of 1872, which are reproduced with slight modifications in the present Code as Ss 233 to 279, the Legislature considerably widened the power of the Courts to try a number of offences at one trial, and to join in one trial those offences with regard to which the evidence would overlap—1 S. 73

4. **Application of S. 235 (1).**—In considering whether S. 235 Cr. P. C. (1) applies, the Court has to consider carefully whether the series of acts with which the accused are charged are so connected together as to form the same transaction

11 A. J. 188.

5. **Sec. 235, explained and read with S. 35 Cr. P. C. and 75 I. P. C.**—Sec. 235 should be explained in a broad and common-sense way, and

not by a technical dissection of the language employed. Regarded in the proper way the distinction between its three subsections is very clear. Reading the whole section with S. 71 of the Indian Penal Code, we get a fourfold result which may be stated thus

First—A repetition in the same transaction of several criminal acts of exactly the same character may constitute one crime—e.g.—a number of blows on one person, a number of lies in one continuous deposition or a number of articles stolen at one house breaking. This is a case covered by S. 71 I. P. C.

Second—A single transaction may give rise to either (1) several offences of a different character, each constituting a crime in itself and distinct from the other,—e.g.—a criminal breach of trust accompanied by falsification of accounts as preliminary or sequel to such breach, or (2) Several offences of the same character but affecting different persons—e.g.—a single gunshot fired with Criminal intent which injures two or more persons

Such cases come under the first subsection of S. 235 above mentioned

Thirdly—The same series of acts may constitute different offences. All may be charged, but only one offence can be regarded as committed for the purpose of the trial.

I P C

Fourthly—An act in itself an offence, may become either an aggravated form of that offence or different offence, when combined with some other acts, innocent or criminal. Here we have a compound offence, which, as well as its component minor offence, may be charged under S. 235 Subs (3) of Cr. P. C. but again S. 71 I. P. C. controls the punishment

These provisions of the law must not be confused with the provisions laid down in S. 35 Cr. P. C.

Separable offences which come under S. 71 I. P. C. and may be charged under S. 235 subs (2) and (3) Cr. P. C. are not distinct offences within the purview of S. 35 Cr. P. Code, while subs (1) of S. 233 refers to distinct offences which are separately punishable.—*Per Staynon A. J. C. in D N 20; See also 38 C 433.*

6. [Note—The following cases should be studied with a view to clearly understand the bearing of Ss 71 I. P. C. and 35 Cr. P. C. on the principles enunciated by S. 235 Cr. P. C.—16 C 442 (F.B.) [11 C 349, Od.] 12 C. 495 23 C 174; 80 N 344 D W R 33 10 W R 63 13 W. R. 12; 7 A. 414 (F. B.) 6 A 121; 17 B. 260; 23 B 706]
7. *Alternative charges.*—Neither S. 235 nor S. 236 relates to two acts which form two transactions or empowers a Court to say in a charge

to an accused person; "Either on one day at one place, you did an act which constituted one of several offences, or on another day at another place, you did a different act constituting a different offence, and therefore you are guilty of some one or other of all the offences specified"—43 P R 1887.

8. *Primary offence excludes secondary crime.*—[11 C 349, Od.] 12 C. 495 23 C 174; 80 N 344 D W R 33 10 W R 63 13 W. R. 12; 7 A. 414 (F. B.) 6 A 121; 17 B. 260; 23 B 706]
9. I. P. C. cannot be charged under S. 201 of the same Code. [8 B R 538] The person who is concerned as a principal in the commission of a crime cannot be convicted of the secondary offence of concealing the evidence of the crime [7 A 749 22 C. 618 6 C. 789].

II. PRACTICE AND PROCEDURE.

9. *Separate sentences*—When the accused is tried at one trial on two separate charges for two distinct offences and conviction are recorded on both charges, separate sentences ought to be passed Rat 369 Rat 597 See 7 A 114 (F. B.) 7 A 20
10. *Separate charges must be framed*—Distinct offences committed in the same person can be tried at one trial but must be charged separately. The failure to frame separate charges is an illegality fatal to the trial—10 C. N. 53 10 C N 320
11. *Joint trial of an offences punishable with imprisonment exceeding 6 months and an offence not so punishable.*—In such a case, the procedure laid down for warrant cases must be followed and formal charges should be drawn for both offences—3 L B 113.
12. *Attention must be concentrated on the principal charge.*—Although for the purposes of the charge, it may be convenient to vary the

13. *Charge of offences at a separate trial illegal*—8 C 481

14. *False charge and giving false evidence.*—When the accused is charged with making a false charge and giving false evidence and found guilty, consecutive and not concurrent sentences should be passed as the accused has committed two distinct offences—10 B 231 7 W R 59

15. *Prosecution can confine itself to offences not requiring sanction.*—The accused was committed for trial under S. 116, I. P. C. of having instigated certain persons to commit dacoity. In the course of the trial, the Assistant Sessions Judge added an alternative charge under S. 511 and convicted the accused of either instigating or attempting to commit dacoity. It appeared that the real charge was attempt to commit the offence of waging war against the Queen under S. 122 I. P. C. but the Government refused to give sanction. Held that the refusal of Government to prosecute under S. 122 did not affect the accused's liability to punishment under the other sections—25 B 90.

violation and sentence on the gravest offence proved—2 A 644

III. THE SAME TRANSACTION—MEANING AND CASES.

16. *The real test.*—The real and substantial test determining whether several offences are so connected together as to form the same transaction, depends upon whether they are so related to one another, in point of purpose or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action. A mere interval of time between the commission of one offence and another does not, by itself necessarily import want of continuity though the length of the interval may be an important element in determining the connection between the two
- 27 B 135, 30 B 49 29 B 449 15 B 491 16 B 514; 14 B R 306; 6 B. R. 517 29 M. J. 397. 33 M. 502; 3 Cr 382 (M). 21 Cr 297 (M); 26

M. 125 2 N. 147 19 Cr 34 (L. B.) 12 P R 1918 18 P. W. 1908 21 C. J 331
(The word "transaction" should be read in the ordinary sense of a completed act—25 M J 397)

17. *The principle explained.*—If a series of acts are so connected together by proximity of time, community of criminal intent, continuity of action and purpose and such subsidiary acts as
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offences committed in a series of acts, so connected, they may be tried together. *Whether or not the series of acts be so closely connected as to form the same transaction, necessarily rests with the Court to decide.* The limits are wide, but no powder of charges or trials should be permitted which will result in bewildering any of the accused in his defence, or in causing undue prejudice against him.—1 S. 73. See 15 C. N. 732.

16. **Separation by time or space.**—The expression "same transaction" is not applicable to cases in which the offences are separated by distinct intervals of time and space and which must be proved by distinct evidence.—10 S. 102 [15 U. 431 Fd.] The mere fact that the complaints were lodged on the same day or that the motive of the commission of the offences was the same in all the four occurrences does not at all go to show that the offences were committed in the course of the same transaction [19 Cr. 739 (Ft.). See 17 C. N. 1124, 4 Fnt W. 103]

19. **Meaning of "same transaction" discussed.**—What is the nature of the connection contemplated between different acts which would bind them into the "same transaction"? The idea conveyed by the words "same transaction" seems to be obvious enough and it may be doubted whether it can be compendiously expressed in simpler and clearer language. Generally speaking, there can be very little difficulty in arriving at a proper conclusion in a concrete case. No doubt proximity of time, any more than unity of place is neither a necessary nor decisive test of what constitutes the "same transaction" though such proximity of time furnishes good evidence of the connection which unites several acts into one transaction. This seems to be the effect of the decisions reported in 27 B. 123, 30 B. 19, 13 B. 191, 16 B. 411, that at least in a certain class of cases, community of purpose or design and continuity of action are essential elements of the connection necessary to link together different acts into one and the same transaction. In such cases, the acts alleged to be connected with each other must have been done in pursuance of a particular end in view, and as necessary thereto, or perhaps as suggested by the circumstances in which the acts in pursuance of the original design was done, and in close proximity of time to those acts. But mere community of purpose is not sufficient, there must also be continuity of action. For, it may happen that an act is done with a particular object in view but the final aim is abandoned for some time and pursued afterwards. For instance, suppose a man forges a document with a view to cheat a certain individual and then foregoes his intention for two years and afterwards reverts to his original intention and uses the document for the fraudulent purposes which he had in mind when he committed the forgery. It would be difficult to say in such a case that the offences of forgery and cheating by means of the forged document were committed in the course of the same transaction. As regards community of purpose, it would be going too far to lay down that the mere existence of some general purpose or design, such as making money

at the expense of the public, is sufficient to make all acts done with that object in view part of the same transaction. If that were so, the results would be startling: for instance, supposing it is alleged that A, for the sake of gain, has for the ten years been committing a particular form of depredation on the public, viz. house-breaking and theft in accordance with one systematic plan, it is hardly conceivable that he could be tried at one trial for all the burglaries which he committed within the ten years. The purpose in view must be something particular and definite, such as where a man, with the object of misappropriating a particular sum of money or of cheating a particular individual of a certain amount, falsifies books of account or forges a number of documents"—19 Cr. 104; *Rubin J* in 33 M. 502

20. **Using eleven forged receipts in three different suits.**—Where the accused filed eleven forged receipts in three suits in three suits, each set with a separate written statement—*held*, as the "same" was merely putting in of three sets of documents in three suits simultaneously and there was nothing to show that any of them was used at any other time, *held* therefore that there was no illegality in framing three charges for the three sets and convicting the accused on all the three charges in the same trial.—20 C. H. J.
21. **Several false entries.**—Where several false entries as to amounts collected were made by the accused in the Government accounts of his village so as to show less amounts as collected, *—held*—that they constituted one transaction within the meaning of S. 235. (12) M. N. 515
22. **Theft and escape from custody.**—The trial of two charges, theft and escape from lawful custody (4 224 1 P. C.) are not so connected as to form one transaction, and none of the articles mentioned in S. 233 will cover the misjoinder [12 Bur. R. 216]
23. **Possession of opium and opium.**—Where the accused was found in illegal possession of opium and opium for the purpose of carrying on the business of a vendor of contraband, *held* that the possession of both the articles was part of the same transaction.—19 Cr. 34 (L. B.). See 3 Fnt J. 143
24. **Criminal misappropriation and falsification of account.**—A charge of criminal breach of trust of a sum of money can be tried under S. 235 (1) Cr. P. C. at the same time with one of falsification of accounts made with the object of cheating the act of misappropriation, as part of the same transaction, but a charge of criminal breach of trust cannot be legally tried together with one of falsification, relating to a distinct act of misappropriation committed in a separate transaction.—19 Cr. 987, (3) 40 C. 315; See 30 M. 324. (11) M. N. 576
25. **Cheating and receiving stolen property.** A charge of receiving stolen property may be joined with a charge for cheating, when the facts constituting the offence form part of the same transaction.—21 Cr. 276 (H)

26. **Acts done pursuant to another act.**—Where a police-officer inflicted injuries on an accused person in an attempt to extort confession and subsequently prepared false official records to conceal the cause of his death,—*held*—the transaction of making false entries so as to attribute another cause for the death, was in continuation of and pursuant to the same transaction of voluntarily causing grievous hurt with a view to extort confession within the meaning of S 235 (1)—and illustration (f). 14 B. R. 41.
27. **Proximity of time.**—Between acts do not necessarily constitute such acts part of the same transaction (*e.g.*—house-trespass and subsequent attack on the complainant while on his way to inform the police).—[5 Bar. T 101 See 2 L B 19 7 M T 301.] An appreciable interval between two acts, otherwise connected, does not prevent them from continuing to be parts of the same series of connected events, and hence, it is not necessary to show that the theft and disposal of the stolen property occurred within a few hours or even a few days of each other [(197) C B 5].
28. **When several distinct acts may form part of the same transaction.**—

night, and on the next morning went again to his house and renewed the threat and intimidation. Held the joint trial was legal as the series of acts charged formed part of the same transaction—9 Cr 367 (N).

- (2) **Occurrences on different dates.**—The complainants were called to the *cantehay* by two *pouahs* and were fined by the *Naiab* on the 14th. On paying a part of the fine and promising to pay the balance, they were released. They failed to do so, and were again called and confined on the 18th, but on hearing that the Police were coming they were shoe-beaten and turned out. *Held* that the two occurrences of the 14th and 18th including shoe-beating etc., were for a single purpose—*viz.*—extortion of money. They therefore constituted only one transaction—42 C 760.
- (3) **Distinct acts actuated by a common purpose.**—where there were three different unlawful assemblies at three different places, each with a different common object but all in pursuance of a common purpose or design, *viz.*, to prevent Police officers from searching a place, and the whole occurrence arose out of a common cause. *Held* that the acts of all the accused were parts of the same transaction, and might be the subject of charge in one and the same trial [21 M T 265].
- (4) **Single theft from several owners.**—The following examples will make the point clear as to whether the theft of the several articles forms a single transaction or not. (a) A thief goes to the three-ling float, where the grain of four cultivators is stored, and steals a little from every heap. Unless it is shown that he had distinct designs against several owners it is plain that

there was but one act of thieving accomplished through one and the same trespass (b) In a crowded place a thief picks the pockets of A, B, and C, in succession. Three thefts have been committed.—C. P. Cr Cir Pt II, No. 20: See 26 P. R. 1859. (72-02) L. B. 440: (72-02) L. B. 444

[Note.—Stealing at the same time two bullocks which belonged to two different owners, and which had been tied to the yoke of a single cart, constitutes a single offence of theft only.—Rat 927 (81) A. N. 1641.]

- (5) Transfer of property to several persons on one day.—The accused was charged by the committing Magistrate in a general indictment with having made several fraudulent transfers on one and the same day, but the Sessions Judge limited the prosecution to three or four charges, *vid.*, that the proximity of time, combined with the unity of purpose and similarity of action and result, brought all the transfers charged as fraudulent within the words "same transaction" in S 233, and the accused should be tried for every such offence at the same trial.—[4 B 414]
- (6) Offences not of the same kind.—In 3 B 1 675, the accused was charged with defamnation and also with using criminal force, *held* that there was no misjoinder. A gang of dacoits hiding in a jungle was discovered by an old woman. She was murdered by some of the dacoits to prevent her from raising a hue and cry. Subsequently they committed a dacoity in a village at some distance from the scene of murder. *Held* that the joint trial of all the accused under S 395 I P C and some of them on an additional charge under S 302 I P C was perfectly legal as the murder was committed in order to commit dacoity, and the two offences formed parts of the same transaction.—[4 B R. 760 *Not ac* 14 A 302]
- D. Concealment of offences as part of the same transaction.—Receiving some stolen property on a particular occasion (S 411 I P C) and assisting to conceal some other property stolen on the same occasion are part of the same transaction (S 414 I P C) [29 A. 313]. Conspiracy within the term of S 121—A. I. P C and steps taken to conceal the existence thereof, form part of the same transaction, so that a charge under S 124 I P C. may be legally joined with one under S. 121—A, I P C.—[37 C 467 16 C N. 1105]
- D. Retention of proceeds of theft or dacoity.—Separate retainers by different persons of separate articles at different places, although all the articles may have been the proceeds of the same dacoity, cannot be said to be offences committed in the course of the same transaction.—[33 C 1256]. In the absence of any connection, between the several acts, a retainer of property stolen from different persons
- r S 235
H.C.N.

r S 237
U.C.N.

31. When offences committed on different occasions may form the same transaction.—The accused by means of personating a Police officer, obtained from A several sums of money on different occasions and on one occasion attempted to obtain another sum—*held*—A joint trial for all these acts was not illegal, by reason of misjoinder of charges, as the offences charged were committed in the same transaction.—15 C N 732; 10 A 58

32. Riot consisting of Several incidents.—In the course of a riot consisting of several incidents (e.g. setting fire to public buildings, forcibly closing a private college etc.), the mob committed several excesses and acted with different common objects. *Held*, that the proceedings of the mob consisting of several minor transactions, from first to last, showed such a continuity of purpose, and of action, and were united by such proximity in time, as to form "one transaction" within the meaning of Ss 235 239 Cr. P. Code, so as to render all the rioters liable to be tried at the same trial for the acts done by each of them.—6 M. T. 17 (F.B.) [Per Bowen and James JJ. *Bankers' Note* J. (contra)]

33. Several offences committed for a single purpose.—The accused by personating a Police officer obtained from A, several sums of money on different occasions and on one occasion attempted to obtain another sum. *Held*, that the trial of the accused on a charge under S 170

1 P. C. and on three charges of extortion in respect of "one" "transaction" was not illegal by reason of misjoinder of charges, as the offences charged were committed in the same transaction.—15 C N 732; 10 A 58

34. Where time is the determining factor.—The accused cut a large number of trees on eight or nine separate occasions. Although a common purpose (theft) ran through the several distinct offences which were committed by the same person with reference to the property of the same person, the various fellings were separated by distinct intervals of time, and breaks in the continuity of action, there being no necessary connection between them; they therefore were not so connected together as to form one transaction under S 235 Cr. P. Code.—(11) M. N. 467

35. Continuity and community of purpose, the guiding factor.—Where a number of persons attacked certain others in the morning to secure possession of certain documents and the same persons attacked the same others in the afternoon and killed one of the latter to prevent them from presenting a complaint to a Magistrate regarding the morning occurrence, *held* that in the absence of any evidence of common aim in the two occurrences, they could not be said to constitute the same transaction.—28 M. J. 397

IV. THE SENTENCE IN A TRIAL FOR MORE OFFENCE THAN ONE.

36. Joint trial of charges under Ss. 457 and 380 P. C.—In the case of housebreaking by night in order to commit theft and theft, there may be either one sentence not exceeding that which may be imposed for the graver offence or separate sentences for each offence provided that in the aggregate the punishment awarded does not exceed that which may be given for the graver offence.—1 W. 214 (F. B.) Ser. 2 A 644 (72 '92) L. B. 390 8 C P 7 6 C 718 12 C N 187 Rat 790 But see Rat 228 10 A 493

37. The principle to be followed.

(1) Where in the course of one and the same transaction an accused person appears to have perpetrated several acts directed to one end and object, which together amount to a more serious offence than each one of them taken by itself would constitute, it may be convenient to vary the form of the charge and to designate not only the principal but also the subsidiary crimes alleged to have been committed. But for the sake of simplicity and convenience, the conviction and sentence should be concentrated on the gravest offence proved.—2 A 644 2 A 101 16 C 412 (F. B.) 4 P. R. 1901 (F. B.)

(2) Where the charge against the accused is founded upon one single continuous transaction, the first thing to be ascertained is, what is the principal legal offence involved in the conduct of the accused which would subject him, if convicted, to the greatest amount of punishment? That, being ascertained, the object of sentencing is not the accumulation of punishment,

but to provide against the event of the evidence failing to establish the principal charge. The most convenient course (with reference to appeals) is to enter up findings on all counts.—And 11 B. 110 10 3 '63.] The accused was squabbling with the husband of the witness at the door of the house. Witness remonstrated and abused the accused. The accused trespassed into the witness' home for the purpose of assaulting her and in carrying out the intention caused her grievous hurt. *Held* that his conviction for the substantive offence of grievous hurt was right but not for the subsidiary offence of house trespass.—2 W. R. 29.

38. Offences under Ss. 147 and 323 I P. C.—Offences under Ss 147 and 323 I P. C. are not in the light of the explanation added by Act V of 1898 to S 32 Cr. P. C. distinct offences and therefore it is not illegal to convict the accused of both offences. When S 71 I P. C. is read and carefully compared, it seems to me that it is in no way conflicts with the illustrations given under S 235 Cr. P. C.—[Per Kinnear J. C. J. in 19 Cr 788 (1) Ser Rat 369 Rat 228]

39. One substantive offence forming the aim of the other.—This section taken with its illustrations forbids two punishments for an offence so compounded that one substantive offence is the aim of the other. Therefore where a person who has been tried and convicted under S 323 I P. C. of abducting a child with the intent of dishonestly taking movable property cannot also be punished for the theft of a part of the movable property which he intended dishonestly

to take through the means of abduction—7 M. H. 375 Fd. in Rat 159].

40. *When S. 71 P. C. does not apply.*—Where the accused has committed distinct offences which when combined are not punishable under any single section of the Penal Code S. 71 P. C. does not apply. Rat 228 10 B. 493-7 A. 414 (F. B.) But See Rat 790

42. *Subs. (3) of S. 235 Cr. P. C.—joint trial of separate offences and the combined offences.*—An accused person tried for offences under S. 321, 323, 326 or 353 P. C. and S. 143 and the combined offences under S. 147 or 149 P. C. can be separately convicted and sentenced for each such offence provided, the limit imposed by S. 71 P. C. is not exceeded.—12 O. 495 7 A. 757 (F. B.). 7 A. 414 (F. B.); 7 A. 29 9 A. 645; 10 C. 105 17 B. 260 (F. B.). See Rat 493; Con 16 C. 412 (F. B.); 4 P. R. 1901 (F. B.); 6 A. 121, 52 P. L. 1801.

V. JOINDER OF CHARGES.

43. *Counterfeiting Trademarks.*—A person can be tried at one trial for having in his possession stolen plates for counterfeiting trade marks (S. 455 P. C.) for having sold goods to which a counterfeit trade mark was affixed (S. 456), and for having in his possession such goods (S. 456), since the three offences can be said to arise out of the same transaction.—27 B. 135

44. *Dacoity, forgery, using forged document and cheating by personation.*—The trial of the accused on seven charges, three of dacoity, two of forgery, one of using as genuine a forged document, and one of cheating by personation would be perfectly regular, if the offences with which the accused was charged, all formed one transaction.—11 C. N. 715

45. *House-breaking and theft.*—An accused person can be tried under two heads of charge (See S. 454 and 350 P. C.)—Rat 307.

46. *Accused committed an offence only on a C 1053*

47. *Charges under Ss. 307, 408 I P C.*—In a conviction under S. 307 I P C., a charge under S. 408 was also joined, held that the two acts did not form one series of transactions within the meaning of S. 235 Cr. P. C. and that the two charges ought not to have been joined—6 A. J. 697

48. *Cattle trespass and rescue of cattle.*—The act of permitting cattle to trespass and rioting in rescuing the cattle after they had been impounded at another time and place, could not be treated as forming part of the same transaction [See 7 M. T. 367]

49. *Facts necessary to justify joinder of charges.*—The accused who was a servant of a lambaradar of a mehal, obtained possession of a Jamabandi belonging to the additional lambaradar, and after collecting canal dues on the basis of the Jamabandi and deducting his commission, thereon, paid the amount to his mistress (the lambaradar) and not to the additional lambaradar who was lawfully entitled to the same. The charge was one of criminally misappropriating that portion of the canal dues which was paid to him on account of the additional lambaradar's division of the mehal—held that the prosecution

was entitled to go into the whole matter at a single trial, provided it took upon itself the burden of proving that all the facts alleged against the accused, were in fact so connected together as to form part of the same trial—13 A. J. 1131.

50. *Cheating, forgery, using as genuine forged document and cheating by personation.*—Where the accused was tried on seven charges,—three of cheating, under S. 420 I P. C. two of forgery under S. 460 and 465 I P. C., one of using as genuine a forged document under S. 471 I P. C. and one of cheating by personation under S. 419 P. C.

Held,—that the trial of the accused on all these charges was perfectly regular under S. 235 Cr. P. C. as the offences with which the accused was charged, all formed one transaction

11 C. N. 715

51. *Counterfeit coins—Joint-trial.*—A person tried and convicted under S. 243 for being in possession of counterfeit coins can be jointly tried with another person and convicted for delivery of counterfeit coins (S. 240 P. C.)

31 C. 1007.

52. *Criminal breach of trust and falsification of accounts.*—A charge under S. 403 I. P. C. cannot be legally tried with one of falsification of account relating to a distinct act of misappropriation committed in a different transaction (477-A), but when forming part of the same transaction, they can legally be tried together by virtue of the provision of S. 235 (1) Cr. P. C.

40 C. 316 30 M. 328.

53. *When a charge is a continuation of the same transaction.*

said to be a continuation of it. The four offences, therefore, were not committed in the course of the same transaction, so as to be capable of being

- joined in one trial under S. 235 Cr. P. C.—[10 S. 102]. But where the accused was tried under S. 203 I. P. C. in the same trial for two distinct and separate offences—*viz.*—a false suit against one person in the Court of the City Munsiff and another false suit against a different person in the Court of the Subordinate Judge, *held* that the accused in spite of full warning, had acquiesced in the joinder of the two charges and the error had in no way prejudiced the accused. The case was therefore covered by S. 537 Cr. P. C. [42 A. 12]. Where the accused (Agents and Secretaries) were tried in respect of five charges, four of which related to a false balance-sheet prepared for 1912, and one to a false balance-sheet prepared for 1913, *held* that the trial was illegal as the different acts attributed to the accused in respect of the two balance-sheets did not form part of the same transaction [21 B. R. 732].
54. Ss. 302 and 323 P. C.—Where at a trial, several persons are charged with several offences, punishable under Ss. 302 and 323 P. C. which do not form part of the same transaction, *held*—the trial was illegal.—11 A. J. 164
55. One charge for three distinct offences.—The framing of one charge under S. 321 P. C. for causing hurt to three different persons is illegal
17 C. N. 419
56. Charges under S. 403 and 455 P. C.—Where the alleged offence under S. 463 (falsification of accounts) was committed in relation to the act forming the basis of the charge under S. 403 P. C.—*held*—the two offences were connected with each other and arose out of the same transaction within the meaning of S. 235 (1).—11 B. R. 306

VI. AUTREFOIS ACQUIT.

58. Application of subs (1)—It should be noted that subs (2) of S. 403 lays down that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under S. 235, subs (1). "It seems to us that the fact that a person is acquitted on some of the charges, does not prevent him from being charged again on some of the facts forming part of the series of acts, another offence may be charged against him." * * * See 275 (1) seems to us to be inapplicable when the accused is sought to be charged with another offence on the identical facts on which he was charged before with one offence." [Per Sundarrao Aiyer and Aylmer J. J. 36 M. 308 See also 2 C. J. 622; 10 C. N. 518 and 8 M. 296]
59. Cases—
S. 211 I. P. C. the same fact P. C. [36 M. 30] charge of committing mischief by cutting certain branches from a tree, could not be charged again with the offence of theft on the same facts [8 M. 296]. Similarly a person who was tried for offences under Ss. 201 and 202 I. P. C. could not be tried again for an offence under S. 176 on the

57. Instances of misjoinder of charges.—
- (a) Obstructing Civil Court peon and beating son of decree-holder.—Where several accused more than five in number, obstructed the execution of a Civil Court decree and after holding a consultation, all of them excepting one or two proceeded to the *kutcheri* of the decree-holder to beat his son and the Tashildar, and took the Tashildar to the judgment-debtor's house where they had obstructed the execution of the decree and there assaulted the Tashildar, *held*—that the two occurrences did not form part of the same transaction.—11 C. N. 1113. But See 6 M. T. 17.
- (b) Misapp orpation and Cheating.—The accused (a Jamadar in the service of a firm) was entrusted with two cheques for encashment on the 20th September, and told to pay out of the proceeds, the freight and take delivery of certain goods from the Railway Company. He cashed the cheques on the 21st and on the 22nd but when asked by the firm, denied having done so. On the 26th he induced, under promise of immediate payment, a clerk of the Railway to give him delivery of the goods and then without making payment, absconded. *Held* that the offences under S. 404 I. P. C. was complete before the petitioner cheated the Railway Company (S. 420 I. P. C.) Therefore the two offences could not be tried together as they were not committed in one transaction.—13 C. N. 1089
- (c) Other instances.—See cases noted under S. 211 Cr. P. C. and 233 Cr. P. C. *Supra* also 6 A. J. 697 (106 I. P. C. and 307 I. P. C.) and 10 P. R. 1906 (Murder, and causing grievous hurt in removing the dead body)

- same facts [Per Pargiter and Woodroffe J. J. in 10 C. N. 518]. A person acquitted of a charge under S. 417, owing to the non-appearance of the complainant, could not be again charged under Ss. 417, 501 and 506 on the same facts, [2 C. J. 623]. The accused was charged under S. 203 I. P. C. for giving false information. Upon the facts on record, he could have been convicted under S. 177 I. P. C. The advisers of the Crown seeing that a charge under S. 203 I. P. C. was not sustainable, fell into error in withdrawing the entire
60. Scope of subs. (1)—As more offences than one committed in the course of the same transaction can be separately tried, a conviction on one of such offences is no bar to the trial of another. [(10) A. N. 32; 21 C. 174]
61. The bearing of S. 235 Subs (1) on the doctrine.—Where under a charge under S. 305 P. C. a conviction is *held* to be bad, a subsequent trial for abduction is not barred by S. 403 Cr. P. C. the case being one which falls under S. 235 subs. (1). [(10) A. N. 32; 5-31 C. 1007.]

62. Person convicted under Ss. 201, 202 P C cannot be tried again for an offence under S 176 P. C.—based on the same facts, by an inferior Criminal Court, as such a case does not come, under subs (1) of 235 Cr P C but rather under subs (2) of that section. The charge under S 176 P C might have been framed at a former trial on the very facts and the Sessions Court which tried him under S 202 P C was competent to try him under S 176 P C. 10 C N 518.

63. Person acquitted of offence under S 182 I P C tried under S 500 I P C on same facts.—The accused who had in a petition to Teshildar under the Court of Wards, falsely made certain defamatory statements against a Sub Inspector of Police, was tried for an offence under S 182 I P C, on the sanction of the Manager of the Court of Wards, but was acquitted on the ground that the person to whom

the petition was made was not a public servant, held that the case fell under S 235 (1) of the Code of Criminal Procedure and under no other of the exceptions in Ss 234, 235, 236 and 239, and therefore the prosecution under S. 500 I P C was clearly saved by the provisions of S 403 (2) Cr P. C.—14 C. N. 839.

64. Previous acquittal under Ss. 467 and 109 I. P. C. no bar to second trial under S. 471 I. P. C.—Where the accused was previously tried under Ss 467 and 109 I. P. C before the Sessions Judge and acquitted and was afterwards tried for a second time with respect to the same document under S 471 I. P. C and convicted by the Additional Sessions Judge, held that as abetment of forgery and the using of the forged document in a Civil Court were distinct offences committed in the same transaction, the matter fell within the first sub-section of S 235 Cr P. C.—40 B 97.

VII. MISCELLANEOUS.

65. Joint trial of offences partly triable by Jury and partly with the aid of assessors.—With reference to Ss 226, 233 and 235 Cr P C, a Judge is competent to hold two trials, where some of the charges, on which the accused are committed are triable by jury and the remaining with the aid of assessors.—2 L W 933

66. Combination of two cases.—Four persons, members of the Police force, were charged with illegally confining, and torturing complainant H and his wife R and his son-in-law Y, in the course of the Police investigation. The charge consisted of 7 counts which may be analysed as follows—

All the four accused were charged

(1) for an offence under S 330 I P C against H (2) for an offence under S 345 I P C against H between 5th and 18th Jan'y, (3) for an offence under S 340 against Y, between 15th and 23rd Jan'y (4) for an offence under S 348 I P C against Y, during the same period.

(5) Accused nos 1 and 3 under S 348 I P C against R on 15th Jan'y

(6) Accused No 3 under S. 330 I P C against R on the 14th Jan'y

(7) Accused Nos 1, 2 and 3 under S 346 I P C against Y, between the 5th Feby and 9th March. Held—that all the several acts of violence alleged to have been committed against H, during his illegal confinement could rightly be regarded

as constituting a single transaction. But the act of violence said to have been committed against R, at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of R, by the accused Nos 1 and 3 on the 15th January a part of the transaction constituted by the hurt which was caused to her by the accused No 3 on the previous day. In the same way all acts of hurt caused to Y, during his first period of wrongful confinement would with the confinement form part of the same transaction. But the second period of confinement would be a separate transaction. 15 B 191

67. Offences falling within two definitions.—For examples See 10 C N. 518 (offences under Ss. 201, 202 and 176 I P C) 24 M J 463 (offences under Ss 161 and 211 I. P. C). 2 C. J. 622 (Ss 447, 604 and 506 I P C)

68. Power to select the charge.—Where the accused has committed housebreaking and theft, he need not necessarily be charged with both, but he may be tried for and convicted of either [Rat 307]. If during the course of the same transaction, offences are committed, some requiring sanction, and others not, the accused can be tried for offences not requiring sanction, when no sanction is given in respect of the offences that require sanction [31 M 43]. Though there might be a joint trial for offences committed in the same transaction, yet, a separate trial for each of the offences is not illegal [8 C. 451]

236. If a single act or series of acts is of such a nature that it is doubtful which of several

Where it is doubtful what offence has been committed

offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences,

and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or be charged with having committed theft, or receiving stolen property, or criminal breach of trust or

A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, if it cannot be proved which of these contradictory statements was false.

(1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence, a person is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is to have committed, although he was not charged with it.

(2) When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) although he was not charged with such offence.

Proposed amendment to the section.—Sub section (2) of section 237 of the said Code shall be omitted,

Arrangement of Notes.

S 236=S 155 (1872)=S 212 (1861)

S 237=S 156 (1872)=Ss 50 59 (1861-6)

Application of the sections,
Alternative charges,

3. When person charged with one offence can be convicted of another.

I. APPLICATION OF THE SECTIONS.

Scope of the section (236).—This section does not relate to several distinct acts but to a single act or series of acts to which on the ascertainment of facts, it is doubtful which section is applicable.—43 P. R. 1887. 14 C. N. 839. 23 C. 174. 5 S. 16. See 36 M. 309.

Ss. 234, 236 and 237 not mutually exclusive.—The provisions of Ss 236 and 237 are intended to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under S 234 Cr. P. C. The provisions of S 234 Cr. P. C. do not prevent the prosecution from establishing at the same trial the minor or alternative degree of criminality involved in the acts complained of. Ss 235 and 236 may be resorted to in framing additional charges, where the trial is, under S 234 of three offences of the same kind committed within a year.—10 B. R. 973. See 7 W. R. 13. 9 N. 26. Con 9 C. 371.

Charge framed under S. 233 Cr. P. C. in relation to appeals.—Where the accused was charged with and tried for various offences arising

out of a single act or series of acts, it being doubtful which of these offences the facts proved will constitute, an appeal from a conviction for any one of such offences, lay the whole case open to interference by the appellate Court, notwithstanding the acquittal recorded by the first Court as regards any of the other offences.—22 C. 377.

4. **Distinctly separate transactions.**—Neither S 235 or 236 Cr. P. C. relates to two acts which form two distinct transactions or empowers a Court to try in charge to an accused person—“either on one day at one place, you did an act which constituted one of several offences or on another day at another place, you did a different act constituting a different offence, and therefore you are guilty of some one or other of all the offences specified.” 43 P. R. 1887. 11 Cr. 731 (L. R.) See 3 L. R. 201.

5. **S. 236 applies to cognate offences.**—Offences charged in the alternative arise out of the same delictum and are, therefore necessarily cognate offences. [Per Pratt J. C., *Crouch v. J. C.*, *Contra*.] The alternative offences need not

necessarily be offences dealt with under the same chapter of the Penal Code or cognate "in any other technical sense," but they must, from the nature of the case, be such that the commission of each can reasonably be inferred from the same facts—[*Per Crouch A. J. C.*]—5 S 16.

6. **Application of the section.**—An alternative charge under S. 236 Cr. Proc. Code cannot be framed in respect of distinct offences nor even in respect of cognate offences, when the difference is one of degree, i.e. as to the intention imputed to the accused or as to some circumstances of aggravation. S. 236 applies to those cases only in which the prosecution cannot establish exclusively any one offence, but is able, on the facts which can be proved, to exclude the innocence of the accused and to show that he must have committed one or two or more offences—[*Per Pratt J. C.* in 5 S 16 (58) A N 93. See 19 B 57 (71) [*Per Rynard J.*]

7. **Nature of the doubt justifying alternative charges.**—The section applies to cases in which the facts themselves are not doubtful but the application of law to them is doubtful [7 N P 137 11 P R 1837 11 P R 1013 21 C 955 (973), 18 C J 574 40 B 77 4 Pat W 40 See 2 Weir 301 Rit 20 23 C 17 12 C N 530]. The doubt referred to in S. 236 Cr. P. C. can only arise when the legal character of the facts sought to be proved against the accused might be considered as ambiguous, and the section authorises a charge in the alternative when it is doubtful which of the several offences, the facts which can be proved will constitute and not in a case where there may be doubt as to the facts which constitute one of the elements of the offence, that is *corpus delicti*. The section contemplates a state of facts constituting a single offence but it is doubtful whether the act or acts involved may

led by the prosecution leads to one result and one result only, it cannot possibly be said that it is doubtful which of the offences has been committed by the accused [21 Cr 44 (Pat)] The section does not apply when the facts proved raise a doubt whether the accused is guilty of any of the charges at all [12 C N 530 Cr R I of 4 8 02]

8. **Distinction on principal charges though**

charges.
same trans-
are perpe-
and and
ore serious
individually

by itself would constitute it may be convenient to vary the form of the charge, and to designate not only the principal but also the subsidiary crimes alleged to have been committed. Yet in the interest of simplicity and convenience, it is best to concentrate the conviction and sentence on the greatest offence proved—2 A 644 See 177-921 L B 390 8 C P 7.

9. **"Several offences"** in S. 236, mean not merely several offences punishable under differ-

ent sections, but also two or more offences punishable under the same section, whether under the same part or under different parts, of the same section—32 P. R 1845. 25 B 533

10. **Series of facts "and several offences".** The series of acts contemplated by S. 236, Cr. P. C. need not be necessarily a series of connected acts. Several offences, may be of the same kind or otherwise—24 B 533.

11. **Rule for assessing punishments.**—When

based on the materials available as to the offence used but the accused committed charged under S. 236, the Court should remit a conviction in the alternative and the question of sentence should be considered from the point of view of the maximum sentence provided for the lesser of the two alternative charges—15 A J 567

12. **The application of S. 403 (1) in so far as it is controlled by S. 236.**—In order to apply S. 403 (1) of the Criminal Procedure Code, it is necessary to see whether under S. 236 of the Code any charge in the previous trial could have been framed for the offences for which the accused is sought to be tried at the second trial. Sec 23 of the Code only applies when the act or a series

constituted, see 111 N 111
21] Under S. 403 of the Criminal Procedure Code an accused cannot be tried a second time on the same facts for an offence cognate to or involved in the offences with which he was previously charged [45 C 727 See 3 S. 16] Where the subsequent charge is based on certain additional facts discovered after the previous trial on a different charge had ended in acquittal, the provisions of Ss. 236 and 237 Cr. P. C. cannot be invoked in order to plead the bar provided by S. 403 Cr. P. C. [10 C N 1031]

13. **Ss. 236–239 provide for the consequences of misapplication of the law.**—An exception to the general rule that an accused person should not be convicted on appeal of a charge to which he had no opportunity to plead in the lower Court, is provided by Ss. 236–239 Cr. P. C. Where the prosecution has established certain acts constituting an offence and the Court has misapplied the law to these acts by charging and convicting the accused for another offence and where notwithstanding the error, the record shows that the accused had endeavoured to meet the accusation arising out of the proper charge the appellate Court may convict the accused of the latter charge and a retrial is not necessary 26 C 663 See (11) U B 3-1 98

14. **Addition of charge at the Sessions.**—Three persons were jointly committed for trial before the Sessions Judge, two of them being charged with culpable homicide not amounting to murder and the third with abetment of the same. At the trial, the Sessions Judge added a charge against all the accused of causing hurt to another person either at the same time as, or

immediately after, the attack which resulted in death and convicted them of all the charges, held—that the Judge had no power to add in the charge and the case did not come out on the terms of Ss 223, 234 or 237 Cr. P. C. 8 A 665

15. When Sec. 234 can be read with Ss. 230 and 237 Cr. P. C.—Under Cl. (2) of S 234 of the Code, offences are of the same kind, when they are punishable with the same amount of punishment under the same section and where this is not the case, neither S 233 nor S 237 can be read with S 234 of the Code

23 Cr 751 (N) See 15 C P 53 33 B 77

16. Procedure when accused is charged alternatively with graver and less serious offences.—When the accused is alternatively charged with a graver and a less serious offence, a definite finding as to the accused being guilty of a particular charge should be given—1 Bur S, 374

17. Alternative charge for perjury.—When a person is charged with having made contradictory statements, one at the Police investigation and the other before a Magistrate, he cannot be charged with, still less convicted, of the offence under S 193 I P C—[19 B 377 (F. B.) Rat 303] Prosecution on alternative charges for making contradictory statements before the Police and the Magistrate, should be discouraged and can be justified only when the prosecution is unable to prove which of the statements is false [47 P R 1490 See 11 Cr 731 (L B) 3 L B 304, 10 B 124 20 P R 1910]

18. Form of charge in respect of possession of stolen property.—Where the accused is found in possession of several stolen articles belonging to A and B, at one and the same time, the proper course is to frame two charges, in respect of the property of A, one under S 379 I. P. C, and the other under S 411 I P C expressed either alternatively or cumulatively and two similar charges in respect of property of B.—26 P R 1489 See 17 M J 219

19. Joint trial.—The joint trial of two persons accused of giving false evidence, in the same case and on the same point is not permitted by the terms of S 231 Cr P C—S 8 120] But where four accused were tried together, the first under S 353 I P C the second under S 350 and 411, the third and fourth under Ss 411 and 414 P C, all the stolen property being handed to the first accused, and the disposal with which the other

accused were charged, forming one and the same transaction—held there was no misjoinder of charges or persons [4 Bur T 203]

20. Application of S. 237 Cr. P. C.—The application of S 237 is by its express terms restricted to case mentioned in S 236 Cr P C S. 236 applies only to a case in which there is a single act or a series of acts of such a nature that it is doubtful which of the several offences is constituted by the criminal act or acts Hence when there is no doubt as to the offence committed neither S 236 or 237 can apply [Per Mookerjee and Beane of J J]—18 C J 574 18 C N, 1276

21. —————

120 8 BUR 1 - 11 (2. B.)

22. Court's duty when convicting under S. 237.—When a Court finds it necessary to make use of S 237 Cr P C, in order to convict an accused person of an offence with which he has not been charged, it should be particularly be careful to formulate to its own mind the charge, upon which, had it been duly framed, the Court would be prepared to convict—Per Piggott J in 17 Cr. 64 (A)

23. S. 231/ Complementary to S. 236.—S. 237 Cr P C would apply in cases where S 236 applies See 237 is an enabling section, which empowers the Court to convict the accused of offences for which no charge has been framed, but for which a charge could have been framed under S 236 See 236 applies only when there is no doubt as to the facts of the case but only under which section of the law upon the facts found the accused would be guilty—4 Pat W 40, 14 C N 539

24. Procedure with reference to recording the plea of the accused.—When arguing the accused and before his plea is received, the Court should see that the charge is sufficiently and explicitly explained to him in order to enable him to understand fully the nature of the charge to which he is called upon to plead [5 C 820; Rat 698 9 M 61] An accused person should not be called upon to plead in the alternative but separately to each of the heads of a charge. [Rat 327]

II. ALTERNATIVE CHARGES.

In cases of perjury.

25. Effect of the change in Law.—Illustration (b) introduced by the Code of 1885 is proposed to with the law that contradictory statements by a witness which are *irreconcilable* constitute the offence of intentionally giving false evidence though it cannot be proved which of the two statements is false. (The statements of objects and persons.) The illustration has adopted the view of the Full Bench in 21 W B 72 (F. B.) and 7 A

41 which laid down in 1884 under the law of English India it is not necessary that a charge of perjury under S 193, based on two contradictory statements on oath, should allege which of them is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction, to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. [7 A 41; See also 2 Weir 210]

The *ratio decidendi* of English cases relating to perjury is inapplicable to India. [7 A 41. 26 M 55 (92)]

Notes.—Rat 518: 336 401 and 18 B. 377 (F. B.) must be held to be superseded.

23. **Scope of ill (b).**—In 15 K. 148 it has been sought to confine the scope of ill (b) to cases where the two contradictory statements are of the same kind and it has been held, inapplicable to statements falling under the two different parts of S 193 I P C. It has therefore been held that where one of the statements was made before the police and the other before a Magistrate, the section would not apply. [See also 18 B 377 (F. B.) and 24 B 533 Rat 503 518, 336.] But this view is opposed to that taken in 22 A. 115: (1905) A N 73 and 5 M T 356.

27. [Note.—Prosecution on alternative charges of persons who make contradictory statements to the police and to a Court, has its convenience, but it has also its drawbacks. It is not a prosecution to be encouraged, and is justifiable only when the prosecution is unable to prove which of the contradictory statements was false.—27 P R 1850 11 Cr 731 (L B) 3 L B 204.]

23. **When the section is to be applied.**—It is only when it is found impossible to say which of the conflicting statements was false and the two could not be reconciled, that the prisoner should be convicted in the alternative on a charge framed under this section.—2 Weir 300

29. **Form of charge.**—The charge should be framed in the alternative as in Form No XXVIII, (4) Sch V [7 A 41 16 B 121. 32 P R 1888]

30. **The rule as to reconciliation of two contradictory statements.**—An alternative finding should not be resorted to until both the committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges and such a finding cannot be based in a case of giving false evidence upon two statements, which are not absolutely contradictory, the one or the other, nor when in one of them the accused gives only

hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made. 13 B L 325; See 28 B 533 7 A 44 (10) M N 397; See 111 (b) to S 237

31. **Alternative charges under the Penal Code and a special Law.**—An alternative charge under Ss. 240 and 237 cannot be framed in respect of an offence under the Penal Code and an offence under a Special Law, nor can a Court inflict any sentence upon a person found guilty in the alternative of an offence under the Penal Code and another under a Special Act. 5 S. 16. See 8 B. H 115.

32. **Differences between cumulative and alternative charges.**—The essential difference between (1) cumulative charges (2) alternative charges and (3) charges in the alternative, is that under the first, the Court is asked to convict of two or more offences, under the second of any one specified offence, and under the third, of one or other of two offences without specifying which. The alternative offences must be such that the commission of each can reasonably be inferred from the same facts. 5 S. 16

33. **Alternative charge should be framed.**—As in the form given in Sch. V, No. 29 Sub-head II.—1 Bur. S 430.

34. **Alternative charges under Ss. 302 and 201 I. P. C.**—A and his wife B committed a series of acts in the course of the same transaction, from which acts, it could be inferred that both A and B or either of them committed the offence of murder or that one of them caused the disappearance of the evidence of commission of the offence by burning the dead body. Held, that the joinder of charges of murder and of causing disappearance of the evidence of the murder in the alternative was legal under S. 236 Cr P C. [4 S 174. 1 S 73. See 11 P. R. 1913]

35. **Omission to frame an alternative charge.**—An omission to frame an alternative charge comes under the very comprehensive words "error or irregularity in any enquiry or other proceedings" in S. 537 Cr. P. C.; (16) M. N. 267 26 B 533.

III. WHEN A PERSON CHARGED WITH ONE OFFENCE CAN BE CONVICTED OF ANOTHER (S. 237).

38. **Principle to be observed in applying S. 237.**—A person should not be convicted of an offence with which he had not been formally charged, if the altered charge was such that if it had been originally framed, the defence made and the evidence adduced for the defence might have been of an entirely different character.—See (16) M. N. 267. 30 C. 288. 4 Pat W. 10. 5 C N. 567.

37. **Modification of charges.**—The accused was charged under Ss. 232 and 245 I P C. It was found that the purpose of the offence was not making gain by passing off false coins as good ones but of getting certain enemies into trouble by secretly getting them into the latter's house. They were acquitted under S. 232 but convicted of offences under Ss. 233 and 195-107

I P C. The appellate Court on appeal convicted the accused under S. 195 and set aside the conviction under Ss. 233 and 195-107 I. P. C. holding that the conviction under S. 195 was permissible although the section was not mentioned in the charge.—43 P. L 1912

38. **Accused summoned to answer a charge of storing wool.**—cannot be convicted of storing cotton.—Rat 529. See 23 W. R. 8
39. **A police officer charged with bribery.**—cannot be convicted of violation of duty under S. 29 Act V of 1801.—26 W. R. 8
40. **Person charged with an offence under S. 385 P. C.**—cannot be convicted of an offence under S. 494 P. C.—(91) A. N. 120

41. A person charged with an offence under S. 328 P. C.—cannot be convicted of an attempt to murder under S. 307 P. C. without amendment or addition of charge.—1 B. B. 221
 42. A person convicted of an offence under S. 379.—cannot in appeal after being acquitted of that charge, be convicted under S. 143 P. C.—27 C. 660
 43. A person called upon to answer a charge under S. 447 P. C.—cannot be convicted under S. 290 P. C. also.—5 C. N. 507 (O) A. N. 129
 44. Person charged under S. 124-A may be convicted under S. 153-A.—An accused person who has been charged with an offence under S. 124-A may be convicted under S. 153-A. I. P. C. even though S. 153-A, was not the subject of the charge, by the application of Ss. 236 and 237 Cr. P. C.—10 B. B. 801 33 B. 77 See also 33 B. 221.
 45. Person charged under Ss. 392 and 382 I. P. C. cannot be convicted under S. 458 I. P. C.—N was sent up by the Police with two others for trial under S. 395 I. P. C. The District Magistrate charged him under S. 392 I. P. C. with robbery and also with a previous conviction under S. 382 I. P. C. The accused pleaded an alibi which was disbelieved. The Magistrate found the accused guilty under S. 458 I. P. C. (house breaking by night after making preparations to cause hurt) and convicted him under that section, observing that as the defence was an alibi, the accused could not be prejudiced by the change of section, *held* that this doctrine could not be accepted as correct, except in cases falling within the purview of Ss. 236, 237 and 238 Cr. P. C.—(11) U. B. 3-g 98
 46. Case under the Bengal Excise Act (V of 1909).—The High Court in this case in revision set aside the conviction under Ss. 46, and 52 of the Act, and convicted the accused under S. 61 read with S. 16 cl (a) and S. 2 cl (12) holding that Ss. 236 and 237 were applicable.—41 C. 537
 47. Person charged under S. 147 cannot be convicted under S. 323 I. P. C.—Where the accused were charged with and convicted for an offence under S. 147 I. P. C. only, it is not competent to the Appellate Court to set aside the conviction under S. 147 and to convict them under S. 323 I. P. C. as the accused had no opportunity to defend themselves on that charge in the lower Court [18 C. N. 1276] Similarly a person charged under S. 323 I. P. C. read with S. 149 I. P. C. can not be convicted of the substantive charge under S. 323 I. P. C. [21 Cr. 439 (Pat) 31 C. 698 6 C. N. 98 17 C. N. 1300 But See 15 C. N. 668]
 48. cannot be
 49.
 49. Rape and kidnapping.—A person charged with rape cannot be convicted of kidnapping 8 B. B. 120
 50. Murder and theft.—Ss. 296 and 297 refer to separate offences, but do not relate to offences of so distinct a character as murder and theft. Where, therefore, a person charged with murder was acquitted of that offence, but convicted of theft with reference to the provisions of the section *held* the conviction was altogether unwarranted.—(48) A. N. 95
 51. Ss. 352 and 353.—Where a person was charged under S. 353, for having assaulted a police officer in the discharge of his public duties, but it was found in the course of the trial, that he committed an assault on a private individual, a witness in the case and not on the police-officer, *held*, that he could not be convicted of the latter offence.—6 C. N. 202
 52. A prisoner charged with dacoity and riot, and acquitted, cannot be convicted of house-trespass, if the latter charge was not read out or explained to him, and he was not called upon to plead to it 23 W. B. 59 See 26 B. 50
 53. A person convicted under S. 376 P. C.—cannot be acquitted of that charge and convicted at the same time under S. 366 P. C. because a charge under the latter section involves different elements and different questions of fact from a charge under S. 376 P. C.—8 B. R. 120
 54. An accused person charged with criminal breach of trust under S. 406 P. C. only—cannot also be convicted under S. 420 P. C. 9 Cr. 400 But see 12 B. B. 1 also 8 B. 200 and 17 B. 369
 55. Persons tried together for theft (S. 379)—can be convicted under S. 311, if the evidence showed that the acts proved led to the inference that, that offence rather than theft has been committed.—17 M. J. 219 See (OS) A. N. 73
 56.
- as there was doubt as to the offence constituted by the facts to be proved in the case, and it was open to the trial Court to have convicted the accused under S. 304 I. P. C. under the provisions of S. 237 Cr. P. C.—17 B. R. 217
57. Person charged under S. 467 may be convicted under S. 471 I. P. C.—Where an accused person was charged under S. 467 I. P. C. but it appeared in evidence that he had committed an offence under S. 471 I. P. C. for which he might have been charged under S. 236 Cr. P. C. *held* that although the accused was not charged with it, he could be convicted of an offence under S. 471 I. P. C.—21 Cr. 110 (A)
 58. Attempt need not be separately charged.—A person charged with the offence of cheating may be convicted of having attempted to commit the offence of cheating, although the attempt is not separately charged 17 Cr. 272 (Pat)
 59. Abetment under the Excise Act.—A person cannot be punished for abetment of an offence under the Excise Act [XXI of 1896] as that Act contains no provision for abetment and the Penal Code is inapplicable on account of its defining offence as "a thing punishable by the Code."—7 W. R. 23.

60. Person charged with dacoity may be convicted of abetment of robbery.—The fact that the accused has been charged with dacoity does not necessarily invalidate a verdict of guilty of abetment of the robbery. 8 Bur T. 247 (F. B.) 3 M T. 122 7 W. R. 19. cf 8 B 200 (F. B.)

61. General Principle.—There is no provision of law which allows of a conviction of a major charge after being charged with a minor offence 1 B. R. 513

62. Ss. 236 and 237 Cr. P. C. will not justify second conviction on discovery of new facts.—The accused, on being challenged, dropped a sewing machine and tried to escape but was arrested and sent up and convicted under S. 31

of the Rangoon Police Act Subsequently, the machine was identified as the one stolen from Mr. Y's house and the accused was tried under S. 457 I P. C. and convicted a second time. held that Ss. 236 and 237 did not authorize a second conviction on further evidence subsequently coming to light and showing that the act of the accused constituted a graver offence than that of which he was convicted S. 493 would bar the second trial.—8 Bur T. 129.

63. Procedure in cases tried with the aid of assessors.—A person cannot be convicted of an offence with which he has not been charged, but which the evidence shows he has committed in a case tried with the aid of assessors, when the opinion of the assessors, has not been taken with regard to such offence.—2 Weir 391.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section

Illustrations.

(a) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 407.

(b) A is charged, under 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of the Code.

Proposed amendment to the section.—After sub section (3) of section 238 of the said Code, the following sub-section shall be inserted, namely:—

"(2c) When an accused is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged."

Notes.

(1) Preliminary.

* S 238 (1894)=S 467 (1872)

1. Application of the section.—This section applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence. The graver charge in such a case gives to the accused notice of all the circumstances going to constitute the minor one of which he may be convicted. The latter is arrived at by mere subtraction from the former. But when this is not the case, when the circumstances embodied in the major charge do not necessarily and necessarily amount to the definition of the offence imputed by that charge constitute the minor offence also, the principle no longer applies,

because notice of the former does not necessarily involve notice of all that constitutes the latter. This section is not intended to apply to a collateral offence. It is not open to a court to find a man guilty of a charge of

2. offences.—a composite offence may, under S. 238 Cr. P. C. be convicted of any element of the composite offence which constituted a minor offence [Rat 293 131] In this case the accused was charged under S. 457 I. P. C. *Mudgappa and Sheerappa* J J held. "We hold consequently that although the specific

intent—namely—the intent to commit theft was not established yet it was competent to the Court to convict the accused under S. 138 I. P. C. and only the consideration is, whether the accused has been prejudiced at the trial by the conviction for a minor offence in conformity with S. 234 Cr. P. C. In determination of this question, as pointed out by Couch I in 6 B. II. 76, the nature of the case made at the trial against the prisoner, the evidence that was given and the line of defence set up by him, are all matters to be taken into consideration, [20 C. N. 1075.]

3. The fact must be indicated in the charge.

—Secs. 237 and 239 Cr. P. C. do not authorise the conviction of the accused upon facts which are not stated or indicated in the charge [11 B. II. 210 (12) M. N. 725 8 Bar T. 217]. An appellate Court, while sitting under a conviction under S. 147 I. P. C. cannot convict the accused of offences under Ss. 418 and 323 I. P. C. when neither criminal trespass nor hurt was the alleged common object in the case. Such a case is not covered by S. 235 Cr. P. C. [18 Cr. 460 (M). 23 W. R. 50 24 C. 325 Fd.] The offence under S. 202 I. P. C. cannot be treated as a minor offence included under S. 201 for an essential ingredient of the offences under S. 202 is the legal duty of the accused to give information and this is no part of the offence under S. 201. S. 239 Cr. P. C. therefore does not apply and a charge under S. 202 should have been framed—5 S. 123

4. Scope of subs (2).—The accused were charged under S. 147 I. P. C. only, there being no charge nor any complaint under S. 471 I. P. C. The common object described in the charge was to take forcible possession of the complainant's land and of assaulting him and others. *Held* S. 238 (2) Cr. P. C. did not apply in as much as the common object was not to commit criminal trespass and the offence under S. 447 P. C. was not minor to that under S. 147 P. C. within the meaning of the section [23 W. R. 59 18 C. N. 392]. When the accused are charged under Ss. 301 and 325 read with S. 149 I. P. C. in respect of an offence alleged to have been committed by another person and the commission of the riot is disbelieved, they should not be convicted under S. 323 in respect of their individual acts with which they are not charged and which are not imputed to them in the Judge's charge to the Jury—[31 C. 325 See also 31 C. 624 17 C. N. 1201]

5. Rioting and grievous hurt.—Where in a riot, the accused had caused grievous hurt with his own hands and he is charged under S. 323 I. P. C. he cannot be convicted separately under S. 325 I. P. C. read with S. 149 I. P. C. he cannot be convicted separately under S. 323 I. P. C. as it cannot be said that the offence of causing grievous hurt is minor to or included in a charge under S. 149 I. P. C. [11 C. N. 696 See 6 C. N. 98 31 C. 325 5 C. 871 17 C. N. 1201]. A person charged by implication under S. 149, A person charged by implication under S. 149, cannot be convicted of the substantive offence unless the Court draws up a charge under S. 323. When the Court draws up a charge under S. 323, I. P. C. read with S. 149 I. P. C. it clearly intimates to the accused persons that they did not

cause grievous hurt to any body themselves, but that they are guilty by implication of such offence. When they are acquitted of rioting obviously all the offences which they are said to have committed by implication disappear, and the defence cannot be called upon to answer to the specific act of causing grievous hurt, simply because it may have appeared in the evidence [16 C. N. 1077 But See 7 M. 151]

6. Minor offences.—The words "minor offences" in S. 234 Cr. P. C. ought to be taken in their ordinary sense and not in any technical sense, if so taken, an offence under S. 305 would be a minor offence as compared with those under Ss. 366 and 376—22 C. 1006

7. Subs (1) illustrated.—The accused was charged and convicted under S. 457 I. P. C. On appeal, the Court altered the conviction to one under S. 411 I. P. C. *held* that the offence under S. 457 being composite, the Appellate Court could record a new finding and sentence on any element of that composite offence [Rat. 293]. On failure of a charge of dacoity the accused can be convicted of theft, if the evidence prove him to be guilty of theft although, the offence is not mentioned in the extradition order [17 B. 369]

8. Subs (2) illustrated.—The accused was charged under Ss. 301 and 325 I. P. C., *held* they might be convicted under S. 323 I. P. C. although no charge under that section has been drawn up against them [31 C. 325]. The dishonest retention of property acquired by dacoity being included in the more comprehensive charge of dacoity, the accused could be convicted under S. 412 when the conviction for dacoity had to be set aside for want of jurisdiction, [11 B. 50]. A person charged with criminal breach of trust as a public servant cannot be acquitted because the facts disclosed—(1) that he was not a public servant (2) that he committed the offence of cheating in such a case he ought to be convicted of cheating, though he is not charged with it [12 B. II. 1]. A person charged with murder may be convicted of the offence of culpable homicide not amounting to murder by the Jury, [20 B. 215]. An offence under S. 361 I. P. C. is a minor offence as compared with offences under Ss. 366 and 376 I. P. C. and the accused charged with the latter offences can be convicted of the former offence, even though not charged with it [24 C. 1006]

(2) Offences not coming within the purview of the section.

9. (1) Murder and kidnapping.—Where the accused was charged with murder but the evidence established the offence of kidnapping from lawful guardianship with which he was not charged, *held* that the latter offence was not a minor offence within the meaning of the section [2 Weir 302]

10. (2) Murder and Criminal misappropriation.—A person charged with murder cannot also be convicted of the offence under S. 401 I. P. C. for having misappropriated property possessed by the deceased person, unless he is charged with it also [13 C. I. 167]

11. (3) Extortion and theft.—It is wholly illegal to convict and punish a man for a grave offence such as extortion (S. 354 I. P. C.) involving many totally different ingredients, on a charge of theft under S. 379 I. P. C. [13 Cr. 597 (C)].

12. ()

of house-breaking by night, or theft in a building, [Rat 211]

13. (5) Ss 392 and 438 I P C.—Where a person has been charged under S. 392 I P C he cannot be convicted of the offence under S. 438 I P C. [(11) U B 189 See I L B 17]

14. (6) Rape and adultery.—An offence under S. 494 is not a minor offence to offences under Ss 363 and 366 I P C and therefore even the formal addition of a fresh charge under S. 498 at a late stage of the trial, is opposed to the spirit of this section, when the trial has commenced on charge under S. 366, only. [31 B. 218 Ss 3 A 233 Fd in 27 M 61 29 C 415] It is not competent for a Judge in appeal to alter a conviction under S. 376 into one under S. 366, because a charge under the latter section would involve very different elements and different questions of fact, from a charge under S. 376 I P C [8 B. R 120]

(3) Miscellaneous.

15. The application of the rule to verdicts by jury.—The effect of S. 238 is to invest a jury trying an offence triable by a jury with authority to find as an incident to such trial that certain facts only are proved in the trial which constitute a minor offence, and return a verdict of guilty of such offence, though it may not be triable by a jury * * * In cases in which, having regard to the charge and the evidence adduced at the trial, it is appropriate to do so, the Sessions Judge in his charge to the jury should draw their attention to the provisions of S. 237 or 238 as the case may be, so that the

charged.—Per Bhushyam Ayyangar J. in (192) 26 M 243

16. Cases in which the Jury convicted under a minor charge.—A Jury in a Sessions

case, is competent where a charge under S. 397 Cr. P. C. is not established to convict the accused of an offence under S. 324 P. C. where the facts proved established the commission of that offence. [13 Cr. 738 (M)] In a trial of the accused upon a charge under S. 149, read alternately with S. 327 of the Penal Code (being members of an unlawful assembly and causing grievous hurt) a verdict of guilty by jury of an offence under S. 327, alone, though it did not form the subject of a separate charge was held legally sustainable under S. 457 of the Criminal Procedure Code (of 1872) [5 C 871].

Note.—See also the following cases: 22 M. 15; 24 M. 611.

17. On a reference under S. 307 Cr. P. C., the High Court can act under S. 238.—On a reference under S. 263 Cr. P. C. (=S. 307), the High Court can convict a prisoner of any offence, which the Jury could have convicted him of, upon the charge framed and placed before them, under S. 457 of Cr. P. C. 1872 (=S. 238) — 3 C. 189 22 C. 1006 (1011); 20 B. 215.
18. Conviction for major offence.—There is no provision of law which allows a conviction of a major offence on a charge of minor offence — 1 B. R. 513.
19. Conviction for adultery on a charge of kidnapping.—Where the accused was charged by the husband of the woman under S. 366 I. P. C. a conviction under S. 499 I. P. C. may properly be had if the evidence be such as to justify a conviction for the minor offence and yet insufficient for conviction for the graver offence.—20 C 453.

Note.—This ruling is opposed to the dicta laid down in 27 M 61. 5 A. 233 22 C. 1006; 20 C. 415; 30 C 910 (F. B.).

20. Scope of the Section.—Though an accused person may be charged in the alternative with either of two offences under S. 236 or may be convicted under S. 237, of a different offence from the one with which he had been charged, the two sections must be read along with S. 238 Cr. P. C. [(11) U. B. 3 q 99]. The section is merely an enabling one. Its provisions are not imperative and therefore where the accused was charged and convicted under S. 454 I. P. C., the conviction was held good, though the facts disclosed an offence under S. 380 I. P. C. and the accused should have been tried for charges under both the Sections [Rat 307].

239. When more persons than one accused of the same offence or of different offences

What persons may be charged jointly. or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit, and the provisions contained in the former part of this Chapter shall apply to all such charges.

Illustrations

(1) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(2) A and B are accused of robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A also with the murder.

(3) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with two other thefts.

Proposed amendment to the section.—For section 239 of the said Code, the following section shall be substituted namely:—

"239. The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed by them in the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(c) persons accused of more than one offence of the same kind within the meaning of section 234 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of offences which include theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining or assisting in the disposal or concealment of, property possession of which has been transferred by offences committed by the first named persons, or of abetment of or attempting to commit any of the last named offences;

(f) persons accused of offences under sections 411 and 412 of the Indian Penal Code, as either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence.

And the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges."

Arrangement of Notes.

S 239 Cr P C S 453 (1872)

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| 1. Object and application of the Section. | 4. Joint trial—when permissible. |
| 2. Same transaction—meaning and cases. | 5. Effect of non-compliance. |
| 3. Joint-trial—when not permissible. | 6. Miscellaneous. |

NOTE.—The several sections relating to joinder of charges and persons are so intimately connected with each other, that a joint interpretation of two, three or even all of them has been made not infrequently in several decisions. An attempt has been made to avoid repetition of these overlapping decisions and the reader is requested to consult the notes on the same point under more than one section, whenever necessary.

1. OBJECT AND APPLICATION OF THE SECTION.

1. The principle to be followed.—If more persons than one are accused of different offences in a series of acts so connected together by proximity of time, community of criminal intent, continuity of action, or by relation of cause and effect, as to constitute in the opinion of the Court one transaction, they may be tried together.
2. Commitment is not rendered illegal by

reasons of misjoinder of offenders in the preliminary enquiry by the committing Magistrate.

20 M 592.

3. The illustrations to S. 239 Cr. P. C.—seem to suggest that the persons jointly tried must have been associated from the first in the series of acts which form the same transaction.

20 B 419

4. S. 230 affiliated to S. 233 Cr. P. C.—S. 233 Cr. P. C. contains the general rule, namely, that for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. To this rule there are several exceptions—viz—those contained in Ss. 231, 235, 236 and 239 Cr. P. C.

12 B. R. 236.

5. Principle explained.—In S. 230, a series of acts separated by intervals of time are not excluded provided that the object of those jointly tried has throughout been directed to one and the same object. If the accused started together for the same goal, this suffices to justify the joint-trial, even if incidentally one of those jointly tried has done an act, for which the other may not be responsible. The foundation for this procedure in the section, is the association of persons concurring from start to finish, to attain the same end.

7 B. R. 633. Ss. 35 C. 453. 13 C. N. 1093.

6. Ss. 234 to 236 and 239 not mutually exclusive.—Ss. 234 to 236 and 239 Cr. P. C. referred to as exceptions in S. 233, are not mutually exclusive.

10 B. R. 973.

7. Difference between S. 234 and S. 239.—S. 234 is not applicable where there are several persons accused. A joint trial of several persons charged together with having committed offences of the same nature though not different dates during the course of one year, not forming parts of the same transaction is illegal. 33 C. 202. 168 P. L. 1911. 123 P. L. 1911.

8. Application of S. 239 Cr. P. C.—S. 239 of the Criminal Procedure Code is the only section of the Code which refers to a joint trial of more persons than one, but it does not authorise such trial for two or more distinct offences unless they form part of the same transaction or unless one is the actual offence and the other or others are offences of abetting or attempting that offence.—[20 Cr. 7 (V). See 4 N. 71].

9. The two clauses of S. 239 not mutually exclusive.—The two clauses of S. 239 Cr. P. C. are not mutually exclusive. If A induces B to cheat and B attempts to cheat in consequence, A and B may clearly be tried together for abetment of and attempt at cheating. If in the course of of the same transaction, A commits the separate offence of criminal breach of trust in furtherance

of the conspiracy to cheat, A may clearly be charged with that offence at the same trial.—[38 C. 151; See 13 C. N. 1099].

10. "Same transaction" includes principle and subsidiary offence.—The expression "same transaction" used in Ss. 235 to 239 is an expression which, from its very nature, is incapable of exact definition, and must have been advisedly used, because it had this quality. The area of facts covered by the expression "same transaction" varies with the circumstances of each case. The illustrations to the section however make the intention of the Legislature sufficiently clear. Those criminal acts, which are by English and Indian law regarded as subsidiary to an offence, are included in the same transaction as the offence. Instances of such acts are in the case of theft the disposing of the stolen property, and handing it over to a receiver, and in the case of murder, the concealment of the body.—1 S. 73.

11. The Section does not apply to preliminary inquiries.—There is no provision in the Code which requires a separate enquiry in respect of each accused person as the provisions contained in S. 233 relate to separate trials only. The trial no doubt could not be joint, but there could be no objection to proceedings prior to commitment on the ground that the enquiry was conducted against the accused jointly with others.—7 B. R. 457. 26 M. 502. 42 M. 501. But see Rat 925.

Note.—The section is enabling and not imperative.—26 M. 592. 11 W. R. 16. Rat 915. (CO) A. N. 200.

12. Security proceedings.—The main principle applicable to criminal trials regarding joinder of charges and the joint trial of accused persons are also applicable to inquiries under S. 107 Cr. P. C. [8 C. N. 180. 9 A. 432. See 11 C. N. 472]. Where several persons are arraigned to show cause under S. 110 Cr. P. C. each must be separately tried [Rat 585. Rat 536. See 14 C. 854. But see notes under S. 110 VI (B) Procedure (12)].

13. Meaning of "accused of the same offence".—The words "same offence" in S. 239 of the Code of Criminal Procedure imply that both the accused should have acted in concert or association and do not apply to a case like the present, and that the two accused ought to have been tried separately as required by the provisions of S. 233.—7 L. B. 69. G. M. 690.

II. SAME TRANSACTION—MEANING AND CASES.

14. Meaning.—Transaction means "carrying through" and suggests not necessarily proximity of time, so much as continuity of action and purpose. The successive acts may be separated by intervals of time, the essential element being progressive action all pointing to the same object. The foundation for the procedure is the association of two persons concurring from start to finish to attain the same end. The continuance of a common object, the progressive execution of it by successive acts satisfy the test and criterion implied in S. 239.—Per Russell and

Batty in 30 B. 49. See 6 C. 171 (F. B.) at p. 186. For definition of same transaction, see Notes under S. 233 supra.

15. Theft and Receiving Stolen property.—The illustrations to S. 239 of the Crim. Proc. Code of 1909 seem to suggest that the persons jointly tried must have been associated from the first in the series of acts which form the same transaction [29 B. 449. 14 C. 305]. On this principle it has been laid down that when different articles stolen at one time are found in the possession of several persons, a joint trial under S. 239 Cr. P.

C would be illegal and must be quashed [33 C 1230 17 Cr 477 (1)] unless of course it can be shown that all the accused received the stolen articles during the same transaction [1 C N 35 40 C 741] When a stolen article is criminally disposed of by one person and at the same time and place, dishonestly received by another, the two offences of theft and receiving stolen property form part of the same transaction and the two persons can be jointly tried at one trial [24 B 112] S. 239 therefore does not apply to a joint trial of the offences of stealing and receiving the stolen property (i.e. the thief and the receiver) when they are not parts of the same transaction [3 P. R. 1905 21 C. N 1111 1. G N 35 5 C L 674. See G C L 245 (97) U. B. 1-q 5 Con 25 O 7, 28 C 10] Accused No 1 received from certain thieves stolen property. Subsequently he delivered to the accused No 2, a portion of the stolen property in satisfaction of the debt which he owed to the latter. A further portion of the stolen property was afterwards recovered from accused No 3, but there was nothing to show when he received it and from whom. Held that the three accused could not be tried together under S. 239 [29 B 419]

18. **Note per contra.**—Persons concerned in the theft as well as those engaged in the purchase or dishonest receipt of the stolen property are all engaged at different stages in what amounts to the same transaction [remarks of *Dielt J* in 33 C 1236 adopted] The guilty receipt of the property stolen is a continuation of the act of theft or criminal breach of trust [8 B R 517 fd]—39 A 311

17. **Murder and grievous hurt.**—Some unknown set of persons killed N and another set of persons came and tried to carry off N's body and in attempting to do so committed grievous hurt to W S, who tried to prevent the body being taken off. Here the two offences of murder and grievous hurt do not form part of the same transaction, for the murder might have been committed by one set of men with one object and the attempt to carry off the body may have been committed by the other set of men with a different object. The trial was therefore bail for mayhem of parties [the two sets of men]—10 P R 1006

The tests explained and illustrated.

18. (1) **Common purpose.**—Where three persons passed a resolution defamatory of the complainant and published the same, while a fourth person transmitted the resolution to a newspaper in Bombay, and all the 4 persons were tried together—held that the trial was bad for misjoinder as there was no evidence to show that the two offences were committed with the same object or that there was any common purpose or that the three persons instigated the fourth person to report to the newspaper [7 M T 127] Two persons severally charged with giving false evidence in their depositions at a certain trial in a Sessions Court cannot be tried together in the absence of evidence of conspiracy [4 B R 53] The complainants were called to custody by two police and were fined by the Sd. on the

18th. On paying a part of the fine and promising to pay the balance they were released. As they failed to keep their word they were again called and confined on the 18th, but on learning that the police were coming, they were shoe-heaten and turned out—held that the two occurrences of the 14th and 18th including shoe-heating were for a single purpose—extortion of money. They therefore constituted really one transaction [12 C. 760]

The rule as to community of purpose illustrated.—Where the accusation against all the accused persons was that they carried out a single scheme by successive acts at intervals but there was complete unity of project, and the whole series of acts were linked together by one motive and design, and they constituted one transaction within the meaning of S. 239 Cr. P. C. [14 B R 972. See 43 B 137] If several accused persons start together for the same goal, the witnesses to justify their joint trial under S. 239 of the Cr. P. C. even if incidentally one of those jointly tried has done an act for which the others may not be responsible [21 Cr 161 (Pat) See 29 B 119, 43 M 402] On this principle, it is illegal to try two sets of persons, one set having permitted cattle to trespass in a reserve forest and the other set having rescued the cattle [7 M T 367], or to try a person charged with an offence under S. 124 of the Railway Act with the person charged with the offence of rescuing him (S. 225 I. P. C.) [29 C 385] C gave the accused 60 counterfeit rupees to pass for him in Calcutta. While in Calcutta the accused's trunk was broken open and the counterfeit coins were stolen. The accused gave information to the police which led to the discovery of 64 other counterfeit rupees in the house of C. C was separately tried and convicted under S. 231 I. P. C. for being in possession of counterfeit coins. The accused and C were then also tried (jointly) the former under S. 217 and the latter under S. 210 with reference to the 50 counterfeit coins made over by C to the accused. Held that the joint trial was perverse, while in S. 231 and with the last clause of S. 235 Cr. P. C. [11 C 1007] The offence of the keeper of a common gaming house and the players arising out of facts so inseparably connected together as to form a single transaction and therefore S. 239 applies to the trial as a joint trial of persons accused of offences committed in the same transaction [14 B R 1919 26 Cr 764 (Pat); 5 A 5 P W 1919 35 P R 1914]

19. (2) **Continuity of action and proximity of time.** To constitute this as one transaction prior to conspiracy among the actors is not required. So long as the acts are proximate and continuous, the doctrine is applicable. Proximity of time is one of the considerations but it is not necessary that all the acts should be completed in the same day [P. Nijer J in 25 M T 374, 15 21 M 512 (Per J. B. K. J. in 21 M T 364; 36 M T 21 B R 712] When the offences are different, falling under different parts of the law, if the offences are of a criminal nature, and the persons committing the offences are distinct, and the persons or sets of persons against whom the

offences are committed are different, they cannot ordinarily be held to have been committed in the same transaction [*Per Sudasita Ligar J* in 25 M T 397] When the crops of one plot were looted on one day and those of another plot on the next day, *held* S 239 did not apply. [33 C 292 10 C N 32] Where the 4 accused were charged and tried for two offences—viz—*one* dacoity committed on the 30th May and another committed on the 2nd June, and there was nothing to show that there was any community of purpose running through the two offences, *held* that the joint trial of the two offences was bad [8 M. T. 286 Pg. 33 C 292 See also 31 C. 1053] Where it appeared that the three accused, in the presence of *washers* went into a patch of jungle, and brought out a box containing aniline dyes and the accused Nos. 2 and 3 on another occasion took out of same tin bushes a tin of coal-tar and all the accused were jointly tried and convicted under S 111 I P C the allegation being that both the box and the tin had been stolen from a train, *held* that the joint trial of the accused was illegal [38 136]. House breaking and theft occurred on two successive nights in two villages, 4 miles apart, *held* that a joint trial of the first accused who was charged with house breaking and theft and the 2nd accused his concubine who was charged with house breaking by night and theft or in the alternative with receiving stolen property was illegal, as there was no proof of continuity of action justifying the inference that the two offences were parts of the same transaction [25 M. J 381 See 7 L B 272] A mere interval of time between the commission of one offence and another, does not, by itself, necessarily import want of continuity, though the length of the interval may be an important element in determining the connection between the two [27 B 135 See 2 N 147 11 C N 715 13 A J 131]

20. (3) Primary and subsidiary offences.—When two persons are jointly concerned in the production in evidence of a forged document, and are tried, the one as the principal and the other for abetment, the trials should be separate [42 A 24-20 Cr 214 (A)] The test to be applied as to whether a number of separate occurrences form the same transaction or not is this: "There must be a continuity of action and the two occurrences should be so related to one another in point of purpose, or as cause and effect or as principal and subsidiary acts, as to constitute one continuous action," [27 B 125-33 M 502 3 Cr 382 (M) 24 M J. 397] Under S 239 Cr. P. C. judicial discretion has been given to the Court to try the principal offender and the abettor either jointly or separately, and the manner in which this discretion should be exercised, must depend on the facts of each case [19 C N 121]
21. (i) Preconcerted plan.—As a general (though by no means invariable) rule, the series of acts following each other must proceed out of a preconcerted plan in order to form parts of the same transaction. Where the second and third charges are unconnected with the first charge, there being no evidence of a preconcerted plan being entertained, when the offence covered by the first charge was committed by only one of the accused, a joint

trial is illegal [15 Cr. 696 (31) See (10) M. N. 541-29 C. 355] In 15 Cr. 645 (M.) one of the accused in trying to force an entry into a factory was ejected. After the ejection, he got the other accused to join him and formed an unlawful assembly, the common object being to force an entrance into the factory. Where 5 persons were tried together on 4 charges, all of them were charged with having engaged in the illicit transport of opium; two of them with being in unlawful possession of 1 seer of opium, two others being in unlawful possession of 6 seers of opium, and the remaining accused with selling opium against the contract terms of the license, there being nothing on record to show that the different facts alleged were connected together in such a way as to constitute one and the same transaction.—*Held* that the trial held in express defiance of the provisions of 239 S Cr. P. C. and must be held to be a void trial, [10 J. 141]. If A. B. and C. conspire to make or have in possession or under control, an explosive substance within the meaning of the Explosive Substances Act, and if in pursuance of such conspiracy, A. makes or has in possession or under control an explosive substance, they may, if the Court thinks fit, be charged and tried together under S 120-B I P. C. and sec 4 (6) of Act VI. of 1909, under S 239 Cr. P. C. [42 C 957 See 10 C N 672] Where the three accused had entered into a conspiracy to defraud the Ry company by understating the weight of consignments—The first accused, as the loader of the Railway, being charged under Ss. 120 B, 420 and 161 I P C and the two accused (not Railway servants) under Ss. 120 B, 420 and 161—109 I P. C. *held* that a joint trial of the accused was valid.—[10 C N 672] It is fallacious to argue that a transaction is complete as soon as any offence is committed, or in other words that the term transaction is synonymous with the term "offence". It is clear that so long as a conspiracy continues, the transaction which begins with the forming of the common intention, continues through the whole series of acts proceeding out of that common intention [42 C 1153] If a person entrusts a sum of money to more than one person and those persons in collusion commit criminal breach of trust or dishonestly misappropriate the amount, surely one would expect that the Legislature would have used very clear and explicit language if it intended that in such a case those persons ought not to be tried together. The transaction is one and the same within the meaning of S 239 Cr P C [17 Cr. 80 (31)] S 239 applies where part of the stolen property is found in the possession of one accused and another part in the possession of the other accused, when evidence is given to show that the two men were acting in concert and were in joint control of the stolen property [1 Pat J 61] Where the six accused had been jointly concerned in carrying on a systematic

trial of these three charges at one and the same trial [38 A 157] Where the allegations

against the first accused are: (1) that they entered into a conspiracy to cheat and (2) in accordance with the conspiracy they forged Railway receipts on the 17th Decr 1915, and these receipts were used, some of them on the 18th, some on 20th and some on the 21st December in order to obtain money by cheating the same persons, and (3) that the fraud was not complete till all the railway receipts had been used—*held* that under the circumstances there was continuity of action and purpose and the three offences of cheating along with that of forgery were committed in the course of the same transaction [17 P R 1917]. Where there is evidence of jointness and concert, the joint trial of several tenants for mischievous conduct in respect of different plots of land in their respective possession is not contrary to law, [1 Pat W 691]

2. When joint trial for offences committed in the same transaction is undesirable.—Though 4 members of a police force, who had conspired to extort confession by torture from a family of suspected persons, could under certain circumstances be dealt with under Ss 235 and 239 for a series of oppressive acts which they committed in the prosecution of their common object, the propriety of doing so will be questioned, when the prospect of a fair trial may be endangered by the production of a mass of evidence directed to many different matters and tending by mere accumulation to induce an undue suspicion against the accused

15 B 491

3. Offences committed on two successive days.—When the accused committed theft of

sheep and on being remonstrated with by the owner, threatened him, drove him into his house and confined him there till late at night, and on the next morning went again to his house and renewed the threat and intimidation,

Held—that the above acts formed part of the same transaction within the meaning of S 235 Cr. P. C and need be tried separately

9 Cr 367 (M)

[For the principle governing joinder of charges—*See* 10 C N 53 10 C N 520 13 C N. 1067]

24. Common object—the determining factor.—Where the accused obstructed the Civil Court, peon in the execution of a decree and after consulting with each other, and at the instigation of two of them, proceeded to the kauchery of the decree holder, in order to beat his son and *teshil-dar*, and violently assaulted the *teshil-dar*—*held* the mere fact that all the accused were not engaged in the second occurrence, and that the common object in respect of it was different from that of the first, shows that the two occurrences did not form part of the same transaction

13 C N 1113

26. Joint trial of abetment and attempt.—The two clauses of S 239 Cr P C are not mutually exclusive. If A induces B to cheat and B attempts to cheat in consequence, A and B may clearly be tried together for abetment of and attempt at cheating. If in the course of the same transaction, A commits the separate offence of criminal breach of trust in furtherance of the conspiracy to cheat, A may clearly be charged with that offence at the same trial

34 C 173

III. JOINT TRIAL—WHEN NOT PERMISSIBLE.

27. General Rules.—The following rules may be laid down as crystallized by a long course of cases, and may form a useful guide for the determination of the question 'should a joint trial be held in this case?' which not unfrequently confronts the Magistrate and the prosecutor in Criminal trials.

28. (1) The fact that several persons have committed the same offence will not justify a joint trial in the absence of anything to show that they acted in concert, that is to say the several offences committed by them though separated by intervals of time proceeded out of a common conspiracy and were calculated to further the same object [see 5 M. 20 33 C 282 3 C N. ccccvi 13 C N. cxi. 13 C N. cxxvi 2 Weir 303 168 P L 1011]. Persons owning lands on both sides of a road can not be tried jointly on a charge under S 283 P C of having let the water on their land overflow the road [Cr. R 3 of 1906]. It follows therefore that where the charges involve a conspiracy among the accused, a joint trial will be valid [see (1) A N 52 16 A 88]

29. Note. In perjury cases, where several witnesses on the same side, give false evidence in the same case, their offences will, as a rule be regarded as distinct, unless there is any evidence of the existence of a conspiracy [14 B B 972]. [See the following cases: 7 B L (np) 66 11 W. R 16

30.

31.

abatement of offence in the case of the other.
[16 C. N. 600]

32. (3) *Where each offence is a completed act in itself and the original design was accomplished so far as that act was concerned before the next offence was embarked upon there is no continuity.* In such cases, the first offence and the subsequent offence cannot be tried together.

33. **Cases.**—A Magistrate held a joint investigation in the case of 4 accused persons who were charged with different offences and committed them under Ss 211, 114, 465, 193 I P C. The High Court directed a fresh enquiry, remarking that the charges against all the accused being under Ss 211 and 114, can only form the subject of a joint trial. While in other cases the trial must be separate. [Rit 923 See 7 P R. 1901, 11 A, 704.] Where S obtained in August certain articles by committing offences under Ss 124, 471 and 404 I P C and in January following, he in conjunction with H tried to obtain goods in exchange for one of the notes, held that the two offences committed in August and January did not form parts of the same transaction and therefore the joint trial was bad in law but they could have been tried jointly for the offences committed in January. [31 C 1053 See also the following cases 10 C N 32 18 C N 1076 14 C 395 3 S 136 51 P. R 1905 10 P R 1906 33 C 292 122 P L 1911.] Manufacturing evadable article seized and brought into Court, bottling it, possessing it, selling from time to time various other articles not before the Court, and attempting to render denatured spirit fit for human consumption do not constitute one transaction.—[41 C 631]

34. (4) *Where the second offence is really an offshoot of the first but the two offences are not connected together by proximity of time, community or purpose of design and continuity of action a joint trial of the persons committing the two offences would be illegal.*

35. **Note.**—This rule is aptly illustrated by cases of theft or criminal misappropriation followed by disposal resulting in the receiving or retention of stolen property. It has been held that the offence of receiving stolen property does not form part of the same transaction with the offence of theft, unless they are simultaneous. [1 C N 371] Theft and the disposal of stolen property will ordinarily form part of the same transaction but there is no necessary inference of connection

but where the person charged with retention or receipt of stolen property is proved to be a participant in the original theft a joint trial is legally permissible. [6 P R 617 11 A J 344 11 C J 182]

36. **False Information.**—Where a Deputy Collector or Acting Under the Land Acquisition Act complained against the Lessor and the Lessee that they had given false information in certain written statements concerning certain lands under acquisition, held that the mere fact that there was joint

complaint against all the parties would not justify a joint trial of what were essentially distinct transactions. [20 C 851.] But where two persons on two successive days laid false information before the police implicating the same person in theft of certain goods held that the trial of the two persons under S. 211 P. C. was not bad for misjoinder of parties. [27 M. 127]

37. **Lurking House-trespass (S. 458 I. P. C. and receiving stolen property (S. 411).—**Where the two accused were sent up on a charge under S. 458 I P C but the Magistrate on taking evidence found that one of the two accused was guilty under S. 411 I P C held that the joint trial was illegal as when the Magistrate found that S. 458 was not applicable to one of the accused, he should have tried the two separately. 51 P. R. 1905. See 38 P. R. 1905. (53) A. N. 135 (82) A. N. 215

- 37-A. **Ss. 457, 411 and 413 P. C.**—The accused S. D. R. and M. were committed to the Sessions on the following charges—viz, S. D. under S. 457 P. C., S. D. R. under S. 411 P C for dishonest possession etc. of stolen property belonging to 7 different persons and S. D. R. and M. under S. 413 for habitually receiving and dealing with stolen property—held—that the commitment was illegal and must be quashed

(53) A. N. 391 (85) A. N. 236

38. **Contempt of Court.**—It is illegal to conjointly try in one trial several persons accused of distinct substantive offences of contempt of Court. It is obvious that this procedure may have been prejudicial to the cases of the persons thus improperly tried, for they would be precluded from calling each other as witnesses in support of their various and distinct pleas of not guilty.—(63) A. N. 25.

39. **Defamation.**—Where accused nos 1 and 3 who were charged with passing and publishing revolutionary defamatory of the complainant were tried together, and the complainant was charged

newspaper, between all illegal, as the nos 1 to 3 and

the offence committed by the 4th accused were not committed in the same transaction.—7 J. T. 127.

40. **Cattle trespass and rescue of cattle.**—Certain persons were charged and tried for permitting cattle to trespass, and the same persons and others were charged and tried together for rioting in rescuing the cattle after they had been impounded at another time and in another place. But it was not found that the parties when they permitted the cattle to trespass intended that if the cattle were impounded they would rescue them, held—that under the circumstances the accused ought not to have been tried together.—7 M. T. 367 [20 M. 474 20 C 335 R.]

41. **Person accused of kidnapping a girl and person found disposing her off.**—A person accused of kidnapping a girl, or of having kept a kidnapped girl in confinement cannot be tried jointly with a person who is found disposing her off on a subsequent date, and is charged with the offence under S. 414.

813 P. L. 1903

42. **Quotations.**—The Court had no jurisdiction to try persons accused of two separate and distinct offences in the same trial.—29 C 384
43. **Criminal breach of trust and receiving property obtained by the same.**—A person, who commits a criminal breach of trust, can be tried jointly with another person, who receives the property obtained by the breach of trust
6 B R 317.
44. **Distinct offences of cheating.**—The trial of persons jointly for distinct offences of cheating and the fusion of the trial of such persons before delivery of judgment are opposed to so 231 and 239 Cr P C 16 P. R. 1902
45. **Causing hurt to three persons.**—Where the two accused were, in one charge, charged with causing hurt by du to three others, but it appeared that one of them did not cause hurt by du and was convicted under S 332 P C for giving a lath against 2 of the 3 persons, held that the charge was improper and extremely confusing and might have prejudiced the accused in their trial [Connection set aside (Retrial ordered)]
17 C N 119
46. **Illicit possession and illicit selling.**—Where the illicit possession of cocaine by the accused (S 49 of the Mysore Act) is unconnected with and distinct from the offence of illicit selling of cocaine (S 53) of the same accused a joint trial of the two accused is illegal and the illegality is not cured even if the accused did not object
29 P R 1911.
47. **Two fraudulent exactions of kabulyat.**—Two acts of persons cannot under S 233 and 211 Cr P C, be jointly tried in the same case, and merely because they have on the same date, and in order to defraud the same person, received kabulyats, as the two kabulyats are separate transactions, 21 C N 756
48. **Joint trial of several witnesses guilty of perjury.**—Though A and B may conspire to give false evidence to the same effect with the common object of inducing a Court to believe and hold to be true that which is not true, nevertheless the act of A in going into the witness-box, taking an oath, and telling a lie, is not any part of the same transaction as the similar but distinct act of B. A joint trial of A and B would contravene the terms of S 239 Cr P C, as they have not committed the same offence but different offences within the meaning of the section. 13 N 35 [1 N 71 2 N 117 151] 9 W. R 63; 11 W R 16; 10 C 405. 2 N P 21

4 A 231 (83) A N 188; 6 M. 252 5 B 11 35; 4 B. R. 53 Con 14 B. R. 972

49. **Joint investigation.**—Where a Magistrate held a joint investigation in the cases of four accused persons and committed them for trial on charges under Ss 211 114, 465 and 193 P. C.—Held the proceeding was illegal.—Rat 925.
50. **Joint trial of separate sets of persons.**—The trial of two separate and distinct offences committed by separate sets of persons at different times at one and the same trial is illegal.

1 C J 175. See 3 S 136 122 P. L. 1911.

51. **Joint trial of the alleged thief with persons charged with rescuing him from lawful custody.**—When one of the accused, caught in the act of committing theft was rescued by 5 others while being taken to the thana and some of the latter snatched away some clothes from the person of the complainant and the Magistrate tried all of them jointly two of them under Ss 225, 379 P. C., two under S 379 P C and the remaining four on a charge under S 225 P C

Held—that the trial was illegal, being vitiated by mis-joinder of charges. 13 C N 801

53. **Offences under Ss. 193, 195 and 211 P. C.** A joint trial of two or more persons for offences under Ss 193, 195 and 211 P C is illegal, and must be quashed (82) A N 121
54. **Charges under Ss. 193 and 465.** Persons accused of offences under Ss 193 and 195 P C (with reference to a forged bond) cannot be jointly committed for trial (54) A N 160.
55. **Six dacoities committed by six persons.** Six persons were committed for trial charged with having committed six dacoities between the 15th and 16th January. Held that the commitment must be quashed and separate trials, held (82) A N 181 (81) A. N 107 8 M T 246 See (81) A N 12

56. **Rioting.**—Persons composing both parties to a riot—with identical complaints cannot be jointly tried for rioting. Each party should be tried separately (82) A N 160 (81) A N 28 5 P R 1906 25 C 517 4 C 49, 14 C 124 14 P 378 8 W R 47; 9 W R 31 12 W R 75 22 and 23 P R 1881 15 P R 1882

Joint trial of three separate acts of cheating by three different persons.—Three accused persons were jointly tried and convicted of three offences of cheating punishable under S 429 P C, the acts of cheating were wholly distinct. Held the joint trial was illegal
122 P R 1911

IV. JOINT TRIAL—WHEN PERMISSIBLE.

57. **Joint-trial in conspiracy cases.**—Where several persons were charged under Ss 121, 121-A 123 P C and where the charge merely purported to place before the Court different aspects of the same transaction, held that the joint trial of the several accused on different charges was

objects are evidence against each of the others and this whether his entry into in his absence (S. B.) 80 a (1871) 12 Cox C G 111]

58. Persons habitually associated for the purposes of dacoity.—Fourteen persons were tried at one trial and convicted of an offence under

four different places, and two of these dacoities were accompanied by murder, held that the joint trial of all the accused under S 190 Penal Code through not illegal, was improper—65 P L 1911

59. Charges under Ss. 411 and 414 P. C.—When a stolen article is criminally disposed of by one person and at the same time and place dishonestly received by another, the two offences from part of the same transaction and the two persons can be tried jointly at one trial

23 B 412

[Note—But where the offences are distinct and cannot be regarded as committed in the same transaction within the meaning of S 239 Cr. P. C a joint trial is illegal

29 B 419

60. [S. B. 800, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 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objects are evidence against each of the others and this whether such acts were done before or after his entry into the combination in his presence or in his absence. [*Per Lord Justice J.*, in 16 C N 1105 (S. B.), 6 C and P 297 (1852) 6 C C C. 131. (1871) 12 Cox C C 111]

59. **Persons habitually associated for the purposes of dacoity.**—Fourteen persons were tried at one trial and convicted of an offence under S. 400 Penal Code for having formed into a gang for the purpose of habitually committing dacoity. Between the 7th March 1905 and 15th December 1905, four serious dacoities were committed at four different places, and two of these dacoities were accompanied by murder, *held* that the joint trial of all the accused under S. 400 Penal Code through out (illegible), was improper.—65 P. L. 1911

59. **Charges under Ss. 411 and 414 P. C.**—When a stolen article is criminally disposed of by one person and at the same time and place dishonestly received by another, the two offences from part of the same transaction and the two persons can be tried jointly at one trial

25 B 112

[*Note*—But where the offences are distinct and cannot be regarded as committed in the same transaction within the meaning of S. 239 C. P. C. a joint trial is illegal]

20 B 419

60. **Charges under Ss. 395, 411 and 412 P. C.**—There is no misjoinder of charges where same of the accused who were charged under S. 395 P. C. were charged also under S. 411 and 412 P. C. on the strength of an incident which was part of the chance against them on the charge under S. 395

11 C J 182

61. **Charge under Ss. 409 and 411 P. C.**—A person who commits criminal breach of trust can be tried jointly with a person who receives the property obtained by breach of trust

6 B B 517

62. **False charge preferred by two different persons on two successive days.**—Where two persons preferred a false charges of stealing coat, the mere fact that one them made the statement on day and the other on the succeeding day,

would not make the joint trial of the two persons under S. 211 P. C. bad for misjoinder of parties [27 M. 127]

03. **Joint-trial of licensees and persons who sold without license.**—When A. who held a license for the sale of opium, allowed B. who did not hold such a license, to sell opium, *held*, that a joint-trial was illegal under S. 239 Cr P. C.

361 P. L. 1906,

04. **Two persons cheating several persons.**—Where two accused persons (the Kulkarni and the Patil) conspired together and cheated certain persons on the same date, by asking them to pay certain small sums in excess of what was properly payable by them as assessment, *held* that there was clear proximity of time and space and clear continuity of action and sufficient specific community of purpose justifying a joint trial—13 B 147, 46 C. 712

05. **S. 408 and 409—109 and S. 420—511.**—A ticket collector landed over 2 steel tickets to a confederate and the latter thereupon prepared a false claim for refund on producing them before a Railway authority. The former was charged under Ss. 408 and 120 read with S. 109 I P C and the latter under S. 420 read with S. 511 P C. *Held* there had been no misjoinder, the offences charged were committed in the same transaction and the case fell within the purview of S. 239 Cr P C.—38 C 153.

06. **Principal and Agent.**—S. 239 clearly allows an agent to be tried in the same trial as the principal. A licensed vendor who is punishable by implication under S. 56 of the Bengal Excise Act 1905 may be tried together with his agent who commits the offence. The case is one of abetment by implication [15 C J 682]. A person who had license for the sale of opium allowed another who had no license to sell the drug, had that their joint-trial and conviction under S. 50 of the Opium Act was valid as they acted in the course of the transaction [113 P. L. 1906]

07. **Approver and other accused.**—An approver whose pardon was forfeited may be tried along with the other accused

(08) A. N. 259.

V. EFFECT OF NON-COMPLIANCE.

68. **Contravention of S. 239 amounts to illegality.**—The joint trial of several accused renders the trial invalid, except in cases falling under S. 239 of the Code [4 N 71, 15 C P. 33, 25 M 61 (P. C.), (72—73) L B 275]

69. **Waiver does not cure irregularities.**—Where Criminal proceedings are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused or their pleaders—6 C 96 [Ex 2 C 23]. (In which on separate commitments of the opposing parties in a riot, the Sessions Judge judiciously mixed up the two trials); *See* 4 B B 53 (57) 7 B B 527 (731), 12 C N 149, 15 C P. 66, also 25 M 125; 7 M. T. 229; 11 A. J. 188; 4 P. L. 1907, 15 C P. 53; 4 N. 71.

70. **Irregularity when curable.**—Where A. B. and M. were jointly tried for having committed three dacoities on the same day and M. was further tried for an offence under S. 302 I. P. C.

249

337 *infra* as the accused were not prejudiced—1 P. R. 1901 *See* 14 A. 502

Note.—It is doubtful if an illegality can be cured in view of the Privy Council ruling in 25 M 61 (P. C.)

In 5 P R 1906 the Punjab Chief Court expressed the opinion that the Privy Council ruling went too far

70. **Strict compliance necessary.**—The provisions of Ss 233 and 239 Cr P. C. as to framing of charges must be strictly observed. Any violation of them is an illegality and cannot be remedied by 537

2 Weir 303, 5 M 20 33 C 1256 5 C N 294
615 P. L. 1903-16 P R 1902 17 C N 419.

VII. MISCELLANEOUS.

72. **Joint accused as witness against each other.**—Where two prisoners are being tried together for different offences committed in the same transaction, it is improper and illegal to take one prisoner from the dock and examine him as a witness against the other—[5 C L 574 15 C. P. 112 (113)] Where the trial was separate because one of the two accused persons was unknown when the case against the other was taken up, it was held that a Magistrate's procedure in examining the accused in one case as a witness in the other case was irregular—[9 Bar T 135]

73. **S. 239 governed by Ss. 234 and 235 Cr. P. C.**—S. 239 is governed by Sections 234 and 235 Cr P. C. as the provisions contained in the former part of chapter XIX apply to all charges falling under that section 11 A J 188

74. **Objections to joint trials when to be**

71. **Retrial.**—It was not intended by the order on

taken—Objections to joint trials or any other kind of procedure which is alleged to prejudice the accused, should be taken when the charge is made, before the Judge goes into the merits—17 Cr. 477 (4)

75. **The charge need not allege "same transaction."**—It is not necessary that the charge should contain a statement as to unity of transaction—30 B 49

76. **Judgment in cases tried under S. 239 Cr. P. C.**—The judgment of an Appellate Court dealing with the case of several accused, convicted in a joint trial, must show on the face of it that the case of each accused has been taken into consideration and must contain a statement of the reasons for the findings as far as necessary, to show that judicial attention has been bestowed on the case of each accused—35 C 139.

240. When a charge containing more heads than one is framed against the same person, and

Withdrawal of remaining charges on when a conviction has been had on one or more of them, the conviction on one of several charges complaint, or the officer conducting the prosecution may with the consent of the Court, withdraw the remaining charge or charges or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn

Notes.

1. **Application of the section.**—S. 240 applies to a case when a person is accused of several offences and not a case where several formal charges have been drawn up by the Court against him. It may also apply to a case in which there are charges of several distinct offences constituted by separate acts or series of acts, e.g. charges falling under S. 234 or S. 235 Subs 1. But it does not apply when there are several formal charges founded upon the same act or series of acts recorded in different aspects, e.g. charges under S. 235 subs 2 and 3 or S. 236—[21 P. R 1889]. The section applies only to charges formally framed under Chapter XIX of the Code, [10 C. P. 1].
2. **The separate charges must have been framed in the same case.**—The permission

to withdraw one of several charges against an accused person allowed by S. 240 of the Cr P. C. only applies to charges against the same accused in the same case and not to separate charges of distinct offences in different cases—[12 B. 277 6 M T 30 (1)]

3. **The consent of the court.**—Criminal Courts have equally with Civil Courts, inherent power to mould their procedure, subject to statutory provisions to enable them to discharge their functions as Courts of Justice. A Criminal Court may consent to permit the prosecution to withdraw charges, the order of which is objected to as illegal. [Per Judge J in 16 C N 1105 (S.B)]
4. **Why the consent of the Court is necessary.**—Withdrawal of complaint is the act of only one party to the proceedings, the

complainant * * It is quite intelligible why in the case of the withdrawal of a complaint, the Legislature should have imposed the necessity of obtaining the permission of the Magistrate

5. **Stage at which a charge may be withdrawn.**—A charge cannot be withdrawn after the Judge had summed up and the Jury returned their verdict [Rat 255]. When the evidence on all the charges are recorded, and the pleaders heard, the Sessions Judge, must under S 297 sum up the whole of the evidence, and the Jury should then be required under S 303, to return a verdict on all the charges [Rat 256].
6. **When charges should not be dropped.**—When a Court considers the evidence sufficient to convict an accused person under more than one offence under each head, it should not record a formal conviction under the first head and drop the others, but its best procedure is to convict on each head of the charge and pass concurrent sentences [Rat 19].
7. **High Court may on appeal stay enquiry.** In a case of criminal breach of trust in respect of 10 receipts of small amounts, the High Court observed that the Sessions Judge acted very properly in confining the trial to three of such receipts and also directed that the prosecution in respect of the receipts of other items *might be stayed* as the sentence of two years imprisonment already inflicted, was sufficient to meet the requirements of the case.—19 C. J. 257
8. **Stay of enquiry by implication.**—When a Magistrate merely convicts the accused on the first charge and specially refrains from dealing with the second, the trial on that charge may be taken as stayed, and a subsequent trial on the second charge, on the conviction being reversed, on appeal, will not be barred by S 493 Cr. P. C.—(89) A. N. 8
9. **Prosecution should not be compelled to institute a second prosecution.**—Having dealt with the case as it has been tried by the lower Court, in appeal or revision, the superior Court will not be justified, except in exceptional cases, in giving orders for the future proceedings of the Crown and the executive duty of repeating the prosecution where the first trial breaks down.—4 N. 71. See 12 C. N. 240.

CHAPTER XX,

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases

241. The following procedure shall be observed by Magistrates in the trial of summons-cases

Notes.

1. **Application of the Chapter.**—This Chapter deals only with the trial of summons cases. A warrant case being a graver offence cannot be tried under this Chapter, nor can a summons case be tried under Chapter XXI which deals with the trial of warrant cases.—7 M 454 (456) See 22 B 711
2. **Composite Cases.**—Where two charges arising out of the same transaction are made against an accused person, one of which is a summons case, and the other a warrant case, the case should be tried as a warrant case
11 C 913. L B 113
[Note.—If the complainant is absent, the proper order would be a discharge under S 253 Cr. P. C. and not an acquittal under S 247 Cr. P. C. [11 C 91. 22 B 711 (713)].
3. **S. 233 Cr. P. C. applies to trials under this Chapter.**—The principles of S. 231 and the sections mentioned in it apply to trials of summons cases under Ch XX of the code.—3 L. B. 52 (55) [F.B.]
4. **Summons case cannot be committed to the Sessions.**—Where a Magistrate committed a person charged with offences under Ss 352 and 471 P. C. for trial at the Sessions, held that there was no warrant in the Criminal Procedure Code for the commitment of Summons cases.—(66) A. N. 28
5. **Effect of trying warrant cases under Ch XX.**—The accused charged with an offence under S 9 of the Opium Act (1 of 1878) was tried under this Chapter and called upon to plead before recording evidence in support of the prosecution. He was convicted under S 243 on his own admission without even framing a formal charge. Held that the procedure was more than an irregularity and had occasioned a failure of justice.—29 M 372—see also 5 M. T. 201
6. **After issuing summons, procedure cannot be changed.**—Once a Magistrate has issued a summons for an offence punishable with imprisonment for more than six months, he cannot change his procedure from that prescribed

for warrant cases into that provided for summons cases, on an estimate of the prosecution evidence—17 P. R. 1887.

7. Cases under the Municipal Act, being summons cases, should be tried under this chapter.—See 2 P. R. 1890.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Notes.

1. Meaning of "substance of accusation"—It is necessary that the accused should have a clear statement made to him (a) that he is about to be put on trial and, (b) as to the offence or offences constituting the offence with the commission of which he is accused [4 C 603]

2. Procedure.—The point (i.e. the facts which the accused is required to disprove) should be clearly explained in the same way as the issues in a civil suit are explained to the parties (see Punjab Cr. Ch. 12 p. 231). When an accused person is called upon to make his defence, and such accused person is unaided by competent counsel, the trying officer should explain the strong points against him, and ascertain whether he fully comprehends them in order to give him an opportunity of rebutting or refuting the charge. [Madh. Crim. Dig. 11]

3. The word 'charge' as used in S. 242 Cr. P. C.—It is clear from S. 250 (1) Cr. P. C. that in a warrant case, the trial does not begin till a charge has been framed, and the accused claims to be tried. In summons cases the intimation prescribed by S. 212 of the Code takes the place of the formal charge. The word 'charge' must be similarly interpreted in Ss. 213, 212 and 251 Cr. P. C. appears from S. 4 (1)—J. N. 42

4. Duty to explain the charge.—Magistrate trying cases under Ch. XX of the Code must not only state the charge to the accused but also explain fully to him. The record must show that this has been done. [72-92 L. B. 591]

5. European British subjects.—In the case of European British subjects, a formal charge is necessary before the trial can go on. S. 151 (b) infra

6. Record of the plea.—Process was issued against the accused under S. 606 I. P. C. and he was tried under the section but his plea was not recorded. *Hecht*—that the plea of the accused should have been taken under S. 606 as the law provides that in summons cases, the first thing to be done is to ask the accused what he has got to say. [13 Cr. 184 (O)] The answer of the accused to the accusation must be recorded as nearly as possible in the words used. [72-90 L. B. 591]

7. In mixed cases, there should be a written charge.—In a case in which the accusation consists of two parts, viz. a charge of an offence triable as a warrant case, and an accusation in respect of an offence triable as a summons case, (e.g. offences under Ss. 379 and 117 I. P. C.) the latter offence should also form part of the charge. —21 C 181

8. The section applies in principle to security proceedings.—A Magistrate proceeding under S. 117 as nearly as practicable in the same way as under S. 212 Cr. P. C. has to state to the accused the particulars of the matter against them, and ask them if they could show cause why they should not be required to execute bonds.—7 M. T. 301

9. District Magistrate cannot order police enquiry after Magistrate has noted under S. 212 Cr. P. C. Where a Magistrate has noted under Ss. 212 and 211 Cr. P. C. with reference to a case under S. 19 of the Local Act (XV) of 1890, the District Magistrate acts wholly ultra vires in ordering an independent police investigation in the same case.

2 P. R. 1888

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Proposed amendments to the section. In section 243, for the words "shall convict," the words "may convict," shall be substituted.

2. **The plea must be recorded at once.**—The admission of the accused must be recorded at the time it is made and in the words of the accused as far as possible. It must not be prepared subsequently after the close of the trial from memory or from rough notes [15 M 83].
3. **Examination of accused not imperative when written statement is filed.**—When a written defence is filed in a case tried under ch XV (=ch XX of the Present Code), the Magistrate is not bound to take down the defence of the accused by personally examining him 16 W R 53 2 P R 1890
4. **The section should be strictly complied with.**—It is of the utmost importance that the terms of this section shall be most strictly complied with, because the accused's right of appeal depends on whether he has really pleaded guilty or not. It was no doubt for that reason that the Legislature required that the exact words used by the accused in his plea, should, as nearly as possible, be recorded (89) A N 81
5. **Self-exculpatory statements.**—When an accused person makes a self-exculpatory statement before the framing of a charge, the Magistrate should take down the plea of guilty in the form of question and answer and in the exact words

used by the accused in answer to the charge.—5 B R 909; 2 P. R. 1890.

6. **The action applies to security proceedings.**—A statement by the person called upon to show cause in security proceedings, expressing willingness to furnish security, should be duly recorded under this section—17 M J. 438.
7. **Plea of guilty renders record of evidence unnecessary.**—In summons cases, where the accused pleads guilty, there is no need of recording evidence.—Cr R. 23 of 21—2—96
8. **What amounts to a plea of guilty.**—A plea of guilty must be unequivocal to be the basis of a conviction. Where the accused while professing to plead guilty, denies some of the essential constituents of the offence, the plea cannot be a legal basis of a conviction [Cr R 5 of 11-4-02]. Vague admissions and requests for pardon cannot be twisted into confessions of guilt [Cr R 5 of 15—1—04]
9. **Admission before the Police.**—Where there was no plea of guilty on the part of the accused, and no witnesses were examined for the prosecution, and the accused was examined on oath and the Magistrate relying upon an admission alleged to have been made by the accused and recorded in a report written by police officer in another case—*Held* that the conviction was wholly irregular and must be set aside—9 C. N. 816

244. (1) If the accused does not make such admission, the Magistrate shall proceed to hear

Procedure when no such admission
is made

the complainant (if any), and take all such evidence as may be

produced in support of the prosecution, and also to hear the

accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court

Proposed amendments to the section.—In section 244 of the said Code—

(1) In sub section (1), before the words "If the accused" the words "If the Magistrate does not convict the accused under the preceding section, or" shall be inserted.

(2) In sub section (2) for the words "process to compel the attendance of any witness or the production of" the words "a summons in any witness directing him to attend or to produce" shall be substituted

Notes.

1. **Meaning of "shall proceed to hear the complaint."**—The section does not say that the complainant himself has got to be examined. It merely says that he shall be heard. Therefore the non-examination of the complainant does not vitiate the whole of the proceedings. Where the complainant was not examined on account of illness and consequent inability to give evidence, *Held* that the non-examination could not be a ground for setting aside the conviction 21 Cr. 212 (C).

2. **Duty of complainant to prove his case.**—Where an accused person denies the truth of the complaint made against him, the Magistrate ought, under this section, to hear the complainant and his witness. Until he does so, he has no jurisdiction to record an order of acquittal—5 B L (5 N) 18 A 221; Bat 531 5 M 160 20 M 348
3. **Duty to examine defence witnesses.**—Under this section, the Magistrate is bound to examine witnesses produced by the defence. He

acquittal of the accused without examining the complainant and his witnesses is illegal [Rat 539.]

3. **Order of discharge in summons case tried wrongly as warrant case amounts to acquittal.**—If a Magistrate trying a summons case, whatever procedure he adopts, finds no case against the accused and lets him go unconditionally, he acquits him, though he calls his order an order of discharge and tacks on it the number of some section of the Code which deals with discharges—8 M. T. 78 See 23 W. R. 63
4. **Acquittal will not affect a warrant case.** A Magistrate treated a case under S 323 I. P. O. as a summons case and did not frame any charge. He dismissed the charge under S 215 Cr P. G. Held that the so called acquittal had no effect and the order of acquittal would operate merely as an order of discharge under S 253 Cr. P. O. and would come within the purview of S 437 Cr P. O. (86) A. N. 200
5. **Effect of acquittal.**—An offence under S 23 of the Forest Act VII of 1878 is a summons case, and if the accused is acquitted by a Subordinate Magistrate, the District Magistrate has not jurisdiction to direct further enquiry under S 437 *infra* [19 P. R. 1000] A Sessions Judge has no jurisdiction to direct further enquiry into a case in which the order, which should have been passed under S 245 Cr. P. O. has been wrongly passed under S 233 Cr. P. O. [8 M. T. 78] The High Court has no power in revision to convert an acquittal under this section into a conviction [8 M. T. 380] In such a case the proper order will be an order for retrial [15 M. J. 225]
6. **Second complaint after order under S. 247 *infra*.**—Where a case was dismissed, on the ground that the complainant was absent on the day of hearing, held (1) that the proper order was one under S 247 acquitting the accused and not one striking off the complaint, (2) that on a second complaint after the above order the Magis-

trate could not acquit the accused on the ground that an order S 247 had already been passed in the case. The Magistrate was not entitled to acquit without trial—10 B. R. 630

7. **Compensation on acquittal under the section under S. 250 *infra*.** See Notes under S. 250 *infra*
8. **Cases in which the High Court reversed the order of acquittal.**—Where the complaint was dismissed and the accused acquitted under S 245 on the ground that the case was one completely for the Civil Court, the High Court set aside the order and directed the Magistrate to try the case—20 W. R. 66; 11 W. R. 34; 9 W. R. 21.

(2) Subs. (2)

9. **Magistrate bound to pass some sentence on conviction.**—Where a Magistrate convicts the accused, he is bound to pass some sentence, if only a nominal one [4 M. H. (app) lvi] 2 B. R. 611 But see S 562 *infra*
10. **Sentence of daily fine**—is illegal, as that would amount to an adjudication of an offence which had never been committed—1 B. L. (O. C.) 41 25 W. R. 6; 18 W. R. 44 3 B. R. 103 1 Bar S. 421.
11. **Award of Court Fee to complainant on**

the complainant on his petition of complaint and for service of process against the accused [1 Bar S. 109] But a general order to pay costs in addition to fine is bid. The precise amount must be specified [1 Bar S. 610]

12. **Procedure on conviction of Government servants.**—As to any government officer in Civil employ [See Govt. of Ind. Aug 7 1883] As to Military officers, sepoy, recruits in the Native Army etc [See Govt. of Ind. Oct. 3rd 1871 July 6th 1895]

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence,

including not limited by complaint or summons

triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the

nature of the complaint or summons.

Notes.

1. **Scope of the Section.**—The Section enables the Magistrate to proceed in regard to any other offence, *prima facie* established by the evidence for the prosecution. But if he does so, he must proceed under S 212 *Supra*—23 W. R. 40.
2. **Person charged with criminal trespass convicted of assault and mischief.**—Where

certain accused persons had been summoned to answer a charge of criminal trespass only, it is open to the trying Magistrate to convict them of the offences of assault and mischief. Held—that

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the

Non-appearance of complainant,

hearing may be adjourned, the complainant does not appear, the

Magistrate shall, notwithstanding anything heretofore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

S. 217—Ss. 205, 208, 212 (1872)—S. 239 (1861)

Note.

(1) Scope of the Section.

1. The Section does not apply to cases instituted under S. 195 *Supra*. In cases instituted under S. 195 of the Code, the complaint cannot be dismissed on default of the complainant to appear.—*Hat 137*
2. **Adjournment in summons cases.**—See 217 of the Cr P C gives power to a Magistrate to adjourn a summons case for sufficient reason when the complainant does not appear and the fact that some witnesses are examined in the absence of the complainant would not vitiate the trial, unless it is shown that the accused was in some way prejudiced [21 Cr 232 (C)] In a case tried under this Chapter, it is not an irregularity to adjourn the case to allow the defence to secure the attendance of their witnesses.—[16 W R 31 (22)]
3. **Composite cases.**—The fact that one of the offences complained of and tried by the Magistrate in the same case is punishable with imprisonment of 6 months or less, does not make that part of the trial a summons case. A Magistrate, therefore, cannot in such a case, pass an order of acquittal under S. 217 Cr P C, if the complainant is absent.—41 M. 727 39 M. 503 29 C 451 11 O 91 22 B. 711.

4. —

same section on the latter date, when the complainant has again failed to appear. [2 Weir 306] In the case of *Mudunivolu v. Hanuman* [22 W R 40] it was held down that under S. 208 Cr P C of 1872 (S. 217 of the present Code), the Magistrate may dismiss the complaint, if the complainant does not appear on the day to which the hearing has been duly adjourned, even though the complainant and his witnesses have been examined and their attendance seems unnecessary.

5. **Can the case be dismissed on the day fixed for argument?**—The hearing of a case is not concluded with the examination of the witnesses for the parties, but with the argument. S. 217 Cr P C therefore applies where the complainant is absent on the date fixed for the argument. [18 C N 581 See Cr R 7 of 21104]
6. **Case dismissed for default of appearance on the day of judgment.**—After a case was closed for the defence, and arguments had been heard the Magistrate adjourned the trial to the

S. 217 of the Code, in as much as the hearing of the case had already been concluded and the attendance of the complainant had not been specially directed.—46 C 567 2 Weir 306

(2) Non-appearance of complainant.

7. **Appearance by wakil.**—Appearance of the complainant's wakil is not "appearance" of the complainant.—2 Weir 309
8. **Court not bound to wait.**—A Magistrate, before acquitting an accused person under S. 217 for the complainant's default of appearance, is not bound to wait till his Court is about to close for the day.—7 M 356
9. **Complainant prevented by flood.**—The Section contemplates the use of discretion on the part of Magistrates in dismissing complaints [24 W R 64 5 W R 51 (52) A N 229] Where a complainant was prevented from attending the Court on the day of the hearing by heavy flood which cut off all communications, held that the Magistrate did not exercise his discretion properly when instead of postponing the case, he dismissed it under S. 217 [Ibid]
10. **Ignorance of date.** Where in a summons case, the Magistrate did not give the complainant notice of the next hearing, but sent a summons directing him to be present at the Court at Aligarh or Talabnagar on the 5th July 1882 where he used to hold the Court, held that the Magistrate should not have dismissed the complaint for default, but should have adjourned the case under S. 205 (S. 217) [18 C N 229] Where a case was adjourned *vide die*, and in consequence of the absence of the complainant on the day in which it was resumed the accused was acquitted, held that the order of acquittal was illegal [16 W R 55] Ignorance of date will be presumed when the adjournment is not made in the presence and hearing of the parties. [8 M R (app) v]
11. **Change of venue without notice.**—Where the complainant's witnesses could not appear on account of the Magistrate shifting to a place different from that at which the summons, held that the order under S. 217 was improper. 5 W R 51
12. **Transfer of the case to different Court without notice.** Where a Magistrate, in a case had been transferred, called the

case on the day fixed by his predecessor for the trial, without any communication to the parties, and dismissed it under S 247, for default of the complainant, but it was found that the complainant and his witnesses, though they were not present in that Court, were in attendance at another Court in the same Court-house, held that under the circumstances of the case, the provisions of S. 247 had not been properly applied—13 G. L. 303. 21 G. J. 411

13. Death of the complainant.—S. 247 Or. P. C.

trial is ended 1b G. N. 1211 1 Pat. J. 261
See 20 C. N. 862 But see 19 C. N. 334

14. Complainant kept out of the way by fraud.—An appeal from an acquittal under S. 247 Or. P. C. lay on the ground that the complainant had been kept out of the way by the action of the accused. So that the acquittal had been procured by the fraud of the accused—28 M. J. 160

(3) Effect of acquittal.

15. An acquittal which is illegal or ultra vires is of no consequence.—A Magistrate acts wholly without jurisdiction in acquitting the accused, of a charge under S. 426 I. P. C. (under S. 247) when he knows that the complainant is dead. The order being wholly without jurisdiction is no bar to the Magistrate taking cognizance of a second complaint on the same facts (18 C. N. 1211; See 4 C. N. 26 Rat. 16 and 23 (51) A. N. 120) A dismissal of a complaint and the Workmen's Breach of Contract Act for non-appearance of the complainant is illegal, before a plea could be made, by the Magistrate under S. 4. There being no offence, See 403 did not apply [7 L. B. 31] An order of acquittal passed under S. 247 Or. P. C. on a date which

order of dismissal will not operate as an acquittal [2 Weir 307]

16. Is an acquittal under S. 247 at all stages a bar to a second trial?—There is a difference of opinion on this point based on an interpretation of the word "tried" in S. 103. *Abdul Rahim J.* in 10 M. 176 lays down the law as follows "In summons cases the "trial" commences as soon as the Magistrate has taken cognizance of the matter and issued process. The mere fact that chapter XX is headed "Of the trial of summonses by Magistrates" and S. 242 lays down that the first thing that a Magistrate has to do when the accused appears or is brought before him is to ask him to show cause why he should not be convicted, does not indicate that the "trial" did not commence at an earlier stage within the meaning of the Code" [In this case there was a difference of opinion

with *Najeeb J.* and *Wallis C. J.* to whom the case was referred agreed with *Abdul Rahim J.* The above view is supported by 34 M. 254; 3 C. N. 346; 7 C. N. 403; 7 C. N. 711. On the contrary, *Ayling and Najeeb J.* in 40 M. 977 (foot note), are of opinion that if the case is dismissed for default before the accused's plea has been recorded under S. 242 Or. P. C. and the case "tried", the acquittal will not bar a fresh complaint on the same facts [See also 26 M. J. 160 2 Weir 417]

[Note.—The following cases should also be consulted 19 W. R. 52; 23 W. R. 63; 25 W. R. 63 ('85) A. N. 43; 3 C. N. 760]

17. Effect of the order on charge which has not been tried.—Where a Magistrate issued process against and summoned accused persons for one of several offences alleged against them, and acquitted them of the offence for which they were summoned, no fresh processes could, in view of the provisions of S. 403 (1) be issued against them, in respect of all the offences alleged against them on the previous occasion, including the one for which they were summoned and acquitted.—2 C. J. 622.

(4) Miscellaneous.

18. Failure to pay process fee.—After process has been issued a Magistrate has no jurisdiction to dismiss the complaint under S. 203 for failure to pay process fees. The Magistrate should proceed under this section.—M. H. C. Pro. 20-10-'86

19. When summons has not been served.—When summons has not been served on the accused, a complaint cannot be dismissed on the ground that the complainant has not appeared on the day fixed for the hearing.—2 Weir 307.

20. The order "struck off" amounts to acquittal.—The order passed in a summons case where the complainant is absent on the day of hearing, is one of acquittal. A Magistrate's order "striking off" the complaint is improper.—[10 B. R. 628]

21. Magistrate bound to dismiss except for a proper reason.—Where the complainant is absent, a Magistrate cannot adjourn the case or proceed with the case on the ground that the accused has been guilty of contempt of the processes of the Court.—17 C. N. clix. 19 C. N. 334

22. District Magistrate cannot interfere with orders under this section.—A District Magistrate cannot reverse an order of acquittal and direct a rehearing on the ground that the complainant and his Vakil appeared soon after. [7 M. 213. See 2 Weir 308] A District Magistrate cannot act under S. 437 with reference to a case dismissed under this section. See 4 C. N. 316 7 C. N. 403; 7 C. N. 711]

23. Appeals.—No appeal is allowed against a dismissal for default of the complainant under this section [2 Weir 305].

[Note.—See also (11) A. N. 120; ('85) A. N. 43].

13. *See also 10 C. 301.*
14. **Effect of withdrawal for want of sanction.**—A complaint was made to a Magistrate

against the accused of offences under Ss. 182 and 500 I P. C. On the day when the accused appeared before the Magistrate, the latter passed the following order.—“As there is no sanction, prosecution withdrawn the charge. The accused is discharged.” *Held*—that the order was no bar to the entertainment of a fresh complaint after the sanction had been obtained.—22 B. 711.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Notes.

1. **Scope of the Section.**—The section applies only to cases instituted otherwise than on a complaint—[9 P. R. 1913, 21 Cr. 185 (Pat)].
2. **Power to cancel summons.**—A Magistrate has full power to cancel summons on receipt of a second police report after having issued summons under S. 182 I P. C. on the basis of the first police report 21 Cr 185 (Pat).

3. *See also 10 C. 301.*
- respect of a case under S. 34 of the Forest Act (maximum term of imprisonment being six months) *Held also* that the order under S. 249 would not bar further proceedings in accordance with the law.—9 P. R. 1913.

Frivolous Accusations in Summons and Warrant Cases.

250. (1) If, in any case instituted by complaint as defined in this Code, or upon information given to a police-officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits the accused and is satisfied that the accusation against him was frivolous or vexatious the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Provided that, before making any such direction, the Magistrate shall—

- (a) record and consider any objection which the complainant or informant may urge against the making of the direction, and
- (b) if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(2) Compensation of which a Magistrate has ordered payment under sub-section (1) shall be recoverable as if it were a fine:

Provided that, if it cannot be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(3) A complainant or informant who has been ordered under sub-section (1) by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) Where an order for payment of compensation to an accused person is in a case which is subject to appeal under sub-section (3), the compensation shall not be paid before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is preferred before the appeal has been decided.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered in this section.

Proposed amendment to the section.—In section 250 of the said Code.—

(1) For sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"(1) If, in any case instituted upon complaint or upon information given to a police-officer, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against any of them was false and either frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, call upon the person upon whose complaint or information the accusation was made, forthwith to show cause why he should not pay compensation to such accused, or to each or any of such accused when there are more than one.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show if he is satisfied that the accusation was false and either frivolous or vexatious, for reasons to be recorded, and that compensation not exceeding one hundred rupees be paid by such complainant or informant to the accused each or any of them.

(2a) Compensation for the payment of which an order is made under sub-section (2) shall be recoverable as a fine, and the Magistrate may, by the order directing payment of the same, further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2b) When any person is imprisoned under sub-section (2a), the provisions of sections 68 and 69 of the Penal Code shall, so far as may be, apply.

(2c) No person who has been directed to pay compensation to accused under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him.

Provided that, any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter."

(3) In sub-section (3), for the word and figure "sub-section (1)" the word and figure "sub-section (2)" be substituted.

(4) In sub-section (4), after the words "appeal has been decided" the following shall be added, namely:—
"or, in other cases, until the expiration of one month from the date of such order."

(5) Sub-section (5) shall be omitted.

Arrangement of Notes.

S. 250=S. 209 paras 1 and 2 (1872)=S. 270 (1861)=S. 560
[Code of 1882 as amended by Act V. of 1891].

I. Object and Application of the Section.

(1) Object of the Section.

(2) Application of the Section.

(3) Compensation to be awarded.

(4) Miscellaneous.

II. Practice and Procedure.

(1) Objections must be recorded and considered.

(2) Separate proceeding is without jurisdiction.

(3) Procedure.

(4) What is sufficient compliance with the provisions of S. 250.

(5) Miscellaneous rules of practice.

III. Revision.

(1) By the High Court.

(2) By other Courts.

IV. Change in the Law.

V. Imprisonment in default.

VI. Public Servants.

(1) Who may not be ordered to pay compensation.

(2) Who may be ordered to pay compensation.

VII. Appeal under subs (3).

(1) Procedure on appeal.

(2) Notice of appeal.

VIII. Miscellaneous.

I. OBJECT AND APPLICATION OF THE SECTION.

(1) *The object and scope of the section.*

1. **The object of the section** is not to punish the complainant but to award by a summary order some compensation to the person against whom a frivolous or vexatious accusation is brought, leaving it to him to obtain further redress against the complainant if he seeks for it by a regular civil suit or by a Criminal prosecution—30 C 123 (F. B.)—6 C N 799

2. **False cases.**—Where an accusation is frivolous or vexatious, the fact of its being false as well, cannot disentitle the accused to compensation under S 250. Order for the payment of compensation, therefore, can be made in a case, which is false as well as frivolous or vexatious,

30 C 123 (F. B.) 26 A 512 (F. B.) 21 Cr 43 (A) 35 M 1091 21 M 237 1 S 28 (F. B.) 36 B 376 37 B 375 5 B R 128 18 P. R. 1901 30 P. W. 1907 633 P. L. 1903 15 C P. 191 2 U B (1914) 31 11 Bar T 201

Con 22 C 556 29 C 251 4 B R 615 31 A 354 1 S 12 Cr II Nos 10 of 1901 and 24 of 1906 (S) 13 P. R. 1896

3. S 250 Cr P. C. contemplates a case where the accusation is false, a charge that is false must also be vexatious, though it may not be frivolous as well
5 H. R. 124

[Note].—In the proposed amendments, the word "false" is sought to be introduced into the section so that the matter may be set beyond doubt. The following rulings therefore will be rendered obsolete if the amendment is accepted 1 W R 1 2 W R 57 3 W R 70 6 W. R. 55 7 W R 40 17 C P 104 4 B II 615 28 C 251 20 C 179 26 C 181 22 C 566 (96) A N 180 31 A 354

3. **Scope of the section.**—The words of S 250 limit it to a case instituted either by complaint as defined in the Code, or by the information given to a police officer or to a Magistrate—[11 B. R. 1166] It cannot, therefore, have any application where the Court makes an order under S. 476 Cr. P. C. although the order is made on an application for sanction to prosecute being made by a party. [*ibid* See 25 P. R. 1910 20 C 481 26 A 187 1 B 175 2 Wen 318] It has no application to a case instituted on a police report [S. 21 C 979; 7 C N. 206 5 C N 370 7 M 563 G A 96]

4. **Simultaneous proceedings under Ss. 250 and 476 Cr. P. C.**—There is nothing in the Code which makes it illegal for a Magistrate to proceed under both the sections 250 and 476 Cr P C at the same time. There is no conflict between the two sections as the object of S 250 is to give compensation to the accused who have been harassed by a vexatious accusation, whereas proceedings under S 476 are taken on grounds of public policy to punish the complainant for making a false charge 10 S. 162 7 S. 10; [21 M. 217 30 C 123 (F. B.) 14] 15 B II 49 See 6 P. R. 1891 (F. B.)

5. **Order sent to a Village Magistrate.**—The words "information given to a Police officer"

in S 250 of the Code of Criminal Procedure (Act V. of 1894) include also a report which a village headman is bound to send, under S 45 (c) of the Code of Criminal Procedure, on a complaint made to him of the commission of a non bailable offence—32 M. 258 (F. B.) 32 M J 79 27 M. J. 37 16 Cr 248 (M) 4 L W. 73 Con 25 M 607 22 M J 138 4 Rev case no 627 of 1915 (M) (11) M. N. 519 See 14 C. N. 326

6. **Malafides necessary.**—Compensation cannot be ordered, where the complainant did know the complaint to be false and acted upon the information supplied to him by another person, unless it is shown that he acted in collusion with the latter—[11 S 55] Where the charge in respect of which the complaint was made, was a specific and serious one, the Court would not be justified in holding it to be frivolous or vexatious, within the meaning of S 250 Cr. P. C., unless it was also maliciously false. [2 Pat W. 116]

7. **Section limited to cases triable by Magistrates only.**—S 250 Cr. P. C. applies only to a case where a person is accused of any offence triable by a Magistrate. It has no application to a case which is triable exclusively by a Court of Session [19 B II 60 21 P. W. 1910 14 P. R. 1902 26 P. R. 1902; 15 P. R. 1910. 1 P. R. 1919 40 A 015]

8. **...**

Rs 10 Rev Spooner made an enquiry on his account and then conveyed the information to the District Magistrate. The allegation on trial was found to be false. Held that Jagmohan was clearly the person upon whose information the accusation was made and the mere fact that he utilised the Missionary for the purpose of conveying the information to the District Magistrate could not protect him. Had he told the Missionary about the case merely in conversation without any desire for the subsequent prosecution, he would hardly have been liable for the intervention of a busy-body who took upon himself to convey the information to the District Magistrate—40 A. 79 See 14 C. N. 326

9. **Wilful exaggerations and distortions.**—Sec 250 Cr. P. C. speaks of the "case" as a whole and contemplates a trial or inquiry ending in the unqualified acquittal or discharge of the accused. A complainant who, having a genuine grievance, wilfully exaggerates or distorts the same in order to aggravate the case against the accused, is liable in the discretion of the trial Court, to be prosecuted for any offence against the Indian Penal Code which he may have committed; but the policy of the Legislature seems to be to limit the summary jurisdiction of the Court under S. 250 Cr. P. C. to simple cases in which the complainant is found to have been wholly in the wrong—*Per Popcott J.* in 40 A. 010 [24 C 53 70]

9A. **Instigator of false information.**—Sec 250 Cr. P. C. does not warrant an order to pay

I. OBJECT AND APPLICATION OF THE SECTION.

(1) *The object and scope of the section.*

1. **The object of the section is not to punish the complainant but to award by a summary order some compensation to the person against whom a frivolous or vexatious accusation is brought, leaving it to him to obtain further redress against the complainant if he seeks for it by a regular civil suit or by a Criminal prosecution—30 C 123 (F. B.)—6 C N 709**

2. **False cases.**—Where an accusation is frivolous or vexatious, the fact of its being false as well, cannot disentitle the accused to compensation under S 250. Order for the payment of compensation, therefore, can be made in a case, which is false as well as frivolous or vexatious.

30 C 123 (F. B.) 26 A 512 (F. B.) 21 Cr 43 (A) 35 M 1041 21 M 237 18 28 (F. B.) 30 B 376 37 B 377 5 B R 128 18 P R 1901 30 P W 1907 633 P L 1903 15 C P 191 2 U. B (1914) 31 11 Bm T 201

Con 22 C 556 29 C 251 4 B R 415 31 A 374 15 12 Cr. R Nos 10 of 1901 and 24 of 1906 (S) 13 P R 1846

3. 250 Cr P C contemplates a case where the accusation is false, a charge that is false must also be vexatious, though it may not be frivolous as well
5 B R 128

[**Note.**]—In the proposed amendments, the word "false" is sought to be introduced into the section so that the matter may be set beyond doubt. The following rulings therefore will be rendered obsolete if the amendment is accepted: 1 W R 1 2 W R 57 3 W R 70 6 W R 55 7 W R 40 17 C P 104 4 B R 615 28 C 251 29 C 479 20 C 181 22 C 586 (96) A N 180 34 A 354

3. **Scope of the section.**—The words of S 250 limit it to a case instituted either by complaint as defined in the Code, or by the information given to a police officer or to a Magistrate.—[14 B R 1166] It cannot, therefore, have any application where the Court makes an order under S. 476 Cr. P. C. although the order is made on an application for sanction to prosecute being made by a party. [Ibid See 25 P. R. 1910 20 C 481 26 A 183 1 B 175 2 Wn 318] It has no application to a case instituted on a police report [See 21 C 979 7 C N 206 5 C N 370 7 M. 563 6 A 96]

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5. **Report sent to a Village Magistrate.**—The words "information given to a Police officer"

in S 250 of the Code of Criminal Procedure (Act V. of 1894) include also a report which a village headman is bound to send, under S. 45 (1) of the Code of Criminal Procedure, on a complaint made to him of the commission of a non-bailable offence—32 M 258 (F. B.) 32 M J. 79 27 M J 37 16 C 248 (N) 4 L W. 73 Con 25 M. 667 22 M J. 138 Cr Rev case no 627 of 1915 (M) (11) M N. 578. See 14 C. N. 326

6. **Malafides necessary.**—Compensation cannot be ordered, where the complainant did know the complaint to be false and acted upon the information supplied to him by another person, unless it is shown that he acted in collusion with the latter.—[11 S. 55] Where the charge in respect of which the complaint was made, was a specific and serious one, the Court would not be justified in holding it to be frivolous or vexatious, within the meaning of S. 250 Cr. P. C., unless it was also maliciously false. [2 Pat W. 116]

7. **Section limited to cases triable by Magistrates only.**—S 250 Cr. P. C. applies only to a case where a person is accused of any offence triable by a Magistrate. It has no application to a case which is triable exclusively by a Court of Session. [19 B R 60 21 P. W. 1910 14 P R 1902 26 P R 1902 15 P. R 1919. 1 P R. 1919. 40 A 615]

8. **Position of the person who transmits a**

Rs 10 Rev Spooner made an enquiry on his account and then conveyed the information to the District Magistrate. The allegation on trial was found to be false. *Held* that Jogmohan was clearly the person upon whose information the accusation was made and the mere fact that he utilised the Missionary for the purpose of conveying the information to the District Magistrate could not protect him. Had he told the Missionary about the case merely in conversation without any desire for the subsequent prosecution, he would hardly have been liable for the intercession of a busy-body who took upon himself to convey the information to the District Magistrate.—40 A 79.—See 14 C N 326

9. **Wilful exaggerations and distortions.**—See 250 Cr P C speaks of the "case" as a whole and
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9A. **Instigator of false information.**—See 250 Cr. P. C. does not warrant an order to pay

(3) *Meaning of terms.*

25. The word "information" referred to in S. 250 Cr. P. C. need not necessarily be the information on which the case is instituted where a person making a complaint against an accused person subsequently gives information leading to the accusation/arrest of others in the case he may be dealt with under S. 250 Cr. P. C. [14 C. N. 326] "Information" in S. 250 of the Cr. P. C. is limited to the information given and entered in the cognizable register under S. 154 Cr. P. C.—*Per Pratt J. C.* in 21 Cr. 49 (S).
- 25A. Section to be construed strictly.—S. 250 of the Cr. P. C. is a penal section and must be construed strictly. Words ought not to be introduced into it which extend the liability to pay compensation to any person beyond the actual complainant or person who gives the information on which the case is instituted.—21 Cr. 49 (S).
26. The term "vexatious."—An accusation can not be said to be vexatious within the meaning of the section unless the main intention of the complainant be to cause annoyance to the person accused and not merely to further the ends of justice.—11 S. 53.
27. The words "frivolous or vexatious"—The word "vexatious" in S. 250 Cr. P. C. must be read as *cydem generis* with "frivolous". Both the words apply to that class of cases in which the aid of law has been heedlessly invoked. And therefore where a Magistrate holds the complaint to be false or needless he cannot award compensation under S. 250 Cr. P. C. [1 S. 12.] [This ruling is obsolete—it was overruled by 1 S. 28 (F. B.).—9 Cr. 208. It is proposed to expressly amend the section so as to include "false" cases.]
28. The words "triable by a Magistrate" in S. 250 Cr. P. C. mean triable under S. 28 Cr. P. C. The cases provided for by S. 250 are those specified in the eighth column of the Schedule, as triable by a Magistrate. A Magistrate exercising powers under S. 30 is not competent to award compensation in a case triable by a Court of Session or the High Court [002 P. L. 1902, 14 P. R. 1902, 1 S. 81]. So a Magistrate by whom an offence under S. 497 P. C. is not triable but who enquires into the case and discharges the accused cannot award compensation under S. 250 Cr. P. C.—9 Cr. 502 (M).
29. "Complaint."—The term "complaint" in S. 250 means a complaint within the meaning of S. 4 (b) Cr. P. C. A deposition made to a Magistrate in the course of trial cannot be treated as a complaint [20 C. 461; 1 B. 175; 20 A. 183; 14 B. R. 1160].
30. "Frivolous" means trifling, silly or without due foundation.—11 A. 366

(4) *Cases in which compensation may be awarded.*

31. Cases in which compensation may be awarded.

9 W. R. 54, 14 W. R. 36, 17 W. R. 1; 18 W. R. 6; 5 M. H. (ap) 40; 6 M. H. (ap) 49; 1 B. H. 181; 5 B. H. 12—See also 13 W. R. 39; 7 B. H. 59 [But see—23 W. R. 17; 11 W. R. 10] 2 N. P. 447.

32. Section applies to summary trials.—S. 250 Cr. P. C. may be applied in summons cases whether tried summarily or not.

11 M. 142

33. Power not limited to cases under the Penal Code.—Power to award compensation not limited to complaints made under the provisions of the Penal Code.

4 N. P. 94; 11 P. R. 1872.

34. Cases in which S. 250 does not apply.—

(1) Cases under the Bombay District Police (Act IV of 1890)—6 S. 251.

(2) Prosecution under the Workman's Breach of Contract Act (XIII of 1889)—4 C. N. 253, 41 A. 322, 27 C. 131; See 6 B. R. 255; 24 M. 660; 4 M. 234; Rat 617.

(3) Prosecution under S. 28 of the Bombay Public Conveyances Act (VI of 1887)—21 Cr. 380 (B).

Miscellaneous proceedings.

(4) Proceedings under S. 458 Cr. P. C.—16 M. 234; 8 M. T. 281.

(5) Proceedings under S. 107 Cr. P. C.—26 A. 352; 7 A. J. 743; 23 B. 48; 37 P. R. 1884; 16 P. R. 1893.

(6) Proceedings under S. 110 Cr. P. C.—15 A. 365; 25 B. 49; 33 P. R. 1902.

35. Cases under the Cattle Trespass Act.—By S. 4 (b) of the Cym. Proc. Code of 1893, the word "offence" includes an act in respect of which a complaint may be made under S. 20 of the Cattle Trespass Act. It follows therefore that a person against whom a complaint is preferred under S. 22 of the Cattle Trespass Act is a person accused before a Magistrate of an offence S. 250 therefore applies [See 29 M. 517].

Note.—Note the change of law since 18 A. 353; 23 C. 248; 9 M. 102; 9 M. 374

(5) *Miscellaneous.*

36. Cases in which compensation may be awarded.

250) so as to justify an award of compensation
16 W. R. 506

37. Case must be triable by the Magistrate himself.—So a Magistrate has no jurisdiction to award compensation under S. 500 in cases triable exclusively by a Court of Session—Rat 661; 21 P. W. 1910; 602 P. L. 1902, 14 P. R. 1902; 9 Cr. 502 (M); 1 S. 84

[N. B.—The word "heard" was inserted in the Code of 1893 to replace the word "tried"]

38. *See* S. 230 Cr. P. C. 15 P. W. 1910; 21 Cr. 751 (Pat).
It is imperative on the Magistrate in passing an order under S. 230, to record and consider the objection of the complainant, even in a summary trial on the analogy of S. 203 (g) Cr. P. C. A failure to do so vitiates the order [28 4 28 14 8 S. 23 10 G. N. 544 15 P. W. 1913 21 Cr. 751 (Pat)] An order directing payment of compensation to an accused ought not to be made without calling on the complainant to show cause [Rat 723 Rat 634 35 C. 302 5 C. N. 214 2 S. 4 Cr. Rev. No. 25 of 1908 (B). 9 A. J. 170 3 B. R. 556 2 Weir 310 11 M. 142. (1904) U. B. 3—q. 51]

It is imperative on the Magistrate in passing an order under S. 230, to record and consider the objection of the complainant, even in a summary trial on the analogy of S. 203 (g) Cr. P. C. A failure to do so vitiates the order [28 4 28 14 8 S. 23 10 G. N. 544 15 P. W. 1913 21 Cr. 751 (Pat)] An order directing payment of compensation to an accused ought not to be made without calling on the complainant to show cause [Rat 723 Rat 634 35 C. 302 5 C. N. 214 2 S. 4 Cr. Rev. No. 25 of 1908 (B). 9 A. J. 170 3 B. R. 556 2 Weir 310 11 M. 142. (1904) U. B. 3—q. 51]

N. B.—The rule is that compensation cannot be awarded when a police officer (as such) is the complainant.]

II. PRACTICE AND PROCEDURE.

(1) Objections must be recorded and considered.

39. It is imperative on the Magistrate in passing an order under S. 230, to record and consider the objection of the complainant, even in a summary trial on the analogy of S. 203 (g) Cr. P. C. A failure to do so vitiates the order [28 4 28 14 8 S. 23 10 G. N. 544 15 P. W. 1913 21 Cr. 751 (Pat)] An order directing payment of compensation to an accused ought not to be made without calling on the complainant to show cause [Rat 723 Rat 634 35 C. 302 5 C. N. 214 2 S. 4 Cr. Rev. No. 25 of 1908 (B). 9 A. J. 170 3 B. R. 556 2 Weir 310 11 M. 142. (1904) U. B. 3—q. 51]
40. What does not amount to giving opportunity of showing cause.—Where the Magistrate passed the following order "Judgment delivered. Accused acquitted. *** complainant to pay Rs50 compensation to each of the accused under S. 230 Cr. P. C. and show cause why he should not pay Subans Singh is absent. His brother verbally shows cause which is insufficient, order made absolute"—Held that the complainant was in fact given no opportunity of showing cause—18 C. N. 1277

(2) Separate proceeding is without jurisdiction.—41. When a Magistrate on finding a complaint to be vexatious or frivolous, considers

44. Proceedings to be summary.—"Proceedings under S. 230 Cr. P. C. are intended to be of a summary nature, as is sufficiently indicated by the direction that the order awarding compensation is to form part of the order of discharge or acquittal. The Court is bound to offer a complainant,

such representations. All this should be done before the passing of the final order of discharge or acquittal and it was clearly not the intention of the Legislature that a complainant should be entitled to adjournment, in order to enable him to show cause much less to an opportunity of producing further evidence after all the evidence tendered by him in support of the allegations made in the complaint has already been taken at the trial of the case itself. The difficulty which

45. Adjournments should not be granted.—It is irregular to grant adjournment in a proceeding under S. 230 Cr. P. C. but the irregularity is cured by S. 437 Cr. P. C.—36 A. 132; (1903) A. N. 204. See 8 B. R. 847.

46. ...

10 H. R. 101.

47. Compensation can be awarded only in original trials.

8 M. R. 7 (up.); 21 P. W. 1910; See Rat 661; 9 Cr. 502 (M); See Note No. 12 above.

48. Prosecution for contempt of the lawful authority of public servants.—When on the report of a peon the Civil Court orders prosecution and sends the case to a Magistrate for investigation, the latter in dismissing the case as false etc cannot direct the peon to pay compensation under S. 250 Cr. P. C. In such cases the real complainant is the Court and S. 250 Cr. P. C. therefore cannot apply. 1 B. R. 175; 26 A. 183; 14 B. R. 1166.

Note.—But there is a distinction between a prosecution at the instance of a Judge acting judicially and a prosecution at the instance of an executive body, e.g., a Municipality. In the latter case S. 250 applies. Rat 309.

49. Where the case has been withdrawn.—The Magistrate cannot award compensation in a case which he has allowed to be withdrawn (81) A. N. 155; 26 P. R. 1870; 16 P. R. 1891; Rat 462; Com 24 P. R. 1853.

[N. B.—S. 250 as at present enacted does not present any bar to such award].

14 C. P. 37; 10 N. S.

42. Note per contra.—An order as to the compensation is not necessarily invalid, if it is not pronounced in the same breath as the order of acquittal, that is to say, if it is written a few minutes or even for good and sufficient cause a few days later, provided it is substantially a continuation of the order of acquittal and part of the same proceeding.—7 S. 123; 8 B. R. 847 (16) M. N. 159 21 Cr. 371 (H) 18 Cr. 1014 (C); 36 A. 132 (1903) A. N. 214

(3) Procedure.

43. Preliminary order need not necessarily be made in the presence of the complainant.—It is not necessary, neither is it in

complainant has shown cause.—18 C. N. 702.

(4) What is Sufficient compliance with the provisions of S. 250.

50. A Magistrate, in discharging an accused, recorded at the same time, his conclusion that the case was one in which subject to any objection, the complainant ought to be ordered to pay compensation for making a frivolous and vexatious complaint. He then, as required by S 250 (d) Cr P C recorded the complainant's objection and added under cl (b) to his order of discharge a direction that the complainant should pay compensation.

Held—the procedure adopted by the Magistrate was a sufficient compliance with the law as enacted in S 250 Cr P C—6 B R 617. See also (17) A N 214.

(5) Miscellaneous rules of Practice.

51. Composition of offence.—As soon as a composition is voluntarily effected it operates as an acquittal of the accused under S 345 Cr P C and the Magistrate has no power to deal any further with the case. But an acquittal under S 345 Cr P C is a very different thing to an acquittal under S 245 or S 247 and it is only in acquittals under one or other of the sections last mentioned that the Magistrate has been empowered to award compensation. An acquittal under S 245 or S 247 is the result of a purely Magisterial act, but an acquittal under S 345 is solely by an operation of law upon the act of composition and is thus quite irrespective of any Magisterial decision. 14 P R 1658. 10 B R 1076. Rn 957.
52. Responsibility of servant acting on behalf of his master.—The question whether a servant can be held responsible under S 250 Cr P C for an information lodged on behalf of his master, is a question of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation or whether he joins personally in the accusation himself. In the former case he cannot be made liable to compensate the complainant. 11 C N 326.
53. Scope of the enquiry under S. 250.—An enquiry as to whether a charge is not frivolous or vexatious or not under S 250 Cr P C can be made only for the purpose of deciding whether

compensation should be paid to the accused person.

10 B. R. 1076

54. Fine in excess of compensation.—A Magistrate cannot fine a sum over and above that which was ordered to be paid as compensation—(73) A. N 44; 38 P. R 1838.
55. Appeal.—No appeal lies from an order made by a Magistrate of the third class dismissing a complainant under S 247 and awarding against the complainant Rs. 5/- as compensation under S 250 [Act X of 1852] (91) A. N 120. [But See S 250 sub (3).]
56. Who can pass orders.—An order for compensation must be made by the magistrate who tries the case. It is not competent to a Magistrate who has heard nothing of the case except the complainant's pleas against the direction to pay compensation, to make the order for compensation—(92) A. N. 54.
57. Accused has no right to be heard in proceedings under S. 250.—The complainant being virtually the accused in a proceeding under S 250 cl. 2 is the person who has to make his defence. He is the person who is to be heard and not the accused. The latter has no right to be heard in a proceeding relating merely to the order for compensation—14 P. R. 1658.
58. Refund of compensation.—There was no provision in the C. P. Code for the refund of money paid away as compensation under S. 250 Cr P 1852.
1 Dur 333. 2 P. R. 1859. 10 P. R. 1690.
- It was held however in 19 A 112 [See also Rat 213] that when the High Court directs on revision that the fine be refunded the compensation is recoverable by process under S 347 C. P. and not by civil suit.]
59. Village Magistrate.—Is not empowered to act under S 250 Cr P. C. 25 M 207 (11) M N 375.
60. Ground for refusing compensation.—An order awarding compensation was set aside on the ground that the conduct of the accused was not straightforward throughout. 63 P. L 1801.
61. Form of order.—An order should not be passed in the form of a sentence of fine, the amount of which was to be paid as compensation to the accused. 8 C. P. 13.

III. REVISION.

(1) By High Court.

62. Power of the High Court.—An order under this section made by a First Class Magistrate may be revised by the High Court under S 495 and 494 infra and when compensation ordered has been paid, the amount may be recovered under S. 547 infra, if the High Court sets aside the order. 21 P. R 1801. 12 P. R 1845. See 10 Cr 929 (31).
- 62-A. Order against a European British Subject.—The High Court at Allahabad has jurisdiction to entertain an application for revision

of an order of the City Magistrate of Lucknow in a case in which the complainant is a European British subject (irrespective of whether he has a claim to be dealt with as such) and against whom an order under S 250 Cr. P. C has been made—21 Cr. 767 (A).

63. Notice to the accused necessary.—High Court refused to interfere with an order awarding compensation to accused on the ground that the accused had in the mean time died and no order should be made without serving the accused with a notice. Rat 631.

- Court —***Ibid.*

- following day the Magistrate recorded this order: "No cause shown by the complainant who was present yesterday. Order above made absolute. Complainant to suffer simple imprisonment for 30 days in default of payment of compensation." Held (1) that the portion of the order "complainant to suffer imprisonment" • • • "compensation" is illegal, (2) that the order should be amended as follows: "The compensation shall be recovered as if it were a fine and in the event of its not

being so recovered, there shall be a simple imprisonment for 30 days".—18 C. N. 502. See 2 U. B. (1914) 31. 21 C. 670; 24 C. 161; 26 M. 127; (16) M. N. 159; 5 C. N. 213; 5 C. N. 214. Rat 611; 3 L. B. 32; 21 Cr. 751 (Pat).

75. **Warrant of distress.**—A Magistrate in making an order for compensation is ordinarily bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the movable of the person ordered to pay. It was formerly held

that the term ordered, unless the sum be sooner paid. But the warrant of distress cannot have currency simultaneously with the imprisonment because the alternative permitted in case of failure to realise has already been adopted.—23 W. R. 61.

VI. PUBLIC SERVANTS.

(1) Who may not be ordered to pay compensation.

76. S. 250 does not apply to

- a case where a Municipal Janadur arrested a person whom he considered to be committing an offence under S. 34 of Act V. of 1861, the person so arrested having been sent up for trial in the usual manner by the police and having been acquitted.—(71) A. N. 142
- the case of a Police constable prosecuting under the provisions of the Police Act IV of 1866 (Bengal)—7 C. N. 206.
- Police officer instituting proceedings on information received by him. 5 C. N. 370
- Civil Court peon or bullock acting under the orders of a Civil Court. 20 A. 153; 1 B. 175. See 11 B. R. 1105.
- An order directing a constable who arrested and charged a carter with an offence under B. 34 cl. 3 of Act V. of 1861 and who failed to prove the charge, to pay Rs. 20 as compensation to the carter was set aside in 21 C. 979
- A Railway Police constable, who complained against a Railway guard for unlawful obstruction, and the Magistrate discharged the latter.
16 T. R. 1899.

- A constable who presented the charge-sheet to the Magistrate, where an A. S. P. had mentioned the prosecution of the accused under S. 211 P. O.—21 M. J. 811.

(2) Who may be ordered to pay compensation.

77. **Police officers in non-cognizable cases.**—Where a police officer initiates criminal proceedings in a non-cognizable case, a Magistrate has jurisdiction to award compensation to the accused under S. 250 Cr. P. C. 26 B. 150 (F. B.) 6 S. 82; Con 22 B. 931.
78. **Municipal peons.**—The accused was charged

that two body could not authorise a servant to prefer a wrongful complaint and so screen the complainant from the legal penalty liable to be imposed under S. 250 Cr. P. C.—[Rat 309]. But sec. 250 Cr. P. C. is not applicable to the case of a Municipal Janadur arresting a person whom he considered to be committing in his presence an offence punishable under S. 34 Act V. of 1861, the person so arrested having been sent up for trial in the usual manner by the police and acquitted.

(71) A. N. 142.

VII. APPEAL UNDER SUBS. (3).

(1) Procedure on appeal.

79. In cases of appeals under S. 250 (3) Cr. P. C. which provides that there should be an appeal from an order passed under it, it is desirable that notice be given to the accused as he is the party prejudiced if the appeal be allowed and the order for compensation rescinded.—33 M. 89.
80. **Prosecution for false complaint or perjury of the complaint does not stand in the way of awarding compensation to the accused.** See 15 W. R. 9; 30 C. 123 (F. B.) 30 P. W. 1907; 18 P. R. 1901; 6 P. R. 1904. 21 M. 237; 15 C. P. 194. Con 26 C. 181. 22 C. 586.
[Note.—See Note No. 2 above.]

(2) Notice of appeal.

81. **Notice of appeal from an order under S. 250 Cr. P. C. ought to be given to "such officer as the Local Government may appoint in this behalf."** In

Madras the District Magistrate is such officer. [See Rule 60 the Criminal Rules of Practice] 27 M. J. 629 [29 M. 117; 33 M. 89] But a failure to give such notice would not justify the High Court to interfere in revision with the order of the appellate Court. [Ibid; But See 29 M. 187; 33 M. 69; 33 M. 1091; 19 M. J. 130.]

- 81-A. **Right of audience.**—The accused has no right of audience in such appeal.—27 M. J. 619
82. **Procedure in appeals explained.**—S. 250 Cr. P. C. is not a self-contained section (such as Ss 190 and 486) It does not declare what the powers of an appellate Court are in disposing of appeals under cl. 3 of the section, and it is necessary to invoke the aid of S. 423 for the purpose.—An accused person should have notice of the appeal in order that he may have an opportunity of supporting the order passed in his favour. [29 M. 167 F. J.] 38 M. 1091.

VIII. MISCELLANEOUS.

83. **Lapso.**—Compensation allowed to accused cannot be credited to Government 1 P R 1409 102 P R 1566
84. **Fined in the case and ordered to pay compensation in cross-case.** Accused was convicted and fined for assault. He had preferred a cross complaint on the same facts. The cross complaint was dismissed as frivolous and compensation ordered.
- Held*—the accused was not convicted twice for the same offence.—26 P R 1819
85. **In trials under ch. XV of Act XXV of 1861 compensation can be allowed.** 14 P R 1566 27 P R 1566 6 P R 1569 23 P R 1570
86. **Guardian or next friend of a minor complainant.**—cannot be ordered to pay compensation to the accused 1 P W 1912
87. **Letters patent appeal.** An order for compensation passed under S 250 Cr. P. O. is one passed in a criminal trial and no appeal lies under S 15 of the Letters Patent to a Division Bench against

an order of a single Judge of the High Court refusing to interfere with such order.—19 Cr. 208(B)

88. **Contrast with S. 22 of the Cattle Trespass Act.**—S 250 of the Code applies to a case in which compensation is awarded to an accused person, because a frivolous complaint has been made against him. But where compensation is awarded, not to the accused but to the complainant and it is awarded under S 22 of the Cattle Trespass Act, S. 250 Cr. P. O. does not apply.—29 M. 517
89. **Comparison of Ss. 250 and 180 Cr. P. C.**—A comparison of the opening words of S. 250 with S 180 Cr. P. C. will show that they closely correspond and that the former are intended to cover all the three methods marked in S. 180 as

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Notes.

- 1. Presidency Magistrates.**—The provisions of Chapter XXII Cr. P. C. do not apply to trials before Presidency Magistrates. A warrant-case must be tried by a Presidency Magistrate in the manner provided by Chapter XXI of the Code, subject only to the special provisions of S 362 as to the method of taking down the evidence.—Hat 539
- 2. Composite Cases.**—See Notes under S 241 Cr. P. C.
- 3. Procedure under Ch. XXI must be followed in warrant cases.**—The fact that a summons instead of a warrant has been issued in a case falling under this Chapter, will not justify the procedure as in a summons case [10 W. R 31]. The conviction of an accused person under S. 241

- 4. Meaning of the word "trial".**—The word includes the taking of evidence in support of the prosecution, as also the whole of the subsequent procedure laid down in Ch. XXI of the Code for the trial of warrant cases.—[3 L. R. 280]

- 5. When a trial commences.**—The word "trial" is not defined in the Criminal Procedure Code. It has been held that the trial begins when the accused is charged and called on to answer. [*Per Wallis J.* in 32 M. 220 F. B.] The word trial oc-

(trial but only an enquiry as defined in S. 4 (1) Cr. P. C.—[*Per Drake-Hodgman J.* in O. N. 42] *Maclean C. J.* defined "trial" as follows:—The proceeding which commences when the case is called on, with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecution, and for the defence, if the accused be defended, are present in Court for the hearing of the case". [25 C 843 (42)]. See also remarks of *Wilson J.* in 15 C. 608 at p. 620.

Magistrate cannot allow the withdrawal of a warrant case. He may discharge the accused, if the charge is groundless and the fact of there being no evidence can well be a sufficient ground for doing so [Cr. R. 90 of 20 p. 35]

6. **Illegality of arrest does not vitiate the trial.**—Where the accused was brought under arrest under circumstances not sanctioned by law, it was held that the Magistrate was not

concerned to enquire how the accused happened to come before him; nor was the subsequent trial and conviction invalid.—G P. R. 1899. 7 Bur S. 66 at 69.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

Evidence for prosecution

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summons to give evidence before himself such of them as he thinks necessary.

Notes.

1. **Evidence against accused to be recorded as early as possible.**—An accused person has the right to have the evidence against him recorded as early as possible. The fact that there is or may be a great body of evidence forthcoming against him is not a ground for detention for an inordinate period [G M 63]. The absence of some of the accused is not a "reasonable cause" for adjourning the enquiry into the guilt of those who are present before the Court [1 L B 60 (6)].

2. —

(1)

by picture, and such appearance involves the performance of all acts which devolve upon the accused in the course of the trial, such as answering the examination by the Court under S 342, or pleading or refusing to plead to the charge under S 235 of the Code.—G S 206.

3. **As to remands.**—See notes under S. 344 *infra*.

4. **Complainant should have full opportunity to substantiate his case.**—Under S 232, the prosecution is given full opportunity of substantiating their whole case. But it is expected, and the expectation is a right and proper one, that the prosecution should come to Court with their case fully prepared and thought out. After the witnesses produced in support of the prosecution are heard, it is the duty of the Magistrate to see that prosecutors are not allowed to set the Court on to a roving enquiry, summoning persons in the hope that something may be elicited which would help their cases

12 A J. 13

5. **Magistrate bound to examine all the witnesses tendered by the complainant.**—Where the accused is summoned and evidence of the complainant is ready, it is desirable that the Court should not dismiss the complaint without taking all such evidence, as may be produced in a report of the Magistrate. 1908.—See

N. 145
22 W. R.

6. **Exercise of discretion necessary.**—Cr. P. C. (=S 272) read with S. 362 of the

Code, gives a Magistrate a discretion in summoning witnesses and he is not bound to summon every person named as a witness by the complainant [21 W. R. 9]. "A witness is not an inanimate being (sic) and is not to be moved about as if he were a stick or stone. He is a living person who has his work to do and whose convenience is to be considered. For a Magistrate to send for any person whom the complainant names in a supplementary list is a thoughtless act and in some cases, causes serious inconvenience to persons who ought not to be subjected to such inconvenience."—Per Knox J in 12 A. J. 15.

7. **Duty of Magistrate.**—Under S. 244, the Magistrate is to summon witnesses on the application of the complainant in summons cases, but in warrant cases the rule is laid down in S. 252. The Magistrate, in the latter case, is to ascertain the names of other persons acquainted with the case, from the complainant or otherwise, and shall then summon them.—2 Weir 323

8. **Duty of the Crown to produce all available evidence.**—The doctrine that the Crown is not bound to call witnesses on whom it does not rely must not be pressed too far. It is its clear duty to produce all persons who lay claim to a first-hand knowledge of the incidents under trial, and if the prosecution do not choose to place them in the witness box, it must at least tender them to the defence for cross examination. The Crown is not so much concerned to prove a particular theory as to acquaint the Court with all the relevant evidence; and it is for the Court to determine how much of that evidence is to be credited, and what inferences it warrants.—3 S. 200 8 C. 121 (125). 1 P. R. 1888.]

9. **Warrant cannot be issued to witness in the first instance.**—It is only when the summons is neglected that severe measures can be taken. A Magistrate cannot issue a warrant to compel the attendance of a witness, without first requiring him to attend by a summons.—22 P. W. 1907.

10. **Non-payment of process-fees.**—The dismissal of a complaint in a warrant case, although the offence is a non-cognizable one, for failure of

The complaint to pay a debt is not legal. [2 Weir 321.] There is nothing in the Code, which enables a Magistrate to demand costs from a complainant the expense to be incurred by the witnesses thereon, which power is conferred by S. 244 (1) in a summary case. [8 N. 67.]

11. **Right to compulsion on absent witness.** Where witnesses summoned by a party have neglected to obey the summons, he has a right to call upon the Court to compel their attendance. [6 C N. 518.]

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks

Discharge of accused. necessary, he finds that no case against the accused has been made out which, if admitted, would warrant his conviction, the Magistrate shall discharge him

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

(1) *Grounds for passing order of discharge.*

1. **Order of discharge should not be passed until the evidences of all prosecution witnesses produced has been taken.**—See Note no 5 under S. 252 Cr. P. C.

2. **Effect of introduction of subs. (2).**—Subs. (2) is comparatively new. There was no such provision in the older Codes of 1861 and 1872. Whatever may have been the law before the passing of the Crim. Proc. Code (Act V of 1898), under S. 233 cl. (2) of the present Code, it is competent to a Magistrate to discharge the accused after examining some only of the prosecution witnesses.—*Per Ayling J.* in *D M. T. 302*; See Rat 201.

3. **Absence of the complainant.**—In warrant cases not coming within the terms of S. 259 Cr. P. C. the absence of the complainant will not authorise a Magistrate to pass an order of dismissal or discharge except under the last clause of S. 253.—[10 C 67; See 24 W. R. 20 C N. 694.] There can be no discharge under sub. cl (2) after the prosecution evidence is closed and a charge is framed against the accused merely because the complainant happens to be absent. [Rat 524.] Where a Presidency Magistrate dismissed a warrant-case for non-appearance of the complainant, *held* the order of dismissal was bad. [4 C N. 26 and 46; 1 C N. 67. See 17 C N. 18.]

4. **Discharge not to be ordinarily made after full enquiry.**—Where there is a body of evidence which, if believed, justifies conviction, it is far better, as a rule, to *draw up a charge and dispose of the case finally*. But if a competent Magistrate, after hearing all the evidence for the prosecution and thoroughly discussing it, does dismiss the charge, a High Court *should not set aside* the order of dismissal, and enquiry, unless new and cogent coming.—[18 P. W. 1909]. The

12. **Right of accused to inspection of exhibits.**—An accused person is entitled to the inspection of all the documents filed as exhibits in the case. 1 B R 171

13. **Opportunity to engage plouder should be given.** A Magistrate should grant the accused an adjournment for which he prays, as to enable him to secure the services of counsel for the purpose of cross-examining the prosecution witnesses.—14 P. W. 1916 See 5 C N. 838.

has been reached when there is ground for presuming that an accused has committed an offence

witnesses [8 A. J. 707]

5. **Accittal of co-accused no ground for summarily dismissing supplementary case.**—Where on the acquittal of a co-accused, the other accused against whom warrant had been issued surrendered before the Deputy Magistrate, and he passed an order that the

magistrate also passed an order for the Magistrate was to issue a notice to the complainant requiring him to proceed with the case and then dispose of the case according to law.—12 C. N. 68

6. **Further proceedings not taken after issue of warrant.**—Where after the issue of warrants against certain persons, the Magistrate does not think it necessary to proceed further, the termination of the proceedings against them is in effect an order of discharge.—1 C. N. 212.

7. **Illegal order of discharge after withdrawal of the case.**—Where a Deputy Magistrate withdrew to his own file a case which he had originally sent to a Bench of Honorary Magistrates for disposal, and they had already recorded some evidence, and where on the day the case was posted before the Deputy Magistrate, no evidence was produced, and the Magistrate discharged the accused under S. 253 Cr. P. C. *Held* that the order of discharge was illegal and that he should have disposed of the case on the evidence already on record.—38 C. 828

[Note.—an order of discharge, made without any judicial investigation into the merits of the complaint is not a judgment within the meaning of S. 367 or 369 Cr. P. C.—*Per Chow J.* in 29 C. 726 (F. B.)—(1906) U. B. 2-41 49]

8. *Warrant in a non cognizable case.*—*Rat 73. See 17 P. R. 1906; 6 P. R. 1899; 7 Bur. R. 66 (68).*
9. *Want of jurisdiction.*—Where a Magistrate finds that he has no jurisdiction to try a case, he should not discharge the accused, but should send him before a Magistrate having jurisdiction. *2 Weir 323.*
10. *Withdrawal of complaint.*—Where no charge has been framed and the complainant in a non compoundable warrant-case offers to withdraw from the prosecution, it is not competent to the Magistrate to pass an order for acquittal. *See 249* does not apply to warrant-case neither can S. 315 be of any avail as the case is not allowed to be compounded by law—*15 B. R. 61. But See 1 B. 61. Rat 330 and 391; 36 M. 315.*
11. *Doubtful cases.*—Where after hearing the evidence, the Magistrate is of opinion that there are no grounds for presuming that the accused has committed the offence, he ought to discharge the accused under this section. He would be acting contrary to the spirit of S. 251, if he framed a charge—*2 P. R. 1906.*

(2) Procedure.

12. *Magistrate not bound to record reasons for order of discharge.*—A comparison of the wording of Cl. 1 and Cl. 2 of S. 253 and a reference to S. 367 show that an order of discharge, after all the evidence is taken, is not a judgment and that it is not necessary for the Magistrate to state his reason—*[9 B. R. 250].* It is only where a Magistrate discharges without examining all the witnesses for the prosecution that he is bound under Subs. (2) to record his reasons for the discharge *[ibid].*
13. *Taking evidence for defence without framing charge is illegal.*—A Magistrate after examining the witnesses for the prosecution

that the Magistrate acted unfairly towards the accused and contrary to law. The order of discharge ought to be treated as one of acquittal under S. 258 *infra.*

29 P. R. 1883. 18 Cr. 1000 (L. B.)

14. *Magistrate acting under S. 350 with reference to warrant cases cannot act under this Section.*—Proceedings before a Magistrate in a warrant case under Chap. XXI Cr. P. C. are only an "enquiry" until a charge is framed and an charge being framed becomes a "trial" *[32 M. 218. 32 M. 220 (F. B.) Fd.]*. Where the proceedings recommenced under S. 350 Cr. P. C. are only an enquiry, they are recommenced as a trial, and if a charge has been framed the charge the second Magistrate acting under S. 350, must, if he is satisfied that a charge framed by his

predecessor is not well founded, acquit the prisoner under S. 254 Cr. P. C. He cannot pass an order of discharge under S. 253 (2).

27 M. J. 549. 11 P. R. 1903.

(3) Further Enquiry.

15. *Where order of discharge is really an order of acquittal.*—S. 337 does not apply to the case of an accused whose discharge really amounts to an acquittal—*27 M. J. 549. See 29 P. R. 1883; 18 Cr. 1006 (L. B.).*
16. *Discharge under S. 253 no bar to further enquiry.*—It may now be taken as well settled that where the accused has been discharged under S. 253 by a Magistrate, the District Magistrate has jurisdiction to hold further enquiry himself or direct further enquiry by a Subordinate Magistrate.
- 32 M. 220 (F. B.); 18 Cr. 706 (A.) [U. A. 32 (F. B.) Fd.]; 11 M. 331. 20 W. R. 46.*
17. *Power of Magistrate to rehear the case after discharging accused.*—A Magistrate in a warrant case having passed an order of discharge, is competent to take fresh proceedings and issue process against the accused, in respect of the same offence without an order for further enquiry under S. 437—*29 C. 526 (F. B.) [Ghose J. dissenting]; 9 B. R. 250; 24 M. 310; 9 P. R. 1902. 26 P. R. 1905. 21 L. B. 27 (3f). 1 N. 181. See 29 M. 120 (F. B.); 18 M. J. 561; 24 M. 337; 21 M. 543. 29 A. 7. 34 C. 625. Con. 23 C. 983; 21 C. 625. 24 C. 256. 2 C. N. 290. 4 C. N. 40; 22 A. 106. 24 M. 255. 6 C. C. 262.*
18. *Use of discretion in entertaining second complaints.*—Where a second complaint was laid against a discharged accused, on the allegation that further evidence had been discovered since the order of discharge was passed, held, that the

the duty of the Magistrate who receives a second complaint in a case where there has been a previous order of dismissal or discharge, not to issue process unless he is plainly satisfied that there has been some manifest error or manifest miscarriage of justice or unless new facts are adduced which the complaint but not knowledge of or could not with reasonable diligence, have brought forward in the previous proceeding—*[101] U. B. 2-4. 19; 29 M. 126 (F. B.).*

20. *Further enquiry by High Court and Sessions Judge.*—Under S. 439 read with S. 423 and possibly also under the Charter, it is open to the High Court to set aside an order of discharge under S. 253 in a warrant case and direct a retrial or further enquiry *[24 C. 628]*. But the High Court will not interfere when there has been a thorough enquiry *[18 P. W. 1909]*. Hearing Ss. 433 and 437 together, the Sessions Judge it appears, has jurisdiction to direct a further enquiry, if in his

equally may provision of discharge has led to the passing of an incorrect or improper order of discharge [32 M 214 See 2 W R 58 11 P W 1910]

21. **Discharge by Presidency Magistrate.** The High Court has power under s. 470 of the Code to order a further enquiry in a case in which a Presidency Magistrate has discharged the accused person. 11 C N 1224 26 C 1291 27 R 54 See G C J 707 27 C 120. Est. 115
22. **District Magistrates.** A District Magistrate has jurisdiction to order a further enquiry on the ground that the order of discharge was due to *misapprehension of evidence*. [6 M T 157 32 M 220 (F. B.) (N. 11) on Nov 14, 1891] 15 C 608 (F. B.) 25 C P 20 11 P R 1891 11 M 374 31 P L 1891 21 P R 1891 20 W R 16 C. 8 P R 1891 8 P R 1890] Under the latter part of s. 437 he may make the further enquiry himself and frame the charge in course of it but he cannot frame the charge and direct a trial on that charge [32 M 220 (F. B.)] He cannot under s. 437 "examine a case, more enquired into and dismissed for a trial by a Subordinate Magistrate" [4 C 647 20 W R 47]

[Note.—The last quoted rulings and the following rulings 1 C 282 2 C 405 10 C 268 (271) 1 Ch 83 2 B 374 2 A 370 G M 25 M H C R dated 22-10-77 and 16-1-78 were under the old Code and must be regarded as superseded by s. 437 of the present Code]

23. **Withdrawal of a case with a view to dismissal.**—The procedure of a District Magistrate who withdrew a case from the file of a Deputy Magistrate, when he was about to frame a charge and dismissed it under s. 233 Cr. P. C. was condemned in 30 C 691.
24. **District Magistrate.**
unless
Deputy
should not be proceeded against, *held* that the order did not amount either to the dismissal of the

complaint or a discharge of the accused; the District Magistrate had the reform jurisdiction under s. 437 to direct further enquiry into the case—12 C 58

The effect of an order directing further enquiry is to leave the enquiry open as it was before the decision under s. 233—7 M 151; 1 L R 42.

(4) Miscellaneous.

25. **Effect of transfer after discharge of some accused.**—Where after the discharge of some of the accused and the framing of charges against the rest, a case is transferred by the District Magistrate from the file of the Magistrate who has tried the case to that of another Magistrate, the order of transfer cannot operate as cancelling an order of discharge passed by the first Magistrate after due enquiry.—1 B R 752.
26. **Issue of process before order of discharge is set aside.**—It is competent for a Magistrate to issue fresh process against the accused, even though, he has been discharged without the order of discharge being set aside. [See 31 M 513; 20 C 720 (F. B.); Rat 350] But it is illegal for a District Magistrate who had issued notice to the accused to show cause why an order of discharge should not be set aside, to issue warrant for re-arrest before setting aside the order. [15 P. R 1897]
27. **Principles to be followed by High Court be setting aside an order of discharge.**—In dealing with revision petitions against orders of discharge of accused persons by Magistrates, the High Court should be guided by the principles which has resulted in grave injustice, but the question is merely one as to the appreciation of doubtful evidence.

35 M J 518

254. If, when such evidence and examination have been taken and made, or at any previous

Charge to be framed when offence appears proved.

stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent

to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Notes.

S. 254=S. 216 (1872)=S. 250 (1861).

(1) Application of the Section.

1. S. 254 does not limit or control the operation of S. 347.—Sec. 254 makes it imperative on the Magistrate only to frame a charge and not to complete the trial to conviction or acquittal [Per *Sadasua Ayyar J.*] S. 254 simply lays down the procedure for the trial of warrant cases, where the Magistrate considers it proper and

6 A. J. 989; 11 A. 454; 20 Cr. 97 (N); 8 S. 23.

2. "At any previous Stage."—It is not necessary for a Magistrate to examine more witnesses than are sufficient to convince him of the truth of the charge, and with that view he can put questions to the accused. The answers given to such questions will have a great effect upon the question as to the witnesses to be examined for the prosecution. And if on questions put to the accused, answers which leave no doubt as to the commission of the offence are elicited, the Magistrate may frame a

charge and call upon the accused to plead—*H (app) II*; 5 A. J. 707; 18 F. W. 1909.

3. Object of the provision.—The alteration in this Section which enables a Court to frame a charge at any previous stage of the case is to enable the accused to cross examine the prosecution witnesses on their first attendance. This provision is applicable to the trial of warrant cases but not to an enquiry under Ch. XVIII *Supra*—5110

(2) The framing of the charge.

4. Presidency Magistrate bound to frame a charge.—The Chief Presidency Magistrate of Bombay heard the prosecution evidence in each of the two cross cases. Then without framing a charge formally as required by S 254 Cr. P. C. and without following the provisions of Ss, 255, and 257 in the first case, he dealt with it as if a charge had been framed and treated the evidence in the other case as defence evidence in the first. On that understanding both cases were argued before him without any further evidence being taken and both were decided. It appeared that the practice had grown up in the course of years in the Presidency Magistrate's Courts. *Hilf*, that Presidency Magistrate were not at liberty to substitute for the procedure of the Code, a procedure which has arisen by usage, however convenient the latter might be. The difference between the procedure followed and the legal procedure was of too fundamental and important a kind to be treated as irregularities cured by any of the sections in chapter XLV of the Code—17 B R 490.
5. When a charge must be framed.—S 254

570.] In drawing up a charge there is only one consideration to be taken into account and that is the offence disclosed [5 P. R 1901.]

6. A Magistrate should not frame charge under S. 254 when

- he is of opinion that he cannot himself punish the offence adequately.—*Rat* 499 16 B. 550 (585).
- he is of opinion that he should submit the proceedings to the District or Sub-divisional Magistrate though it would not be irregular to do so under S 349 Cr. P. C.—(10) U B 33.
- the Magistrate thinks that the case ought to be committed—21 C 429; 4 B. R. 55; See, Note No 1 above.

- He is in doubt—If the evidence does lead to any presumption that the accused has committed the offence but merely raises a question regarding his innocence the Magistrate ought to give the accused the benefit of the doubt—R 1906

7. The effect framing the charge.—When a charge has been drawn up under S. 254 read and explained to the accused and he pleaded under S 255 Cr. P. C. the charge becomes a trial [29 P. R. 1914 (F B); 10 (F B)]

8. "If the accused pleads guilty to the charge"

in the case without hearing further prosecution evidence and the evidence for the defence—N. 621.

9. What is meant by framing a charge.—When a Magistrate frames a charge he holds thereby that a *prima facie* case exists against the accused—[7 C N. 521.]

10. Effect of omission to frame a charge.—When a Magistrate proceeding under Chap. called on the accused to produce witnesses is framing a charge and after examining the de witnesses, recorded an order which in form an order of discharge. Held that if the order been one of acquittal it would have been saved for the omission to frame a formal charge and under S 535 (1), the omission by itself not have affected the validity of the order.—1006 (L B); 3 A. 129; 29 P. R 1883

11. Charge in composite cases.—When accused is tried for two offences, one of which warrant case and the other a summons case, latter should form part of the charge, if it tended to proceed against the accused also for offence triable only as a summons case.—431 See 3 B R 675.

(3) Miscellaneous.

12. Right of reply.—So far as the trial in warrant cases is concerned, there is no provision in the Code, under which the accused is asked whether he means to call witnesses or not. After the charge is framed, the accused is called on to enter upon his defence, and to produce his evidence if any, but he is not asked whether he means to call evidence or not. The right of reply would seem therefore to depend not on what

may be said, but on what is done and if accused does not lead any evidence, there is no right of reply by the prosecution—*Rat* 938.

13. Framing a charge.—When a charge is framed and explained to the accused, has been pleaded that Court, should upon the presentation to

a petition of composition by a person mentioned in the last column in the table in S 317, at once accept the petition and acquit the accused. It has no power to alter the charge already drawn up and proceed to try it—23 P. R. 1911 (F. B.): 3 C N. 322; 3 C N. 414.

14. **Contents of the charge.** A charge should contain all that is necessary to constitute the offence charged and all that is required to give the accused a notice of the matter with which he is charged but should not allege positively any thing which is not justified by the materials before the Court [23 P. R. 1884]. Such circumstances should be set forth in the charge, that the accused may know what kind of offence it is he pleads guilty to and what fact he is called upon to rebut. [Rat 53]

15. **Power to enquire into offences other than charged in the same trial.**—If a Magistrate, to whom a proper complaint has been made, finds on the evidence that an offence different from the one expressly charged, has been committed, he has power to enquire and proceed against the accused with regard to such other offence [5 H. II (C. C.) 100]. He should also adjudicate on the original charge and dismiss it with leave to the prosecution to institute a more

comprehensive case [5 W. R. 52]. If the offence so disclosed, is a summons case, the procedure laid down in Chap. XX should be followed. [7 M 53]

16. **Magistrate powers not limited by the terms of the complaint or police report.**—In framing a charge, a Magistrate is not limited to offences stated in the complaint or police report [11 C. P. P. (10)]. But a Magistrate may himself convict the accused for the offence, mentioned in the complaint and made out by the prosecution evidence, even though the evidence discloses another offence triable exclusively by the Sessions Court [27 A 63].

17. **Charge should not be framed, so as to throw undue burden on the prosecution.**—It must be remembered that while the prosecution is in all cases bound to prove so much of the matter charged, as is necessary to constitute the offence charged, it is not bound to prove, and cannot by reason of want of care on the part of the Court in framing the charge, become bound to prove more than this, and may, therefore very reasonably insist that the charge be so framed by the Court as not to cast upon it any unnecessary burden—Per Foulden J in 26 P. R. 1849.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Proposed amendments to the section.—After section 255 of the said Code, the following section shall be inserted, namely:—

"255A. In a case where a previous conviction is charged under the provisions of section 221 (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 253 (2) or section 258, take evidence in respect of the alleged previous conviction and shall record a finding thereon."

Notes.

1. **Effect of the plea.**—When the charge has been drawn up under S 254 and read and explained to the accused and he has pleaded under S 255 Cr P. C. the inquiry becomes a trial [23 P. R. 1914 (F. B.) See 27 M J 539]

2. **Charge must be explained to the accused.**—The charge should be read and so explained to the accused that the Court is sure that he has understood the nature of the charge thoroughly, and it is only then that his plea should be received [5 C 826]. An accused person should have a clear apprehension of the offence to which he called upon to plead and rebut by producing evidence [Rat 55]. Where there is nothing on the record to show that the charge was properly explained to the accused, held, that his plea of guilty should not be accepted [(1937) 00 L B 328]

3. **The plea to be effective must be unequivocal.**—A mere admission by an accused

person that "he had killed the deceased" would not amount to an admission of murder, if he is not asked why he intended to kill or in what circumstances he killed the deceased [9 M 61 See 7 C 96]. Before a prisoner can be convicted of murder on his own plea, he should have admitted that he intended to cause the death of the deceased or did so with a knowledge such as is described in S 300 I P. C. Where a prisoner admits that he killed the deceased but adds that he did so in a struggle arising from the deceased having first attacked him [5 C 826] or that he committed the homicide because he was subject to epileptic fits [Rat 693], his plea can not be treated as a plea of guilty.

Note.—See the following cases 25 W. R. 23; 4 R. L. (1913) 101 9 B. R. 1316 Cr R 5 of 17-3-02]

4. **Pleader cannot be called upon to plead to the charge.**—No pleader can be called upon

to plead, on behalf of his client, "guilty" or "not guilty," and it is improper for a Magistrate to act on such plea—*Per Batty J.* in 6 B. R. 461.

Note.—But where the accused has been permitted under S. 295 *supra* to appear by pleader, the pleader may plead or refuse to plead under this section—*in S. 298*

5. Plea should be recorded as nearly as possible in the accused's own words.—It is expedient that the plea of the accused should be recorded as nearly as possible in the words used by him, so that it may be shown clearly that the accused admitted the facts necessary to constitute the offence with which he was charged.—[C. P. Cr. Cr. Pt. 11, No. 22; See 7 C. 38 (17) Cr. R. 11 of 11 B. 102] Where the plea is given in a foreign language, it should be recorded in the language in which it is interpreted, [5 C. 826]
6. Conviction on a plea of guilty alone.—

There is nothing in the Code to preclude a Magistrate in a warrant-case, from convicting the accused on his own plea of "guilty" [3 L. R. 279] A plea of guilty recorded without even drawing up a formal charge cannot be the basis of a conviction [29 M. 372]. It is the *prima facie* duty of the prosecution to prove the facts necessary to constitute the charge. Deficiencies in the prosecution evidence cannot be rectified by the statements made by the accused in answer to questions put to him under S. 342 Cr. P. C. [27 M. 234] A conviction which is illegal and therefore liable to be set aside cannot be sustained merely on the ground that the accused pleaded guilty to the charge in the lower Court. [10 M. 4, 271 See also (11) 2 M. N. 576]

7. Accused threatening himself with the mercy does not affect that he Court should not prejudice him—12 C. N. 140.

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall

Defence be required to state whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record

Proposed amendments to the section.—In Sub-section (1) of section 256 of the said Code, after the words "to state" the words "either forthwith, or, if the Magistrate thinks fit, at the commencement of the next hearing of the case" shall be inserted

Arrangements of Notes.

S. 256=S. 218 (1872).

1. Application of the Section.

- (1) Application of the Section
- (2) Adjournments
- (3) Rules as to Cross-examination.
- (4) Meaning of terms
- (5) Procedure.

2. Right to recall prosecution witness—when to be exercised.
3. Effect of non-compliance with the provisions of S. 256 Cr. P. C.
4. Powers and Duties of the Magistrate.
5. Miscellaneous.

1. APPLICATION OF THE SECTION.

(1) Application of the section.

1. Section 256 does not apply to preliminary enquiries.—See 256, has no application to the enquiry into cases triable by the Sessions Court. In cases which are being committed to the Sessions, the evidence of each witness will ordinarily be concluded as each witness is examined, and the accused has no right to have his cross-examination conducted after the charge has been

framed.—19 O. C. 239 10 A. J. 443; See 10 W. R. 25

2. Sec. 256 does not apply to security proceedings.—In security proceedings, the order passed by the Magistrate under S. 112 is equivalent to a charge in a warrant case and the person against whom the order is made is fully aware of what is alleged against him * * * There is consequently no conceivable reason why he

should be allowed the right of second cross examination. * * The reason which underlies the rule as to double cross examination in warrant cases is entirely absent here and the principle of *reasonable notice bona, except as a last* is fully applicable—*Per S 116, 1st J. to 1 P R 1016* 31 C 213. (Con 12 Cr 84 (L. H.))

3. Case commenced as a warrant case but subsequently treated as a summons case.

—“At the time P W No. 1 was examined the inquiry was being conducted as in a warrant case. The accused persons were entitled to assume that they would have a further opportunity of cross examination after a charge was framed and they might reasonably curtail and limit their cross examination under the impression. When it was found that no offence triable as a warrant case was disclosed, it was the duty of the Magistrate to allow them an opportunity of completing their cross examination.” *Per Lykes J in 16 Cr 270* (M.)

4. Composite Cases. Where a summons case and a warrant case are tried together, the procedure to be followed is that provided for the warrant case. [11 P W 11.] As the accused could not have anticipated that during the trial, the charge in the warrant case would be dismissed, it was illegal for the Magistrate to refuse to allow the accused to recall and further cross-examine the witnesses. [15 M T 12 See 2 L W 574]

[*Note.*—In this case the trial commenced under S. 504 and 352 I P C but in the course of the trial, the charge under S 504 I P C was dropped and the trial proceeded under S. 352 I P C only].

(2) Adjournments.

5. Adjournment for production of witnesses.—Under ss. 250 and 257 an accused person is as a matter of right, entitled to an adjournment for the production of his witnesses.

1 C N 313.

6. Accused not bound to show that he has reasonable grounds for his application.

—A Magistrate is not competent to refuse to call the witnesses for the prosecution to be cross-examined by the accused and it is not necessary for the accused to show that he has reasonable grounds for his application—21 W R 29

7. The law explained.—A Magistrate should not of his own motion, discharge the witnesses for the prosecution, until the accused person has exercised or waived the right of cross examination given him by the section. When it becomes necessary to adjourn the hearing, the Magistrate should in all cases inquire of the accused if he desires to

the prosecution, it was held that the accused was entitled to have the witnesses whom he desired to cross-examine at the further hearing resumed—6 N P 281

8. Delayed applications.—It always depends upon the circumstances of each case whether a delayed application should be granted or not. But it is open to a Magistrate even after a case has been closed and at any time before judgment is pronounced to give an opportunity to the accused to cross-examine the prosecution witnesses—21 M J 243 See 1 M 130.

(3) Rules as to cross-examination.

9. Right to cross-examine.

called upon to cross-examine the prosecution witnesses. It is not giving an accused person reasonable opportunity to ask him immediately after the charge is framed, to cross-examine witnesses and a reasonable time should be granted to enable the accused to engage a pleader—(1911) 2 M N 102 16 Cr 759 (M)

10. The right under S. 250 amounts to absolute privilege.—Waiver by the accused's counsel of the right to re-cross-examine a prosecution witness cannot prejudice the rights of the accused under S. 250 and 257 Cr P C. The right referred to in S. 250 of the Cr P C is absolute and unqualified and is intended to apply only when the witnesses are still before the Court, and before they have been discharged from further attendance—21 Cr 207 (M) 37 C 236 See 6 N P 270 27 C 370, 4 C N 351

11. Cross-examination before charge.—This section does not prohibit cross-examination before the charge is framed, it permits a further cross examination expressly directed to the case framed and embodied in the charge and would enable an accused person, if he has reserved his cross examination, to exercise his right at that time, subject to a discretion given to the Magistrate under S. 257 Cr P C—[21 C 612 8 C N 838 (97-01) 1 H 74] Where the cross-examination before charge was on the distinct understanding that accused would not require the recall of the wit-

was directed to pay the expenses incidental to the recall, specially as they offered to pay the same. [6 C N 421]

12. Where witnesses have been cross-examined before charge.—An accused person is not deprived of the right given him by S. 218, Act X of 1872, (= S. 250) to recall and cross-examine the witnesses for the prosecution after the charge has been framed, by reason of the witnesses having been cross-examined before the charge was framed. 6 N P 251 27 C 370: See 6 M T, 239 21 W. R. 29; 17 W. R. 51 2 B. R. 542. 4 M. 130—Con Rat 490.

not entitled to have them resumed as a matter of right. Where it became necessary to adjourn the hearing—

the right of cross examination given him by this Section. When it becomes necessary to adjourn the hearing, the witnesses can be discharged only if the accused consents to this step. If the Magistrate omits by inadvertence to ask the accused to exercise his right, he will not be entitled to refuse an application for recalling the discharged witnesses at the further hearing.—R. N. P. 254 25 W. R. 48.

26. **Failure to cross-examine when opportunity is given.**—“The object of this section is clearly to secure to the accused the opportunity of cross-examining the witnesses for the prosecution after he has been informed as to the nature of the specific charge which he is required to answer. Until he knows this, he is not in a position to decide on what points the evidence for the prosecution is material. If this opportunity is secured, I do not apprehend that he has any further right of recalling the witnesses. . . . If he refuses to exercise this right after he has entered upon his defence, he cannot demand as of right the recall of the witnesses for the prosecution if the case be adjourned because he has not produced his witnesses. He has had the opportunity intended by the section.—*Per Spryde J* in 2 A 253 (254).

27. **Accused not entitled to a second opportunity.**—(Once the requirements of S 256 Cr P O requiring the accused to state, whether he wishes to cross-examine any witness, is complied with, there is no provision requiring the Magistrate to offer a second opportunity to the accused to have his witnesses summoned.—[12] M N 1121.

28. **Obstructive tactics on the part of the accused.**—The accused, after the charge had been framed, put in an application praying that the case might be committed to the Sessions.

The Magistrate rejected the application and called on the accused who had pleaded not guilty to enter on his defence. The accused thereupon declined to say anything and said that he would reserve his defence for the Sessions Court. The Magistrate thereupon again informed the accused that he was going to try the case himself and called on him to cross-examine the prosecution witnesses. The accused again declined and the case was adjourned for judgment. Before judgment the accused applied that he might be permitted to recall the discharged witnesses, *held* that the Magistrate acted quite properly in rejecting the application as vexatious and the accused was not entitled to recall the prosecution witnesses for cross-examination, after the case had been closed.—21 M J 243.

29. **Written Statements.**—Subs (2)—A written statement cannot take the place of evidence nor of such examination of the accused as is contemplated by the Code [12 C 457 (3) A N. 1] “This Court has recently annuladverted on this practice of filing written statement, which is not provided for by the Cr P O and enables statements to be put before the Court as statements of the accused, when such statements are not in fact drawn up by the accused themselves, but by their legal advisers or friends and are entirely irresponsible [20 C N 124] *Quere*—whether, on admission contained in the accused’s written statement, would rehoire the prosecution from the defect in letting in evidence of the facts admitted.—[10 M T 503]

30. **Reasons to be recorded for refusing recall.**—An order refusing an application to resumption prosecution witnesses without assigning any reasons as to why the Magistrate considered such application as vexatious and purposely designed to delay proceedings, is bad in law [4 C N 241]

II. RIGHT TO RECALL PROSECUTION WITNESS—WHEN TO BE EXERCISED.

31. **Must be exercised when the charge is read.**—The right of an accused person to recall and cross-examine witnesses for the prosecution must be exercised at the time when the charge is read and explained to him and if not exercised at that time, it cannot be afterwards insisted on although it is in the discretion of the Magistrate to recall the witnesses if he thinks fit.—[7 C 28] So where the witnesses had already been cross-

made the formal charge and should allow the accused such opportunities of calling and recalling witnesses as the law gives them.—Rat 723

33. **Charge framed at an early stage.**—Where the trying Magistrate charges the accused at an

32. **Application made a day after the charge.**—A Magistrate trying an offence under S 323 I P O, refused an application to resumption the complainant and his witnesses for cross-examination made by the accused a day after the charge had been read, *that it was, and against him, here he*

34. **Application made after defence is closed.**—Where witnesses for the prosecution were fully cross-examined and a charge framed against the accused, and the witnesses for the defence were examined and cross-examined, and on the day on which judgment was to be delivered, an application was put in on behalf of the accused for the recall of the prosecution witnesses for further cross-examination, *held* that the Magistrate was right in refusing the application.—20 C 109.

III. EFFECT OF NON-COMPLIANCE WITH THE PROVISIONS OF S. 256 Cr. P. C.

35. Trial *de novo*.—Where a Magistrate has de-

denovo by some other Magistrate of competent jurisdiction—[7 C. J. 240. See 19 W. R. 53- (02) A. N. 5] Where an application was improperly refused the High Court directed a retrial from the stage when the charge was framed—[Bat 723]

See II. Right to recall prosecution witnesses when to be exercised.

36. —

irregularity cured by S 537—14 C. P. 137. 9 Bur 23

37. When failure to ask accused if he wished to recall is a mere irregularity. Where the Magistrate did not ask the accused after framing a charge whether they wished to cross-examine the prosecution witnesses again (S 256 Cr. P. C.), *held* that it was a mere irregularity as it appeared from the records that the accused had fully cross-examined the prosecution witnesses before the charge was framed and no objection had been taken on the ground before the lower Appellate Court—16 Cr 5 (H) But See (02) A. N. 5
38. Prosecution to prove want of prejudice. The privilege conferred by S 256 Cr. P. C. is a substantial one and when denied, it is for the

prosecution to show that there was no prejudice—18 M. T. 92.

39. May be a good ground for transfer.—The refusal of a Magistrate to permit the cross-examination of the prosecution witnesses after all of them have been examined-in-chief, the cancellation of the bail bonds of an accused after an application for stay of proceedings pending an application for transfer of the case, and the refusal to furnish the accused with copies of depositions of witnesses for the prosecution are good grounds for directing the transfer of a case—21 Cr 630 (Pat)
40. Proceedings after the illegal refusal are void.—The refusal to resumption witnesses would render it necessary to reopen the case from the stage of the drawing up of the formal charge [Bat 723] Where a trying Magistrate, after a charge had been framed, refused to resumption the complainant and his witnesses, the High Court directed the Magistrate to reopen the case from the stage where he made the formal charge and allow the accused the opportunity of calling and recalling witnesses to which he was legally entitled [14 C. N. 240]
41. In undefended cases.—Where an accused person not defended by a pleader and against whom a charge was framed without any previous intimation, applies for time and for summons to the prosecution witnesses to cross-examine them, and where the Magistrate refuses to grant both, his proceedings are not merely irregular but illegal, and a conviction under these circumstances is one liable to be set aside

(11) 2 M. N. 192.

VI. POWERS AND DUTIES OF THE MAGISTRATE.

42. Power to reserve cross-examination of defence witnesses.—The Court has a discretion, for sufficient reason, to allow the cross-examination of the defence witnesses to be reserved, until the chief examination of all of them is over, there being no provision of law to the contrary—6 M. T. 259
43. Record must show that the requirements of S 256 have been complied with.—The Magistrate is bound, after the charge has been framed to ask the accused whether he wishes to recall any of the prosecution witnesses. The record must show that the requirements of S 256 Cr. P. C. have been complied with 14 C. P. 137 9 Bur 23 12 Cr 89 (L.B.).
44. Duty of the Magistrate.—After a charge has been drawn up, it is the duty of the Magistrate to require the accused to state which of the prosecution witnesses he wishes to cross-examine. The fact that there has been already some cross-examination before the charge was drawn up does not affect his privilege. It is only after the accused had entered upon his defence that the Magistrate can refuse such application under S. 257 Cr. P. C.—27 C 376 2 B. R. 512.

45. Power to recall at any stage.—As a rule, the proper and convenient time for the purpose of cross-examination of the prosecution witnesses is at the commencement of the accused person's defence, through the Court has discretionary power to permit the accused to recall and cross-examine at any period of the defence, when the Court thinks such a course is right and proper.—22 W. R. 44
46. Refusal warranted only if petition is vexatious one.—A Magistrate is bound under S 257 Cr. P. C. to resumption witnesses for further cross-examination after the charge has been framed, against the accused and he has entered

47. —

the witnesses for the prosecution, no matter how fully and completely they have been cross-examined [20 C 469]. The accused has no right to insist upon the prosecution witnesses

being recalled at a later stage, after declining to do so at the time when the charge was read over to him and he was called upon to make his defence [7 C 24].

V. MISCELLANEOUS.

48. **Payment of expenses of witnesses.**—Where in order to suit the convenience of the Court, the witnesses for the prosecution are allowed to leave the Court before the right conferred by S. 24 Cr. P. C. can be exercised they must be required to attend again. In the circumstances the accused cannot be asked to pay the expenses of such witnesses but all expenses which may be allowed them by the Court should be paid by Government.

8 N 65 See 1 C N 351 12 P R 1107

49. **Reason of the amendment of the section.**—“After careful consideration we have adopted the draft of these clauses suggested by the Judges of the Calcutta High Court. Even under these amended clauses, the right of cross-examination may be abused and witnesses unnecessarily harassed but we think on the whole, that the possible abuse of the system does not justify us in making any severer restriction on the existing right of the accused.”—*Sit. Com. Rep.*

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by him in writing.

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Notes.

(1) Application of the Section.

1. **When the accused is to enter upon his defence.**—An accused person ought not to be called upon to enter on his defence before he has cross-examined the witnesses for the prosecution.

8 N 65.

2. **Section imperative.**—The language of this Section is imperative. The Magistrate has no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused for any of the reasons specified in the section and which he is

defeating the ends of justice. The case of each witness must be dealt with *individually*. The Magistrate has no right arbitrarily to limit the number of witnesses to be called on each point. 26 B 418 2 S 5 31 M 131 21 Cr 340 (A) 6 C 714 1 C N 211

3. **Reasons for refusing application limited by terms of S. 257.**—An application for process against a particular witness cannot be refused on the ground that he cannot give any reliable evidence one way or another [(11) 2 M N 192]. The refusal to summon witnesses because they were implicated in the charge, vitiates the trial and conviction [6 B L (Appx) 65].
4. **Credit to be attached to witnesses must not be determined before-hand.**—It is the duty of the Magistrate to summon witnesses for

that a particular name has been entered in the list for the purpose of vexation or delay or for

the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he would give to their evidence.

6 B L (Appx) 78 3 A. 392 (95) A. N. 10. See 6 B L (Appx) 65.

5. Conclusion that application is vexatious must not be adopted arbitrarily.—Where

the defence of the accused was that the complaint did not come from the prohibited area (case under the Assam Emigration Labour Act) and he applied for summonses to compel to prove his defence, *held* that the Magistrate's characterization of the application as vexatious was unwarranted and the application ought to be granted (11) 2 M. N. 172.

(2) Practice and Procedure.

6. What is substantial compliance with the provisions of the section.—It is a sufficient compliance with subs (2) of this section, if a Magistrate while refusing an application for summoning further defence witnesses, states facts leading to an irresistible inference that it was filed for the purpose of vexation or delay or defeating the ends of justice, although he does not expressly say that the application was for that purpose.

11 C. N. 789

7. Application filed "too late."—A Magistrate's order rejecting an application after recording on it the opinion that it was "too late" is a sufficient compliance with the section, and cannot be set aside in the absence of prejudice.—39 C. 781.
8. Refusal when to be exercised.—It is *only* after the accused has entered upon his defence that the Magistrate can in his discretion refuse the application of the accused to recall prosecution witnesses for further cross-examination on the ground that it was made for the purpose of vexation or delay.—27 C. 370.
9. Witness present in Court must be examined.—Though it is competent to the Magistrate to decline to summon witnesses for the defence under this section it is not for him to decline to examine the defence witnesses cited on the ground that their evidence is not necessary. [14 B B 390.] It is not open to a Magistrate to refuse to examine a witness for the accused, when the witness is present in Court. [4 B R 461.] Even when a witness appears after the case is closed and the Magistrate is about to deliver judgment, it is incumbent on the Magistrate to record and consider his evidence. [7 B L 564.]
10. Having once issued summons Magistrate is bound to enforce attendance.—When a Magistrate has once issued process for the attendance of a witness for the accused, he cannot refuse to summon them on the ground that being friends of the accused they would have come to Court, if the accused had desired them to do so. Having once granted the process he was bound to assist the accused in enforcing the attendance of the absent witnesses.—See 10 C 831 G. C. N. 549 35 C. 1081. Rat 394; 28 P R 1884. 4 A 53; 9 C. N. cccix.
11. Recording of reasons.—When a Magistrate

- refuses to grant an application for summoning further witnesses, if the Magistrate states the facts which led him to the irresistible conclusion that the application was for the purpose of delay, though he does not say so expressly in so many terms. [11 C. N. 789.]
12. Issue of summonses to witness not named in the list.—It is not obligatory on the Court to issue any further summonses to witnesses other than those named in the list filed at the time of entering on the defence [7 B L 564.] It is entirely discretionary with the Magistrate to grant an adjournment for summoning further witnesses or not. [9 C. N. cccix.]
13. When witness is found to be absent out of British India.—When it is impossible to procure the evidence of a defence witness, as by reason of his absence out of British India, the Magistrate would not be justified in acquitting the accused, the proper course to be adopted being for the Magistrate to pronounce judgment on the evidence on record.—(81) A. N. 38.
14. The right to refuse summonses.—When the Magistrate is called upon to summons 200 witnesses in a case under S. 110, he acts strictly in accordance with law and exercises a jurisdiction which the law has conferred on him when he refuses the application if there is reason to believe that it was one made for the purpose of vexation and delay.—36 A. 239.
15. Procedure under S. 257 begins after charge is framed.—The accused's right to call evidence, either witnesses or documents, does not arise until after the charge has been framed, and read to him under Ss 254 and 255 Cr. P. C. The right is given by S. 257 Cr. P. C. and is subject to the limitation enjoined by that section if the application should be refused if the Magistrate considers that it is made for the purpose of vexation or delay or for defeating the ends of justice [See 5 B R 950.] A Magistrate thereupon can not call on the complainant at the instance of the accused to produce documents (e. g. books or account) before the charge is framed.—S. 8, 267.
16. Discretion in resummoning prosecution witnesses.—Under S. 257, there is a discretion vested in the Court to resummon the prosecution witnesses already examined and where a witness

(M) 8 A J 707 (95) A. N. 10 20 C 469 (472)
But See 27 C. 370, 37 C. 231 4 C. N. 351

17. Procedure in summary trials.—Even if

warrant cases tried summarily, the Magistrate must under S. 254 (1) not follow the procedure for warrant cases, and should grant the accused (if so requested) an opportunity to summon his witnesses.—5 L. B. 21

18. **Witnesses who should be summoned.**—If the witnesses cited by the accused are really witnesses who can speak in any way to the facts of the case, and who may be material for the defence, the Magistrate should summon them.—4 B. L. (p) 74. 7 B. L. 561 (572)

(3) Miscellaneous.

19. **Application to summon trying Magistrate.**—If the accused wishes to summon the trying Magistrate as a witness touching certain matters connected with the case, he can enforce his appearance under S. 257 Cr. P. C. unless the Magistrate considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.—23 A. 536. 2 S. 5

20. **Prosecution witness subsequently called as defence witnesses.** Where on the Magistrate refusing an application by the accused for an adjournment to enable them to cross-examine the prosecution witnesses, those witnesses were summoned as witnesses for the defence, held that they were in effect, summoned under S. 257 "for the purpose of cross-examination" and the accused had a right to cross-examine them.—24 C. 504 (503). 1 C. N. 19 (20)

21. **Witness examined by the Court.**—Where

an accused first obtained process for the attendance of a witness but subsequently declined to examine him, and the Court examined him as a Court witness, whereupon the accused proceeded to cross-examine him but the Court refused to permit him to do so, held that the witness could not be regarded as a defence witness and the accused undoubtedly had a right to cross-examine him if he so wished.—29 C. 387

22. **Accused's right to call witnesses to meet fresh evidence.**—Where a Magistrate took fresh evidence after hearing the arguments on behalf of the defence, held that the accused had a right to re-examine the witnesses whom he had previously declined to examine in order to meet the evidence newly taken.—4 C. 714.

23. **Opinion of the Sessions Judge.**—On matters of procedure which arise in relation to this section, the Magistrate must be guided by the judgment of the Sessions Court.—Rot. 654

Acquittal . 258. (1) If in any case under this Chapter in which charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal

Conviction (2) If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law

Proposed amendments to the section.—In sub-section (2) of section 258 of the said Code, after the word "shall," the words "unless he proceeds in accordance with the provisions of section 349 or section 362" shall be inserted

Notes.

(1) Preliminary.

1. **Application of the section.**—See 258 contemplates an order of acquittal only where after the framing of a charge, the Magistrate is of opinion that the evidence is insufficient to justify a conviction.—37 B. 369. 22 W. R. 25. But See (81) A. N. 142.

2. **Case submitted under S. 350 Cr. P. C.**—Where proceedings are submitted under S. 350 Cr. P. C. after the framing of the charge, held that after recommencing proceedings under S. 350 Cr. P. C. the second Magistrate must, if he is satisfied that the charge framed by his predecessor is not well founded, acquit the prisoner, under S. 258 Cr. P. C. He cannot pass an order of discharge under S. 253 (2).—27 M. J. 569. 14 P. R. 1903.

3. **Effect of withdrawal.**—As a prosecution under S. 406 I. P. C. is not covered either by S. 258 or 259

Order under S. 258 Cr. P. C. must be treated as order for acquittal.

4. (1) An order of dismissal of complaint under S. 259 is really an order of acquittal [5 C. L. 359]. The mere omission to draw a charge, would not make an order for discharge passed after examining both the prosecution and defence witnesses, anything but an order of acquittal under this section. [29 P. R. 1883 (91) A. N. 60. 18 Cr. 1006 (L. B.)]

5. (2) Where an accused person, who on the materials could have been charged under S. 467 I. P. C. an offence triable by a Court of Session, was charged under S. 465 I. P. C. and acquitted by the Magistrate, held, that such acquittal could not be considered as a discharge under S. 467 I. P. C. and a Sessions Judge would have no jurisdiction to pass an order under S. 436 Cr. P. C.—22 C. N. 117. See 9 B. II. 170

Order must be passed after proper adjudication.

6. (1) **Defence witness unavailable.**—A Magistrate cannot proceed to acquit the accused merely

on the ground that a defence witness could not be summoned as he had left India. He must pass his order after considering such materials as are on the record.—(81) A. N. 38.

7. (2) **Case not tried impartially.**—The order of acquittal was set aside by the High Court, as the Magistrate failed to deal with the case before him with judicial care and impartiality as while laying great stress on all the consideration that might affect the credibility of the prosecution witnesses, he omitted to take into consideration what might be advanced in their favour.—18 C. N. 3244
8. **Order of acquittal bars jurisdiction of District Magistrate.**—A District Magistrate has no jurisdiction to order a retrial in the case, unless the order of acquittal passed by a subordinate Magistrate is set aside by a competent Court.—7 C. N. 493, 7 C. N. 711, 10 C. N. 316 See 3 C. L. 131
9. **Order of acquittal on a minor charge no bar to second trial for a major one.**—Where a man is acquitted of a minor offence (a summons case), it is no bar under S. 403 Cr. P. C. to his being tried for a greater offence (a warrant case) arising out of the same facts.—(86) A. N. 260.
10. **Appeals against order of acquittal.**—The High Court as a rule, would not interfere unless the judgment of the Court below was wrong and perverse or without jurisdiction and based upon obvious errors in procedure.—18 C. N. 660
11. **Applications against orders of acquittal.**—It is inexpedient, to interfere in revision at the

instance of a private person with an acquittal after trial by the proper tribunal and application for that purpose should be discouraged.—19 C. N. 184; 11 C. J. 113.

(2) The order in the case.

12. **In cases of doubt.**—Even though a Magistrate has framed a charge, if he feels any reasonable doubt as to the guilt of the accused at the time of giving judgment he is bound to acquit him.—[Rat 851] A Magistrate must convict the accused on the strength of the prosecution evidence. He cannot rely on the weakness of the defence [Rat 5]
13. **Conviction need not necessarily be by the Magistrate who framed the charge.**—The section does not require that the conviction or acquittal should be by the Magistrate who drew up the charge.—[3 C. 405]
14. **Sentence must follow conviction.**—A Magistrate is bound to pass some sentence however nominal on conviction. He cannot direct the accused's release, on the ground that the hardship to which the accused had been subjected was a sufficient punishment.—4 M. II. (app.) 1st. (84) A. N. 219.
15. **Rule for assessing punishment.**—Where the accused is charged with, tried for and convicted of only one offence, and the facts proved may, if taken piecemeal, constitute minor offences, forming ingredients of the graver offence of which he has been found guilty, only one sentence can be awarded.—(87) A. N. 274 (278)

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained at any time before the charge has been framed, discharge the accused.

Proposed amendment to the section.—In section 259 of the said Code, the words "and the offence may be lawfully compounded" shall be omitted.

Notes.

1. **Scope of the order under S. 259 Cr. P. C.**—An order of discharge under S. 259 is not an order of acquittal, nor has it the effect of an acquittal under S. 403 infra [28 M 310 (311) S S 196]
2. **Order of discharge should not be passed after the charge has been framed.**—If the complainant is absent on the day fixed, in a warrant case after a charge has been framed, the Magistrate cannot legally acquit the accused on the ground that the complainant is absent. He ought to admit the accused to bail and enforce the attendance of the complainant and his witnesses under S. 92 supra.—Rat 624. Rat 847. Rat 847. 4 C. N. 26. 20 Cr. 763 (N)
3. **Complainant not bound to produce his witnesses for cross-examination.**—It is

no part of a complainant's duty to call any witness for cross-examination or any other purpose of the defence, once the charge has been framed. See 259 Cr. P. C. gives no power to dismiss a warrant case in default after a charge has been framed.—20 Cr 761 (N)

4. **Sec. 259 applies only to compoundable cases.**—A Magistrate cannot pass an order "striking off" a warrant case, because the complainant is absent on the day of hearing. Under S. 259 Cr. P. C. which relates to warrant cases, the Magistrate can only pass an order of discharge in those cases in which the offence complained of may be lawfully compounded. In a case under S. 211 P. C. an order under S. 259 cannot therefore be made.—17 C. C. 18; See 10 W. R. 31.

5. **Effect of order under S. 259 in composite cases.**—In the day fixed for hearing of a composite case under Ss. 352, 354 P. C., the complainant was absent, and the Magistrate passed the following order: "Complainant absent. Accused discharged." *Held*—that where two offences are complained of, one of which is triable as a summary case and the other as a warrant case, both arising out of the same transaction, the Court cannot separate the two applying two kinds of procedure, but should adopt the procedure relating to the graver charge, i.e. the warrant case. Hence the order under S. 259 did not operate as an acquittal, even in respect of the offence under S. 352 P. C.—11 M 727, 39 M 503, 11 C 91, 29 C 181, 22 H 711.
6. **Sec. 259 does not apply where there is a withdrawal.**—Where in a case sent up by the Police, the complainant intimated, before any evidence was recorded that the matter had been settled, and that he did not wish to proceed with the case, *held* that although an order of discharge was proper in the case that order could not be passed under S. 259 Cr. P. C. which is inapplicable except in cases in which the complainant is absent.—[10 C 551, 8 C 10 C 67]
7. **Where there is evidence on the record**—A Magistrate exercising his discretion under S. 259 Cr. P. C. is bound to consider the evidence on record and to see whether there is a *prima facie* case against the accused or not.
12 Cr 181 (S).
8. **Ss. 253 and 259 mutually exclusive.**—In a warrant case, an order discharging an accused person, on account of the complainant's absence cannot be made under S. 259 *supra*, but can only be made under this section in a case where the offence may be lawfully compounded.—20 C N 698.
9. **Absence due to unavoidable causes.**—Where the absence of the complainant was due

to unavoidable causes (e.g. floods) held that the order of discharge should be set aside, (further enquiry directed). 12 Cr 181 (S).

Note. In a case when the absence of the complainant was due to no hour being fixed for hearing and the case being called up early, the District Magistrate was held to have acted very properly in dealing with the matter under S. 137 [Bat 984, 143, 76].

Effect of the Discharge.

10. (1) There is nothing in the Code to prevent a
11. **[Note.**—In S. 8 190, the complaint was directed to be restored on the following conditions—(1) the applicant do pay into Court any expenses incurred by Government under S. 511 Cr. P. C. in connection with the first complaint (2) to execute a bond with one fit surety undertaking to pay the reasonable costs of the accused in the event of his being acquitted or discharged.]
12. (2) A Magistrate (i.e. a District Magistrate) who has dismissed a complaint under S. 250 is not precluded from proceeding with the case on a fresh complaint filed by the complainant.—29 M 310 (311), 28 C 102.
13. (1) A Presidency Magistrate is competent to rehear a warrant case triable under Ch. XXI of the Code in which the accused person has been discharged under S. 259 of the Code.—29 C, 652 (F.B.); 8 S 100, Bat Sec 1 C N 10.
14. (1) There is no difference between orders passed under Ss. 203, 253 and 259 Cr. P. C. as far as rehearing a complaint which has been dismissed is concerned.—29 M 126, 18 M 1 161, 8 S 190, Sec 10 H 141.

CHAPTER XXII

OF SUMMARY TRIALS.

- Power to try summarily**
260. (1) Notwithstanding anything contained in this Code, —
- (a) the District Magistrate,
 - (b) any Magistrate of the first class especially empowered in this behalf by the Local Government, and
 - (c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Local Government,
- may if he or they think fit, try in a summary way all or any of the following offences —
- (a) Offences not punishable with death, transportation or imprisonment for a term exceeding six months,
 - (b) Offences relating to weights and measures under sections 261, 265 and 266 of the Indian Penal Code,
 - (c) but, under section 321 of the same Code;

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(e) dishonest misappropriation of property under section 403 of the same Code where the value of the property misappropriated does not exceed fifty rupees;

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(h) mischief, under section 427 of the same Code;

(i) house-trespass, under section 448, and offences under sections 451, [453, 454], 456 and 457 of the same Code;

(j) insult with intent to provoke a breach of the peace, under section 501, and criminal intimidation, under section 506, of the same Code;

(k) abetment of any of the foregoing offences;

(l) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(m) offences under section 20 of the Cattle-trespass Act, 1871:

Provided that no case in which a Magistrate exercises the special powers conferred by section 31 shall be tried in a summary way.

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.

261. The Local Government may confer on any Bench of Magistrates invested with the

Power to invest Bench of Magistrates powers of a Magistrate of the second or third class power to invest with less power

, try summarily all or any of the following offences:—

(a) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month;

(c) abetment of any of the foregoing offences;

(d) an attempt to commit any of the foregoing offences, when such attempt is an offence,

262 (1) In trials under this Chapter, the procedure prescribed for summons-cases shall be

Procedure for summons and warrant-cases applicable. followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as

hereinafter mentioned

(2) No sentence of imprisonment for a term exceeding three months shall be passed in

Limit of imprisonment

the case of any conviction under this Chapter.

263. In cases where no appeals lies, the Magistrate or Bench of Magistrates need not record

Record in cases where there is no appeal. the evidence of the witnesses or frame a formal charge; but he

or they shall enter in such form as the Local Government may direct the following particulars:—

(a) the serial number;

(b) the date of the commission of the offence;

- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d) clause (c), clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;
- (h) the finding, and in the case of a conviction, a brief statement of the reasons therefor ;
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.

264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

(2) Such judgment shall be the only record in cases coming within this section.

265. (1) Records made under section 264 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

(2) The Local Government may authorize any Bench of Magistrates, empowered to try offences summarily, to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court in which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write so far as judgment.

Proposed amendments to the section. In *a and clause (1) of subsection (1) of section 260 of the said Code, before the word "and" the following words and figures shall be inserted, namely, "attempts to commit suicide under section 309 and "*

Proposed amendments to the section. In *section 301 of the said Code*

(b) In clause (a), for the word and figures "and 117," the figures and word "117 and 301" shall be substituted,

(a) In clause (b), after the words "and 117," the words "and 301" shall be added.

ARRANGEMENT OF NOTICES.

By 260-265 (1) P. O. No. 224 228 (1872)

1. SUMMARY TRIAL. SECTION 260.

(1) SUMMARY TRIAL.

2. Magistrate cannot usurp jurisdiction.
3. Offences which are and are not triable summarily.
 - (1) Offences which are triable summarily
 - (2) Offences not triable summarily
4. Procedure (By 262-265).
 - (1) General remarks
 - (2) Record of evidence.

- (1) Recording of evidence in summary trial
- (1) Cases in which the record of evidence was considered insufficient
- (2) Cases in which the evidence was considered sufficient
5. Appeals.
6. The evidence in summary cases (By 262).
7. Miscellaneous.
 - (1) Summary trial as a preliminary to proceedings
 - (2) Jurisdiction of Magistrate
 - (3) Offences which a Bench of Magistrates may try (By 301)
 - (4) Other notices.

1. OBJECT AND APPLICATION OF SECTION 250.

(1) *Object and application.*

1. **The object.**—A summary trial under s. 227. (=s. 200) is intended to apply only to short and simple cases where little evidence is needed. [25 W R 65] The power to try cases summarily is to be exercised only in trial cases. When an adequate sentence cannot be passed in summary trial, the case ought not to be tried summarily. [4 L B 335]
2. **Chapter XXII does not apply to serious offences.**—Summary procedure in cases of serious offences though legal is inappropriate. [14 N 100 13 C P 17 6 M 396] The offence of cattle lifting is a serious one and ought not to be tried summarily. [6 S 101] When a conviction may entail serious consequences, the case should not be tried summarily. [Bat 778 784 6 M 396]

Note.—Where it is impossible to pass an adequate sentence if the case is summarily tried, the Court should not try the case summarily but follow the ordinary procedure.—1 L. B. 374

9. 337

therefore the procedure under § 260 Cr. P. C. is inapplicable. [G S 165:27 C 131, O B R. 253]

Under S. 260,
order may be

(2) *Cases which should not be tried summarily.*

4. **Cases of a complicated nature.**—A Magistrate exercises his discretion wrongly where he adopts the summary procedure for the trial of a case, in which, from the nature of the dispute is apparent and title are Court will is discretion.
- [21 Cr 374 (Pat). Rat 578. Rat 784 25 W R. 65. 27 C 320: 1 C N 311 13 Cr 771 (S). G S 120 14 N 190 See O. F. Cr. Or. Pt I No 20 Pt II, No 23] Where a good deal of correspondence has to be gone into and the case is by no means of a simple character, it is not advisable to try the case summarily [35 A. 773] A *longish claim of right* deprives a Magistrate of jurisdiction to try the case summarily [10 C 404 25 W R 65. G S. 120]

- 5.

7 lead to
—Summary
n cases in
what their
[18] P. L.

1911] Police constables charged under S. 29 of the Police Act (V of 1841) should not be tried summarily [ibid. : 1 Ag. 21]. A charge under S. 202 I P O, against a Vastanfar Kulkarni should not be tried summarily, as a conviction may entail further serious consequences [Ist 778, Est 784]. So where a police officer of many years standing was charged with a criminal indignation and was tried summarily and convicted, held, that the Magistrate did not exercise a sound discretion in trying the case summarily and depriving the accused of the privilege of an appeal.

6 M 3245

6. Trials likely to last a long time.—Where a case under § 370 was tried under Ch XIII, and the proceedings lasted from the 20th March to the 12th June, in the course of which a local inquiry had also to be held, and the property in question was moreover valued at over R. 50, held that the case was not one in which a summary trial should have been held.—(91) A. N. 143.] In a case where the proceedings of the Magistrate covered more than 150 pages and occupied seven days, it was held that the application of summary procedure amounted to an abuse of the law [25 W. R. 67]
7. *Note per contra*.—Where the case is of a summary nature, the trial is summary, notwithstanding the length and carefulness of the record and decision [24 W. R. 66] Where a Magistrate is empowered by law to try a case summarily the fact that the trial is a protracted one does in no way affect his jurisdiction. [(92) A. N. 30]
8. Deaf and Dumb accused.—Where the accused is a deaf and dumb man, it is inconvenient to try him summarily, even if the offence is summarily triable. Attempt should be made to trace his friends and relatives if any, who are accustomed to communicate with him, and enquiries should be made into his antecedents and ordinary mode of life.—S B R. 819
9. When a summary trial through legal is inexpedient.—There are many cases in which though the summary procedure is strictly legal, it is inappropriate and should not therefore be employed. Such are:
 - (a) cases which are *pauca facti* likely in the event of a conviction, to call for more severe punishment than that can be awarded in a summary trial; as cases of cattle theft [cp. G S 101] and cases against notoriously convicted offenders. [See 1 Bur S 256 - 2 Weir 324]
 - (b) Cases which are *pauca facti* likely to be long and complicated. [See Notes Nos 4 and 6 above]
 - (c) Cases arising out of disputes as to title. [See Note No 1 above]
 - (d) Cases in which for any particular reason it is desirable that there should be a full record of the evidence for future reference, as cases in which Government servants of any rank are concerned as accused persons. [See 181 P. L. 1911]—C. P. C. Cr. Pt. II. No 23.

(3) *Miscellaneous.*

10. **Offences involving forfeiture.**—Where fine is prescribed as a punishment for an offence and confiscation of the accused's property follows as a consequence, the fact that such confiscation follows, cannot alter the nature of the case as regards the mode of trial that may be adopted, (e.g.) an offence under S. 19 of Act XXI of 1876 3 C. 366 (E.B.) [23 W R 31 and 43 *overruled*]
11. **Presidency Magistrate.**—The provisions of Chapter XXII does not apply to trials before Presidency Magistrates. Rat 539.
- [Note—An exception to the rule is an offence under the Cotton Duties Act VII of 1890]
12. **Magistrates acting under S. 36 Cr. P.C.**—A Magistrate of a District exercising his powers under S. 36 Cr. P. C. cannot try an accused person summarily.—[25 P R 1879]
12. A. **Cases instituted otherwise than on complaints.**—Where there is no complaint and the Magistrate acts on his own motion in committing a serious blunder if he tries the case summarily [25 W R 69]

13. **Cases in which the Magistrate has por-**

the passing of a non-appealable sentence in such a case is illegal [A C N cccxxvi See 52 P. L. 1900] The brevity permitted in a summary trial does not mean that there should be no trial at all or that an accused can be heavily fined at a Magistrate's discretion on his personal knowledge, notwithstanding that the law gives the accused the right of demanding that the case should be tried by another Court [31 P L 1905]

14. **Powers under the chapter must be cautiously exercised.**—"The responsibility thrown on Magistrates entrusted with summary powers, is very great and the responsibility of those who have to entrust them with such powers is equally great. Magistrates who are sufficiently alive to the responsibility entrusted to them will take care that the procedure and the record is not made more summary than the law has laid down"—*Per Kunt J* in 21 A 189 (192)

II. MAGISTRATE CANNOT USURP JURISDICTION.

15. **Offences must be strictly within the terms of chapter XXII.**—The procedure under Chap XXII Cr. P. C. can be followed only when the charge brought against the accused is plainly and directly one of those specified in S. 260 6 Bur T 137 22 W R 29 21 W R 65 29 C. 409
16. **Magistrate cannot split up the offence.**—A Magistrate is not authorised to split up an offence so as to give himself jurisdiction over the parts which he would not have over the whole thereby depriving the accused of his right to appeal. For example he cannot overlook the portion of the evidence shewing that the accused came armed with sword etc and treat the offence which is really one under S. 144 I P C as an offence under S. 1 P C [4 C 18 29 C 109 27 C 953 1 C L 431 14 N 190, See 21 W R 69 2 C L 374 2 W R 24, Rat 988 Comp 5 C N 372 13 B 502]
17. **Note.**—The rule that the fact whether a case is triable summarily or not, must be determined by the complaint [25 W R 19 3 C L 374 3 Shome 17] does not seem to be an invariable rule. When a complaint comprises charges not triable summarily but the Magistrate ascertains that the facts that have taken place discloses only an offence triable summarily he may proceed under Ch. XXII [See 23 W R 10 6 N P 254 10 A 55 (87) A N 103 16 C 715 22 M 459] Where the so called aggravating circumstances are mere exaggerations the mere fact that the complaint charges the accused with an offence not triable summarily will not oust jurisdiction [1 B E. 653 Comp 25 B 95] Where a complaint alleged an offence under S. 189 I P C but from the sworn statement of the complainant it appeared that the offence was really one under S. 184 I P C held that the Magistrate had jurisdiction to try the case summarily [36 C 67.]

8. **Charge cannot be modified to bring the case within the terms of chapter XXII.**—It is not in the power of the Magistrate, when a person is charged before him with a grave offence, to reduce the accusation of his mere will to such dimensions as will make it triable summarily. The trial must be according to the nature of the charge.—22 W R 29 24 W R 21 21 W R 48 See 22 W R 43 23 W R 33 23 W R 8
19. **Composite cases.**—Where an accused person is charged with offences, one of which is triable summarily and the other not so triable, it is not open to the Magistrate to disavow the latter charge for the purpose of enabling himself to proceed to try the case summarily [11 C 236] The fact that the Magistrate had jurisdiction over both the offences and the accused is not prejudiced by being tried only for the lesser offence, does not meet the objection that the prejudice lies in the different procedure which dispenses with the formal judgment and abridges the privilege of appeal [6 P L 1887 5 P L 1888]
20. **Offences must not be arbitrarily mitigated or misdescribed.**—Offences should be truly described and not mitigated merely for the purpose of introducing a different jurisdiction or a lower scale of punishment by applying a summary mode of procedure [5 P L 1888 24 W R 48 11 C 236 27 C 953 1 C L 434] So where the accused was charged with theft of a box containing Rs. 30 in cash and the box worth annas 8 pices and the Magistrate considered the box to be of no value and struck out the 8 annas 6 pices and thereupon tried the case summarily, held that the Magistrate was not at liberty, upon his own authority and without taking evidence, to throw the box entirely out of consideration [22 W R 65] Where the complaint referred to an offence under S. 392 I P C but the Magistrate tried the accused summarily and convicted him of

an offence under S 323 I. P. C. held that he was not competent to do so. [21 P. L. 1907; See 29 G 409 21 W. R. 80] Similarly an offence under S 452 I. P. C. cannot be summarily reduced to that under S 451 I. P. C. [6 Bor T 137] or that under S 211 I. P. C. to an offence under S 182 I. P. C. [Rat G70], or a case of grievous hurt (S 323 I. P. C.) to a case under S 321 I. P. C. [Rat 985] In a case, in which process was issued for the offence of rioting, it was held, that a Magistrate was altogether wrong in treating it as a case

under S. 113 I. P. C. and trying it summarily. [See 5 G. N. 242] where the facts showed that the accused was guilty under S. 353 I. P. C. or S. 312 I. P. C., he could not be tried summarily for an offence under S. 352 or 311 I. P. C. [23 W. R. 3]. A Magistrate cannot treat a charge of wrongful confinement under S. 312 I. P. C. as one of unlawful assembly under S. 113 I. P. C. with the object of trying the case summarily.—[24 W. R. 21; 16]

III. OFFENCES WHICH ARE AND ARE NOT TRIABLE SUMMARILY.

(1) Offences which are triable summarily.

(A) Offences under Special Acts.

21. (1) **Indian Railways Act (IX of 1890).**—When a person is prosecuted under S 130 read with S 126 (a) of the Railways Act, the offence is not one triable exclusively by a Court of Session and a Magistrate has jurisdiction to try it and try it summarily. [43 B 885] So also an offence under S 121 of the Act—[(22) A N 24]
22. (2) **Indian Companies Act.**—A Magistrate has power to try a case under S 74 of the Companies Act (VI of 1882) summarily.—35 A 173.
23. (3) **Stamp Act.**—An offence under S. 65 (1) of the Act (failure to grant a receipt for money paid, though demanded)—1 Weir 906
24. (4) **Municipal Acts.**—See for example—17 B 731 (proceeding for recovery of cesses and taxes under S 84 of Bombay Act VI of 1873 as amended by Act II of 1884)
25. (5) **Indian Forest Act.**—See S 65 of Act VII of 1878
26. (6) **Bengal Abkari Act (XXI of 1856).**—For a case under the Act (offence of having in possession opium not supplied from Government Stores)—See 3 C 366 (F. B.) which overruled 23 W. R. 33 43.
- 27 (7) **Prison's Act (XXVI of 1870)**—offence under S 47 of the Act—(94) A N 178
- 28 (8) **Cotton Duties Act II of 1896.**—All offences against the Act may be tried summarily by a District Magistrate or Magistrate of the first class or a Presidency Magistrate.—See Ss 25 and 26
- 29 (9) **Cattle Trespass Act.**—There is no reason why the summary procedure prescribed by Ch XXII of the Cr P C should not be applied to the trial of a complaint under S 22 of the Cattle Trespass Act—(46) A N 136

Note.—The change of Law since 9 M 102, 374, 23 C 248—See S 4 (3) *Supra* and cl (m) S 260]

(B) Offences under the Penal Code.

30. (10) **Offence under S. 118 I. P. C.**—Under Beng Act IV of 1866, S 26—1 B L (3) 39

31. (11) A person may be tried summarily for criminal trespass and mischief, unless there is a bona fide claim of right depriving the Magistrate of jurisdiction—10 C 404, 21 W. R. 38
32. (12) A charge of mischief, even if combined with one of theft, is triable summarily.—25 W. R. 5.

(2) Offences not triable summarily.

(A) Offences under the Special Acts.

33. (1) **Workman's Breach of Contract Act XIII of 1859.**—An offence under this Act cannot be tried summarily—33 B 25, 33 B 22, 6 B R. 275 2 S. 165, 3 P. R. 1012 2 L. B 163 (2) U B 3—1 See 27 C 131. Con 11 A. 202.
34. (2) **Charge of an illegal demand of Toll** under Act VIII of 1851.—22 W. R. 70
35. (3) **Press Act.**—The offence of keeping a printing press without making the declaration prescribed by S 4 of Act XXV of 1867 cannot be tried summarily—8 P. R. 1859
36. (4) **Opium Act (I of 1878).**—The offence under S 9 of the Act being punishable with one year's rigorous imprisonment, a Magistrate has no jurisdiction to try the same summarily.—4 Rai T. 371

(B) Miscellaneous proceedings.

37. (5) **Maintenance cases** cannot be tried summarily under S. 494 Cr. P. C.—20 C 351; 24 W. R. 61.
[Note.—Proceedings under Ch XXXVI Cr. P. C. cannot be conducted as in a summary trial under Ch. XVII but the evidence should be recorded as provided by S 355—*Ind*]

(C) Offences under the Penal Code.

38. (6) **Offence under S 354 I. P. C.**—Cr. R. 23 of 22 G-05
39. (7) **Offence under S 211 I. P. C.**—25 C 251
40. (8) **Offence punishable under S 224 I. P. C.**—(94) A N 170
41. (9) **Offence under S 302 I. P. C.**—Rat 778 784
42. (10) **Offence under S 379, or 380 I. P. C.** when the value of the property exceeds Rs 50—22 W. R. 65 20 W. R. 19 20 W. R. 17
43. (11) **The offence of resisting apprehension of a Criminal.**—18 P. R. 1869

IV. PROCEDURE (Ss. 262-265)

(1) General Remarks.

44. **Formalities must be strictly observed.**—In summary cases under Ch XVIII (—Ch. XXII)

the formalities provided by that Chapter must be most strictly observed. 22 W. R. 24, 21 A 189, (82) A N 178 15 M. 89 1 Ag. 24.

45. **How to determine if the case is triable summarily.**—In determining whether a case is triable summarily, under the provisions of the Crim. Proc. Code, the facts stated in the petition of complaint as well as the sworn statements of the complainant must be taken into consideration.—24 C 67. *Rat 288. See 24 C 600. 27 C 1083. 24 W. R. 11*

46. **Test of a summary case.**—Whether a case is triable summarily or not must be determined by the complaint not by an estimate formed by the Magistrate after evidence has been recorded and such estimate cannot retrospectively convert a mode of trial which was originally illegal.—25 W. R. 10. 21 W. R. 50. 2 W. R. 20. 2 C. L. 373. 21 P. L. 1907. 3 Shorne 17. 6 Bur. T. 137. *Con. 22 M. 459*

47. **Note.—The Magistrate's discretion.**—The mere circumstance that the complainant puts down in his petition of complaint an offence not triable summarily would not necessarily preclude a Magistrate from trying the case summarily if the charge is not *essentially* indictable.—[87] A. N. 103] Where the Magistrate in examining the complainant ascertains facts which disclose only an offence triable summarily, he can act under chapter XXII although the complainant comprises charges not triable summarily.—23 W. R. 10. 6 N. P. 254. 10 C. 715. 10 A. 55. *See 1 B. R. 683*

48. —

triable, would not necessarily oust the summary jurisdiction of a Magistrate under this section. Whether a complaint affords sufficient ground for a summary trial, or requires a trial according to the ordinary procedure, must be left in a great measure to the discretion of the Magistrate, exercised with due care according to judicial methods with reference to the circumstances of each case.—*Per Mahmood J* in 10 A. 55

49. **Framing of charge.**—Although in a summary trial, the Magistrate need not frame a formal charge, still he must specify the offence charged in such a way as will give sufficient notice to the accused.—[10 C. N. 696. (82) A. N. 59]. The accusation must be carefully explained. [1 Bur. S. 594]

49A. **Coviction on a plea of guilty.**—In a summary trial under the Contumacious Code, the Magistrate recorded in his order. Finally, he (the accused) admits his error in not having complied with the notice and throws himself on the mercy of this court. *Held*, that this was equivalent to a plea of guilty and that the accused could not be heard in revision except as to the extent or legality of the sentence.—[(97) A. N. 204]. A Magistrate is bound to accept the plea if it is an unreserved and voluntary one. He cannot refuse to accept it, acting on his opinion that it is not a genuine plea. [8 S. 213]

49B. **Examination of the accused.**—See 263 does not give the Magistrate discretion whether he will examine the accused or not. This is governed by S. 312. It gives the accused the right to refuse to say anything if he chooses. But there must be

examination. In all warrant cases.—41 C. 713; 9 C. N. 1161

50. **The procedure and not the proceedings to be summary.**—A summary trial is summary only in respect of the record of its proceedings and not in respect of the proceedings themselves which should be as complete and as carefully conducted as if they were recorded at length.—C. P. Cr. Cir. Pt. II. No. 23

(2) Record of evidence.

51. **Only substance need be recorded.**—Magistrates are not bound to record the substance of every separate deposition but to state generally what is the substance of the witness' evidence.—25 W. R. 6

Note.—But the substance of the evidence should be recorded in such a way that the Court of appeal will be able to form an opinion as to whether the evidence was sufficient to support the conviction.—4 L. B. 334

52. **How the evidence should be recorded.**—In a summary trial a Magistrate made rough notes of the evidence, which he subsequently copied and placed on the record and destroyed the original notes. He also introduced into the case the facts of another case which he tried at the same time. *Held* that the procedure adopted by the Magistrate was illegal and the destruction of the original notes was tantamount to destroying the original record with the result that there was no legal evidence which an Appellate Court could go into. [21 Cr. 229 (Pat)] A Deputy Magistrate while riding on a pony, convicted and fined an inhabitant of a Municipal town for obstructing a public way without issuing process on making a record or even dismounting. He subsequently prepared the record from memory or from rough notes.—*Held* that the procedure was illegal. [15 M. 83]

53. **In non-appealable cases.**—In a case which is tried summarily and in which no appeal lies, it is not incumbent on the trying Magistrate to put on record sufficient evidence to justify his order.—[(70) A. N. 143]

54. **Proof of the evidence.**—In ordinary cases, the record taken down by a Magistrate is the only admissible proof of what was said, but in a summary trial, when no obligation is laid upon the Magistrate to reduce depositions to writing, they may be proved by persons who heard them made.—*Rat 334*

55. **Failure to record substance of evidence.**—A Sessions Judge should not quash a conviction in a summary trial on the ground that the substance of the evidence was not embodied in the Magistrate's judgment.—1 A. 650. 2 P. R. 1874

56. **Record must show that the case comes within the purview of Chap. XXII.**—It must clearly appear on the face of the conviction that the case was dealt with as one of those which come within the purview of that section. If the case be one of theft it should appear what the value of the property alleged to have been stolen really was.—20 W. R. 17. 22 W. R. 24

57. **Failure to comply with the strict provisions of Chap. XXII.**—Where the judgment

in a common gaming house S 3 of Gambling Act, held that the entry though it should have been more explicit was a sufficient compliance with the law.—(80) A N 31

(6) Miscellaneous.

66. Omission may be remedied subsequently.—A Magistrate in case of conviction ought to enter in the register kept under S 241 a brief statement of the reason for such conviction; but an omission to do so may, under some circumstances, be remedied at a subsequent time.—6 C L 273

Note.—It has been held however in *W C N 144* that where no reasons are given, the defect can not be cured by the explanation of the Magistrate sent to the High Court in pursuance of a rule issued on him.]

67. Record must be written by the Magistrate.—When the law permits a Magistrate to try a case summarily it was provided as a safeguard for the accused that in non-appellable cases the record and in appellable cases the judgments should be written by the presiding officer. It contains no provision enabling him to depute that duty to the Bench clerk.—6 M 336

68. Delay in naming defence witnesses.—In a warrant case tried summarily though a formal

(1) that the record of the proceeding was not made at the time of the trial (S. 253) which the Magistrate conducted relying on a horse, but was subsequently prepared at the close of the trial from memory or from rough notes.

(2) that the Magistrate did not record the admission of the accused at the time in the words of the accused as far as possible as required by S 247.

15 M 83

70. Magistrate bound to hear the evidence of all the witnesses.—S 263 Cr. P. C. excuses a Magistrate trying a criminal case according to the summary procedure from recording the evidence of any of the witnesses but not from hearing the evidence of all the witnesses.

39 C 931

71. Summary procedure laid down in Chap. XXII Cr. P. C.—is not adapted to the trial of offences to which S 75 applies.

1 Bar S 340

72. Length and carefulness of the record.—Where the procedure is of a summary nature, the trial is summary, notwithstanding the length and carefulness of the record and decision.

24 W R 63 (3d) A N 30

73. Adjournment in warrant cases tried summarily.—In a warrant case tried summarily the Magistrate must, under S 262 (1) Cr. P. C. follow the procedure prescribed for warrant cases, and ought to grant an adjournment, if so desired by the accused, to enable him to summon the witnesses for the defence under S 257 Cr. P. C. unless the application is made for the purposes of vexation or delay or for defeating the ends of justice.—51 B 20

Ratio 703

69. Instance of fatal irregularity.—Proceedings were set aside as being illegal on the following grounds:

V. THE SENTENCE SUMMARY CASES (S. 262).

74. No limit as to fine.—S 262 Cr. P. C. lays down the limit to the sentence of imprisonment which may be awarded at a summary trial. There is nothing in Chap. XXII which limits the amount of fine which may be imposed in a summary trial.—35 A 173
75. Sentences of imprisonment limited to three months.—It is illegal to pass a sentence of six months R 1, in a summary trial. No sentence exceeding 3 months may be passed in such trial unless S 262 (3) Cr. P. C.—4 L B 335
76. Power of High Court.—The High Court as a court of Revision can enhance the sentence up to 2 years, i.e. the limit to which a first class or Presidency Magistrate can pass sentence.—Bomb H C R 30 7-83 (F. B.)
77. Subs. (2) applies to substantive sentence

only.—The rule of S 262, limiting the period of imprisonment in summary trials, applies only to substantive sentences of imprisonment. In cases of simple imprisonment ordered as a process for the enforcement of payment of fine, the general rules of Ss 32, 33 Cr. P. C. are applicable, and the principle of S 671 P. C. is unaffected by Ch. XXII Cr. P. C.—6 A 61

76. Solitary confinement. There is nothing in the terms of S 262 Cr. P. C. to make it illegal to impose solitary confinement as a part of the sentence in summary trial. Sec. 262, does not interfere with the Court's powers under S 73 I P C. or S 32 (a) Cr. P. C.—6 A 83
78. Security under S. 103 Cr. P. C.—A Magistrate trying summarily is competent to require security for keeping the peace.—(80) A N 181

can enhance a summary sentence to one up to 2 years, i.e. the limit to which a first class Magistrate can pass sentence.—Bomb H C R 30 7-83 (F. B.)

VI. MISCELLANEOUS.

(1) Sundry matters relating to procedure.

80. High Court's power of enhancement in summary cases.—The High Court of Revision

81. Magistrate of the Dist exercising powers under S. 34.—cannot act under Chap XXII Sec 5 260 27 P. R 1870
82. Defective record.—If a record of a conviction at summary trial under S. 237 Cr P C (s. 240 (1894)) is defective, the defect is fatal and the conviction must be quashed—6 P R 1870
83. Deaf and Dumb accused.—See I, object and Application (c)
84. Subsequent regular trial without illegal summary trial being quashed is illegal as the accused cannot be tried again.—1 Bur. T. 271
85. Setting aside a conviction in revision where no evidence has been recorded.—The High Court would set aside a conviction based on S 188 P C even if the accused were convicted in a summary trial where there is nothing on the record to show that the order was lawfully promulgated by a public servant empowered to promulgate such an order—35 A. 136
86. Appeal.—An appeal lies under S. 107 from a conviction by a Bench of Magistrates invested with second or third class powers [9 M 36] But no appeal lies where the decision is by a Bench of Magistrates consisting of an Assistant Magistrate with second class powers and two or more Honorary Magistrates, as a Bench so constituted lies, under the Government orders dated 31st March 1882, the powers of a Magistrate of the first class [9 C 95]
87. Setting aside conviction for insufficiency of evidence.—It has been held in 20 W. R 13 that if the evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted he ought to acquit them
88. Effect of trying summarily a case not

91. Valuation of stolen crops how to be made.—Where a tenant charges the landlord with theft of paddy worth Rs. 88 the Magistrate cannot try the case summarily taking the share of the tenant as half the produce, as under S 71 of the Bengal Tenancy Act a tenant is entitled to the exclusive possession of the whole produce until it is divided—17 Cr. 473 (Pat)

(2) Jurisdiction of Magistrate.

92. Bench of Magistrates.—In Madras any Bench of Magistrates exercising 1st or 2nd class powers are empowered to exercise summary power.—Part S. G. (s. 141) Pt 1 p 279
- 92A. Magistrates first class,
- (1) In Madras.—All Subdivisional Magistrates of the first class have been invested with powers under this Chapter.—Part S. G. (s. 142) Pt 1 p 112a
- (2) In United Provinces.—All Magistrates of the first class who are or have been exercising as Joint Magistrates and also all Assistant Commissioners of the first class.—Sec 142, 1884, p 93.
93. Proceedings of a Magistrate not empowered.—If any Magistrate not being empowered by law in that behalf, tries a case summarily, his proceedings shall be void—S. 530 cl (q) infra
- (3) Offences which a Bench of Magistrates may try (S. 261).
94. (1) A Bench of Magistrates cannot try any offence, except those mentioned in S 260 and S 261—21 W R 12; 9 C 106.
- 94A. (2) Concomitancy clauses of Police Acts.—Offences under S. 48 of the Madras Police Act (XXIV of 1839) are within the cognizance of Bench Magistrates [13 M 112] See also, the General Police Act (V of 1861) S 34 and S 61 of the Bombay Police Act (IV of 1890)

(4) Other matters.

- Magistrate is competent to hold summary trial, *actia* [21 C. 403 21 P. L. 1907]
89. Compensation in summary trials.—S 262 renders applicable in cases of summons cases triable summarily, all the provisions of S 250 Cr P C—11 M 142 See (96) U. R. 3-q 51
90. European British subject.—The District Magistrate of Bangalore who is Justice of the Peace is incompetent to try and convict a European British subject of an offence under S 8 of the Municipal By Law No 3 after a summary trial under S 260 Cr P C as the C P Code does not apply primarily to Bangalore and the Declaration of the Governor-General in Council No 732D of 10th March 1913 conferring certain powers on Justices of the Peace does not include the power of trying offences summarily under S 260 Cr P C—21 M. J. 758.

95. Power of Local Government.—A second class Bench tried a case under S. 436 I P C which was transferred to them by the District Magistrate regularly and acquitted the accused, held, that the proceedings of the Bench were not void under rule 4 of the Local Government Rules made under Ss 15 and 16 Cr. P. C and the District Magistrate's order for retrial was valid.—[10] U. R. 1-q 70
96. Nature of retrial under S. 260 Subs. (2).—The rehearing must be *de novo*, as all proceedings taken before are void under S 530 (q)—Sec 23 W R 3
97. Clauses (b) to (k) not controlled by cl. (a).—Clauses (b) to (k) of S. 260 Cr. P. C being properly expressed are not to be governed by cl (1) but may be given their full effect—*Bar* 600
98. Inspection of Registers by District Magistrates.—District Magistrates should satisfy themselves from time to time that the law regarding summary trials is properly observed and

especially that Magistrates do not exceed their jurisdiction—a duty which may most conveniently be performed by an occasional and not infrequent examination of the registers of summary trials.—Wilkins 113

89. **Record not to be mutilated.**—In appealable cases, a Magistrate should not make the record

required by this section as an entry in the register prescribed by S. 263, and then on the Appellate Court calling for the record of the trial, cut out and send up the portion of the register containing this entry. The practice of mutilating official registers is open to the gravest objection, and is strictly prohibited.—Wilkins 113

CHAPTER XXIII

OF TRIALS BEFORE HIGH COURT AND COURTS OF SESSION

1. Preliminary

266. In this Chapter, except in sections 276 and 307, and in Chapter XVIII, the expression "High Court" means a High Court of Judicature established * * * under the Indian High Court Acts, 1861 [or the Government of India Act, 1915] and includes "High Court defined" * * * the [Chief Court of Lower Burma] and such other Courts as the Government-General in Council may, by notification in the Gazette of India, declare to be High Courts for the purposes of this Chapter.

Proposed amendments to the section. In section 266 of the said Code, after the words "for the purposes of this Chapter" in clause (1) of Chapter XVIII shall be added:

Note.—For definition of "High Court."—See S. 4 (i) and the notes under that clause.

267. All trials under this Chapter before a High Court shall be by jury.

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the Indian High Court Act, 1861 [or the Government of India Act, 1915] the trial may, if the High Court so directs, be by jury.

Notes.

1. **Note the provision in S. 528 (3)** (under "When the High Court withdraws for trial") in force itself any case from any Court other than the Court of a Presidency Magistrate it shall except as provided in S. 267, observe in such trial the same procedure which the Court would have observed, if the case had not been so withdrawn. Therefore unless the High Court otherwise directs, a case transferred to it shall be tried with the aid of assessors, if that is the mode of the

trial in the Court from which the case has been transferred.

2. **As to transfer.** See also S. 114 (5) of the Code relating to Europe and British subjects.
3. **Under the Indian Criminal Law Amendment Act of XIV of 1908.**—All persons sent for trial to the High Court under this Act shall be tried by a Special Bench of the Court composed of three Judges and not tried before the Special Bench of the High Court.—See S. 11.

Trial before Courts of Session to be by jury or with assessors

268. All trials before a Court of Session shall be either by jury or with the aid of assessors.

Notes.

1. **By Jury.**—If a magistrate is made to be the local Government under S. 294(1) proclaiming a particular Sessions Division as a "Jury District"
2. **The ordinary rule.** Under this section, in the absence of any notification under S. 267, a trial in a Court of Session must be with the aid of assessors.—S. 18 of 1888.

3. When a trial by Jury or with the aid of assessors is said to begin.—In a Court of Sessions the trial by jury or "with the aid of assessors" does not commence with the reading of the charge, as the jury or assessors are chosen under S. 272 only if the accused has refused to or does not plead to the charge or claims to be tried.—15 B. 511.
4. Trial with the aid of one assessor.—Where a trial before the Court of Sessions begins and ends with one assessor only, it is not a legal trial and the whole proceedings are vitiated by the error.—[25 B. 691 15 B. 511.] Where one of the two assessors was found after the Public Prosecutor had closed his case, to be so deaf as to be incapable of understanding the proceedings held that the proceedings were null and void.—[21 A. 106.] But where the trial was commenced with the aid of two assessors but one of them was absent owing to the illness of his mother and subsequently attended the Court for some days only after 1 p.m., after perambulating the daily obsequies rendered necessary by her death, evidence in his absence being shown to and read by him, held that the irregularity was cured by S. 537 Cr. P. C. [21 M. 533 C. 113 A. 337 60 C. N. 715.]
5. No difference in procedure.—The law makes no distinction as to the procedure at the trial between a trial by a jury and one with the aid of assessors except as to the summing up in the case of the former and the manner in which the verdict in the former and the opinion of the assessor in the latter are respectively taken. It is at this latter stage that there is a marking of ways and if the accused who is tried does not intervene at that critical point and get the procedure applicable to trials with the aid of assessors enforced, he can not be heard to complain.—23 B. 421.
6. Difference between a trial by jury and a trial with the aid of assessors.—In a

trial by jury, the jury is the real tribunal and is aided by the Judge and in certain matters directed by the Judge, whereas in a trial with the aid of assessors, the Judge is the sole tribunal aided by each of two assessors. Though assessors did not form members of the Court, yet it is mandatory that a trial with the aid of assessors should commence with at least two assessors and at least one assessor must attend the trial throughout and give his opinion. The Jury form a tribunal of their body with a foreman and the verdict is the verdict of the body and when there is no unanimity among the members of the body, the opinion of the majority prevails as the verdict of the body. But in the case of a trial with the aid of assessors the assessors do not form a body, and each acts and expresses his opinion individually and the Judge is to justify the opinion of each separately and record it. The Judge is the sole Judge of law and fact, and the responsibility of the decision rests solely with him, though in the case he is expected to take into consideration the opinion of each assessor." Per Lordship of Appeal in 21 M. 527 at p. 526. As to the position of the Judge in jury trials, see 27 C. 283 and in trials with the aid of assessors.—14 B. 710.

7. Effect of trial by jury of a case not so triable.—No appeal lies on matters of fact where an accused person who ought to have been tried with the aid of assessors is tried by a jury.—25 B. 650 (F. B.)
8. Effect of recording evidence in the absence of assessors.—In a trial of murder, the Sessions Judge, relying on a statement made by the deceased convicted the accused, but there was evidence to show that the statement was not recorded until after the assessors had been discharged, held, the evidence so taken was recorded *contra non iudice*, i.e. before a tribunal which had no authority to record it, and conviction based upon such evidence must be reversed.—15 A. 135.

269. (1) The Local Government may with the previous sanction of the Governor General in Council, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session shall be by jury in any district, and may, with the like sanction, revoke or alter such order.

(2) The Local Government, by like order, may also declare that in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are triable by jury, he shall be tried by jury for such of such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.

Notes.

1. Power of Indian Legislature to restrict the right of trial by jury.—The right to trial

by jury can be taken away by the Code of Criminal Procedure. Such a provision cannot be said

to be after this, as contravening the terms of the proviso to S 21 of the Indian Councils Act (24 and 25 vict. C 67)—47 C 407 See *Amir Khan*, 6 B L 302 and 159

The words "class of offences" referred to in S. 269 are not restricted to the classification recommended by the Legislature, such as is found in the Penal Code (e.g. offences against the state, against the person) or in the Criminal Procedure Code (e.g. bailable offences, cognizable offences). Offences may also be classified according to the person who commits them or according to the person or property against whom or which the offences are committed or in regard to the particular occasion in connection with which they are committed. Thus, the fact of offences having been committed by *Hindus* or *Muslims*, *Criminal tribes* or having been committed against women or public property, would afford reasonable ground for classification. The notification by Government dated 30th August 1893 by which the Government revoking their previous orders providing for trial by jury of certain class offences, directed the trial of persons concerned in the "anti shaner riots and disturbances in Tanjavur and Malabar" (in 1891) should be tried with the aid of assessors and not by jury. *Hill*, that the offence connected with the anti shaner was rightly treated as a class of offences and that it was competent to the Local Government, with the consent of the Governor General in Council, to revoke the previous notification so far as it related to that class.—23 M 642

[**Note**—In this case the offences tried were offences under Ss 145, 454, 393 and 323 I P C]

Scope of the words "by Jury in any District, when so ordered by Notification duly issued under S. 269" in S. 516 Cr. P. C.—The words "by Jury in any District when so ordered by Notification duly issued under S. 269 Cr. P. C." mean that the trial of the offences shall be by Jury in any District, and not that the trial shall be by jury of offences "committed in any District." There is therefore nothing to prevent the transfer of a Sessions Case under S. 520 (1) from a jury to a non jury District.

10 S 51 See 8 C J 30 (F. B.) [*Per Woodroffe and Gore J J*]

Offence under S. 396 P. C. not triable by Jury in Oudh.—An offence under S. 396 of the Penal Code is not one of the offences made triable by a Jury under the Government order

which is embodied in paragraph 49 of the Oudh Criminal Digest—22 O. C 130

5. As to notes on S. 269 subs. (3)—See Notes under Ss 297-304 *infra*

Notifications.

6. **Bengal**—Trial by jury which was extended to the district of 24 Parganas, Hooghly, Burdwan, Moorsahabad, Nuduh, Patna and Dacca in the case of offences under Chapters VIII, XI, XVI, XVII, XVIII (*Cod. Gaz* 27 3 93) and under Chapter XXI P C (including abettments of and attempt to commit such offences) [*See Ind. March* 1895] and was subsequently (*Cod. Gaz* 19th April 1897) extended to the districts of Chittagong, Mymensingh, Ryshidih and Jessore has now been extended to all the remaining Districts. See Ben II & O

7. **As to Madras.**—See G. O. of 20-3-83 (*Fr. St. G. Gaz* Pt I p 150) extending trial by jury to all Courts of Sessions in the Madras Presidency except those in the agencies of Coimbatore, Godavari, and Vizianagaram, in the case of offences under Ss 179, 340, 341, 392, 495, 397, 402, 111, 412, 413, 451, 459 and 461 I. P. C. including abettments of and attempts to commit such offences (*Fort St. G. Gaz* Pt I p 1198)

8. **United Provinces of Agra and Oudh.**—See Para 49 of the *Oudh Criminal Digest*—Trial by jury was extended to Allahabad, Benares and Lucknow in the case of following offences—313, 364, 372 and 373, 376, 379, 382, 392, 395, 397, 399, 401, 493 and 494, 411—414, 426, 432, 434, 436 and 440, 118, 470, 462 and 473, 478 including abettments of and attempts to commit such offences

9. **Bombay.**—Trial by jury has been extended to the districts of Thana Belgram, Surat and Karachi City, all offences punishable with death transportation for life in imprisonment for ten years, and to Ahmedabad (all offences punishable with death). In Poona District all offences under Chapter VIII XI XII XXI in XXIII, or under any of the said Chapters taken in connection with S 75 I P C including abettment and attempt to commit are triable by jury

10. **Burma**—The Rangoon Town District of the Pegu Division and Moulmein Subdivision of the Arakan District, trial by jury has been extended. As to the Tenasserim Division—See *Bur. Gaz* 1909 Pt I p 321 Bur R M

11. **Assam.**—See Ass. Gaz 1903 Pt II p 170, for Assam Valley Sessions Court

al before Court of Session to be
acted by Public Prosecutor

270. In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor

Notes.

1. **The section is directory.**—This section is merely directory. The absence of a Public Prosecutor in a sessions trial or a defect in his appointment is at most an irregularity capable of being cured under S. 537 by the final order unless it occasions a failure of justice.—35 P W 1887

2. **Analogous Law.**—In England it has been held that in a criminal prosecution on indictment, the

prosecutor has no right to address the jury or to conduct the prosecution. *R. v. Burt* 2 B & Ald. 606. *R. v. Gurney* 11 C. & C 411

3. **Police officer as Public prosecutor.**—For strong remarks against the objectionable practice of permitting police officers to conduct prosecution in Sessions Courts—See 13 W R 15.

4. **Private pleaders engaged by party.**—The Public Prosecutor may avail himself of the services of counsel engaged by the private complainant and in doing so he does not deprive himself of the right of general management. Where the assistance of Counsel has once been accepted, it is not excluded at the stage of the trial, but extends also to the summing up and the reply.—*See* 11 B. II, 102. *See* S. 193 *infra*.
5. **Advocate of the High Court.**—An advocate

of the High Court may appear on behalf of the prosecution without being specially empowered by the Magistrate of the District for that purpose.—21 W. II, 11. *But see below*.

6. **Counsel holding "watching brief."**—Counsel instructed by a private person can watch the case on behalf of his client, but cannot conduct a prosecution before the Sessions Court without being specially empowered by the District Magistrate.—O. S. 31.

B—Commencement of Proceedings.

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought

Commencement of trial

before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence

charged or claims to be tried.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Plea of guilt

Notes.

(1) General rules as to the plea.

1. **Duty of Court to see charge is carefully explained to the accused.**—The charge should be read and so explained to the accused that the Court is sure that he has understood the nature of the charge.

that the accused fully understand what it is that he is admitting and pleading guilty to. [2 Weir 330, 9 M. 61, 3 B. R. 459]. It is not sufficient merely to read out the charge to the accused. It must be explained to him [9 M. 61. *See* 6 B. R. 575].

2. **The record must show that the charge was explained to the accused.**—Where an

and it is improper for a Magistrate to act on such plea.—*Per Jolly J.* [6 B. R. 661].

5. **Admission by pleader.**—Admission made by a prisoner Yakkil cannot be used against a prisoner [17 W. II, 49]. The admissions made by a pleader who is appointed by the Court to help the accused in his defence, are not binding on him. [2 B. R. 751].

6. **The plea of "not guilty."**—*See* 271 and 272 contain all that is necessary as to pleading and there is no necessity to supplement their contents by a reference to any other system of judicature. The plea of 'not guilty' is not one recognised by the Criminal Procedure Code. It is not open to the accused in answer to an indictment, to make any answer except 'guilty' or 'a claim to be tried'.—*Per Stephen J.* in 11 C. 1072.

7. **The plea may be recorded in the language in which it is interpreted.**—The Magistrate need not record statement of an accused in the words of the very language in which it is made, when it is a foreign language. The record should be in the language in which it is conveyed to the Court by the interpreter.—5 C. 528.

8. **Effect of failure to record the plea.**—If the accused pleads guilty on a charge, the plea should be recorded. Where no such plea appears on the record, the conviction is bail, and must be set aside and a new trial ordered on the charge.—5 M. T. 216.

(2) When plea of guilty should not be accepted.

3. **What is meant by a plea of guilty.**—Only the admission of an act or acts constituting an offence can be deemed as a plea of guilty. [1 C. P. 25] where an accused pleads guilty but goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty. [11 W. II, 53].

4. **Accused must state his own plea.**—The accused must state his own plea or the plea must be stated by his own pleader. The plea is not valid if it is stated upon to the Court on behalf of his client 'guilty' or 'not guilty'.

9. (1) **Long and rambling statement.**—In cases where an accused person when called upon to plead to a charge before a Court of Session, instead of pleading guilty, makes a long and rambling statement more or less admitting guilt,

it would be much safer if the Judge recorded a formal plea of "not guilty" and proceeded to try the case in the ordinary way, recording the evidence.—(186) A N 34

10. (2) When the offence was not explained to the accused.—The plea of guilty of an accused person can not be accepted, when it is clear that the offence was not correctly stated to him.—14 Bur II 261

11. (3) Qualified plea.—Where a prisoner pleads guilty but at the same time informs the Judge that he committed the homicide because he was subject to epileptic fits, the plea cannot be treated as a plea of guilty.—Bat 698

12. (4) Offence committed when the accused was 'not in his right mind'.—Where a prisoner admitted before the Court of Session that he killed his wife but at the end of his confession said that he was not in his right mind at the time, held that the plea in effect was one of 'not guilty' and that the trial should not have proceeded without the aid of assessors
5 N P 110

13. (5) When the prisoner is of "weak intellect".—If the Judge is of opinion that the prisoner "without being actually insane so as not to be aware of what he was doing, appears to be decidedly a man of weak intellect", he ought not to accept his plea of guilty.—See 61 P R 1905

14. (6) Plea of guilty accompanied by a plea self-defence.—Where a prisoner admits that he killed the deceased but adds that he did so in a struggle arising from the deceased having first attacked him, held, that his plea could not be treated as a plea of guilty.—5 C. 526

15. (7) That the false statement was made,

to injure another is essential ingredient of an offence under S 211 I P C.—7 C. 96.

16. (8) Plea accompanied by allegation of "grave and sudden provocation".—Where an accused person admitted, in answer to a charge of murder, that he had killed his deceased wife,

Note.—Where there is a clear *prima facie* case of murder, a Sessions Judge cannot legally without trying the case, accept a statement made by the accused as sufficient to establish his plea of guilty of the offence of culpable homicide not amounting to murder, on the ground of grave and sudden provocation and convict him accordingly for such offence on his own plea.—Bat 411

17. (9) Bare statements.—A bare admission by an accused person that he had killed the deceased would not, unless it is ascertained by questions why he intended to kill and in what circumstances he killed, not be taken as a plea of guilty.—9 N G1 8 B R 210

Note.—In 8 B R. 210—The accused merely pleaded that he hit the deceased on the head to take away his ornaments without saying that he had committed 'murder'

18. The general rule as to when a plea should or should not be accepted.—A plea of guilty can be accepted only when it is unconditional and absolute. Where the prisoner admitted having struck his wife on the neck with a *dao* but denied having any intention of killing her, held that if a Court were to convict a man exclusively on his own admission, it was bound to take the admission as a whole and was not entitled to pick out and act only on those parts which told against him [21 W R 23 11 N. 564] Similarly, where the accused while admitting having presented a false petition of complaint, said "I did so under the influence of certain persons mentioned" held that the plea was not one of guilty [(160) A N 66] Where the accused admitted having accompanied the decoits for a short distance but said that he had returned back almost immediately and had nothing to do with the decoity which afterwards took place and did not know that such an offence was in contemplation, held, that the statement did not amount to a plea of guilty [7 W R 39]

19. Plea of guilty must cover each necessary constituent element of the offence.—Unless the accused distinctly admits each and every fact necessary to constitute the offence and unless the Judge himself finds on the admission made that the offence charged is legally established he should take evidence and come to decision thereon.—1 Weir 336

20. Effect of partial plea of guilty.—Where a person is charged with having intentionally given false evidence for having contradicted in three points in the Court of Sessions, the evidence which he had given before the Magistrate, and these have been made into six heads of charges, the two contradictory statements in each point being charged as separate instances of giving false evidence, and the accused pleaded guilty to one of the alternative charges, and not guilty as to the other, the accused may be convicted on a plea of guilty, and the verdict of the jury is unimportant. But it does not follow that a verdict of not guilty is to be recorded in the other alternative matter of charge. It might have been that both statements were false. Looking to the special nature of charges, the prisoner ought not to be allowed to elect which statement he shall admit to be false.—The fact should be tried as it is optional with the Court to do.—8 W R 6 (Cr. Letters)

21. Accused not to required to be plead alternatively.—An accused person should never be called upon to plead in the alternative but separately to each of the heads of a charge.—Bat 327.

22. The general rule in murder cases.—It is not in accordance with the usual practice to accept a plea of guilty in a case in which the natural sequence would be a sentence of death.—8 B R 210 [Per Jenkins C J] 19 B R. 376. 51 P R 1905.

[Note.—Where it is doubtful whether the person, charged with murder pleading guilty to that charge has understood the meaning and effect of such plea, the Judge should proceed with the trial and take evidence.—19 A 119]

23. **Confessional statement at the close of a trial.**—A confessional statement made at the close of the trial is not a plea of guilty upon which the Sessions Judge can record a finding without taking the verdict of the Jury.—2 Weir 371-7 B R 731.

24. **Plea of guilty applies only to the specific charge to which it is pleaded.**—Where a person charged with murder pleaded guilty, and the Judge convicted him of culpable homicide not amounting to murder, *held* that the Judge was not right in convicting the accused of an offence other than the specific offence to which he had pleaded. [2 Weir 375 3 R, 59] Where the accused committed for trial of the offence of culpable homicide, pleaded guilty, but the Sessions Judge instead of convicting him on such plea, convicted him of grievous hurt on the evidence recorded by the committing Magistrate, *held* that the conviction was illegal. [Rat 413]

25. **Where there is variance between the offence charged and the offence admitted.**—The accused was tried on a charge of murder after having admitted in her examination that she had committed the offence of concealment of the child's birth. The offence of murder was not proved and the Court thereupon convicted her of the offence admitted. *Held*, that such conviction was illegal, without framing a charge of concealment of birth and trying the accused on that charge.—Rat 386 See Rat 410.

(3) Practice and Procedure.

26. **Court not bound to accept plea of guilty.**—See 271 though it directs that the plea shall be recorded does not direct that the accused shall be convicted thereon, but only that he may be so convicted, that is to say, it is left to the discretion of the presiding Judge in each particular case to determine whether in spite of the plea, it is or it is not desirable to enter upon the evidence.—19 B R 356

27. **Procedure following upon a plea of guilty.**—The trial of an accused person does not necessarily come to an end as soon as he offers a plea of guilty. The accused on having pleaded guilty, should either be convicted on the plea of guilty and removed from the dock in which case he could be called as a witness against the other accused or the Judge should put it on record that he decides to put the accused on his trial in spite of his plea of guilty. He has the discretion to decide under S 271 sub 2, and that discretion ought to be exercised, as soon as the plea is offered and recorded. He is bound to read and explain the charge to the accused and he ought to satisfy himself by interrogation of the accused if necessary, that he fully understands the responsibility which he assumes by making a plea of guilty. Having done so, the Judge is then in a position to exercise properly the discretion which the law allows and to put upon record

the reasons which guide his discretion in either direction. The course which it is intended to pursue should not be left in doubt. *Per Lindsay J C and Kananga J of A J C.* in 20 O C 136 See 23 M 151-2 Weir 375

28. **Acceptance of plea by one of several accused should not be deferred.**—Where an accused person pleads guilty, the Court should record the confession and forthwith convict him therein. If there are other persons being tried with him for the same offence, the Court shall not postpone his conviction merely for the purpose of allowing the statement he may have made to be considered against the co-accused. It is against the spirit of law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence.—

30 A 510-23 A 53 17 A 521-19 B 193 15 P R 1911

[Note.—In 13 C N 552 it has been held that it is not always inc to accept the accused from t court reason, one to try him jointly with other accused and in that case his confession may be taken into consideration against the others.

28.

weakest kind.—*Per Gault J C & C.* 493 (F. B.) 2 C N 740 5 B 85 10 B 319 15 B 66 10 B 195- Rat 436 7 A 160, 17 A 521, 23 A 445 10 M J 117 (F. B.) 7 M 102, 22 M 491 11 P R 1900 *See* 10 O C 328 29 A 434

29. **Procedure on refusing to accept the**

in order to determine whether the prisoner has committed the offence to which he has pleaded guilty or any other offence with which he is charged.—[4 B L (Appx) 101]

30. **Practice where the plea is not accepted.**—Where the accused made a statement "admitting the fact but alleging provocation" and the Judge decided that the plea did not amount to a plea of

guilty is not accepted, plea of "not guilty" ought to be entered before the trial is proceeded with. [9 O J 55] As a matter of practice in Sessions trials, especially in murder cases, many Judges prefer not to act on the plea of guilty, but proceed

that the trial does not terminate with the plea of guilty.—[23 M 151]

31. **Procedure on plea being accepted.**—If the Court decides to convict the accused on his plea

a plea of guilty, a trial may be continued where it is necessary to ascertain the actual guilt taken by the accused in order to assess the punishment.—[21 A. 53]

32. **Procedure when the accused has once claimed to be tried.**—A confessional statement at the close of the trial is not a plea of guilty, upon which the Sessions Judge can record a finding without taking the verdict of the jury. After the prisoner has claimed to be tried, all the evidence whether the statements of the witnesses or a confession of the prisoner, should be laid before the jury.—2 Weir 311
33. **Plea of not guilty qualified by admissions of guilt.**—An accused person may admit some or even all of the facts alleged by the prosecution but if he pleads not guilty, the court trying him is bound to proceed according to law by examining the witnesses and giving an opportunity to the accused to cross examine the prosecution witnesses and adduce his own evidence.—9 B R 1316
34. **Conviction solely on confession before committing Magistrate is bad.**—Where an accused person does not plead guilty to a charge, the Sessions Judge will not be justified in convicting the accused solely on a confession made before the committing Magistrate.—[2 N P 479]
35.

was accepted by the Sessions Judge or not would

seem to be, whether in fact the trial proceeded as against the accused who had pleaded guilty as if he had done so, i.e. whether, for instance, he cross-examined or was given an opportunity of cross-examining the witnesses, whether he was examined himself, and in a case where there are assessors, whether their opinion was taken as to his guilt.—(13) U. B 1 170 See also 15 P R 1911

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See — (16) M. N. 327. See, 310 infra

38. **Accused's denial of his plea of guilty.**—A Magistrate recorded that the accused pleaded guilty. In an application for revision to the High Court the accused tendered in evidence his own affidavit setting forth that he did not plead guilty. Held, that the affidavit was not admissible. If there was any mistake about the matter, it should be the Vakil and not the client who ought to make the affidavit.

19 M. 209

272. If the accused refuses to or does not, plead, or if he claims to be tried, the Court shall Refusal to plead or claim to be tried proceed to choose jurors or assessors as hereinafter directed and to try the case.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try or the same assessores may and in the trial of, as many accused persons successively as the Court thinks fit

Notes.

1.

he is obstinately mute or dumb *ex testatione Dei* If he is found to be obstinately mute, the plea of "not guilty" should be recorded, and the trial should proceed. If he is found to be dumb, *ex testatione Dei* an enquiry should be made as to whether he is sane or insane or incapable of being tried. If found sane, a plea of "not guilty" shall be recorded, and the trial should proceed but if found to be insane, the procedure laid down in Chapter XXXIV *infra* should be followed.—Rt 19

2. **When the trial begins.**—A trial with the aid of assessors does not begin with the reading of the charge, as the assessors are only chosen under

S 272 of the Code of Criminal Procedure, if the accused has refused to plead, or does not plead to the charge or claims to be tried.—15 B 514 23 B 694 6 B R 671 See 12 M 220 (F. B.)

3. **Procedure when the accused refuses to plead.**—If the accused refuses to plead or claims to be tried, the Court should proceed to try the case, where the trial is not by jury, it must be conducted with the aid of two or more assessors.—2 B L 27 (F. B.).
4. **Examination of the accused.**—The accused person shall not be examined by the Sessions Judge immediately after he has been called upon to plead, if his plea be "not guilty"—3 Ag 65.
5. **If the accused pleads not guilty and public prosecutor offers no evidence.**—In a case tried with assessors, if the prisoner

pleads not guilty and if the public prosecutor is not able to offer evidence in support of the charge, the Judge should instruct the assessors that they are bound to find the prisoner not guilty.—[1 M. H. (1897) xxxv.] Where there is nothing which can, if believed, amount to proof, the case should not be put to the jury at all, as the verdict of guilty cannot under such circumstances be sustained.—[16 W. R. 19]

6. Meaning of "the same jury may try as many cases etc."—"By this we understand that one trial is to follow the other, i.e., that, on the conclusion of one trial, the same jury may proceed to try the accused in the next case. The law does not contemplate that two trials shall be

conducted piece-meal in such a manner, that at their conclusion, the jury shall be called upon to decide at one and the same time upon two distinct classes of evidence which, though they have points in common, require careful discrimination as

prisoners that the sole issues on which they are to be tried, and the evidence bearing upon those issues, should be laid before the jury, and that the minds of the jury should not be encumbered by the consideration of foreign and irrelevant matter"—*Prinsep J.* in G. C. 96 (99)

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Notes.

1. Applications under the section.—(=S 14 of Act V of 1875) should be disposed of by the High Court in its original Criminal jurisdiction.—[9 C. 837]

2. Object of the section.—Under S. 273 of the Code, in trials before the High Court, when it appears to the Court at any time before the commencement of the trial, that any charge or any portion thereof is clearly unsustainable, the,

Judge may make on the charge an entry to that effect. Such an entry has the effect of staying the proceedings upon the charge or portion of the charge as the case may be.—21 C. 97.

[Note.—In this case, the immoral act of sexual intercourse, at an interview, with a young prostitute procured for the purpose, was found not to be contemplated by S. 372 I. P. C., and the charge was dismissed under this section]

C.—Choosing a Jury.

Number of jury.

274. (1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number, not being less than three or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Notes.

1. Effect of exceeding the number filled by the Local Government.—Where the Local Government has issued a notification that in trials by jury, the jury should consist of five persons, a District Magistrate, trying a person with a jury consisting of seven persons, under an old notification, acts improperly and the trial is a nullity.—26 A. 221.

2. Number of Jury as fixed by Local Government in different Provinces.—In Bengal (where the accused is not a European) nine. In the United Provinces. seven. In

Madras five. in the Punjab: nine (Districts of Lahore, Delhi, Rawal Pindi and Peshawar), five (Districts of Amballa, Multan and Sukkot) and three (other Districts); in Bombay five in the Poona Court of Session (of offences under Chapters VIII, IX, XII, XVII, XVIII I. P. C.) But in Bombay five (for cases in which a European, not being a European British subject or an American, is the accused)

3. For Rules in Bengal for the trial of Europeans and Americans.—See Ben. R. and O.

275. In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Notes.

1. Native Christian is not entitled to Christian Jury.—A Judge is not bound to try a Native

Christian with the aid of a Christian Jury.—[1 W. R. 2.] As to trial of Foreign Subjects [See 3 W. R. 11]

2. **Hindu prisoner at the High Court.**—A prisoner not being a European British subject and not being charged jointly with a European British subject is not entitled, under the provisions

of the High Courts Criminal Procedure, to be tried by a jury the majority of which shall not be Europeans or Americans or both; this right only belongs to a European British subject.—1 B. 232.

276. The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct.

Jurors to be chosen by lot

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed,

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present

thirdly, in the presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed, and

fourthly in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 323.

Proposed amendments to the section.—In the third proviso to section 276 of the Code, for the words "in the presidency-towns" the words "in a trial before any High Court in the town which is the usual place of sitting of such High Court" shall be substituted.

Notes.

1. **Mode of selecting jury by lot in High Courts.**—The nine persons who are to be chosen by lot to form the jury ought to be selected from the entire number of persons summoned to act as jurors and that this selection which is to be by lot, ought to be made from one box, and not from six boxes.—1 B. 462

2. **The object of selection by lot.** The Legislature has taken special precautions to render impossible any intentional selection of jurors to try a particular case. In the first place, the persons who are to be summoned to act upon the jury are drawn by lot and then again, when they

3. **Jury empanelled in inconviction of this section.**—The selection of jurors contrary to the provisions of S 240 (—S 276) is an irregularity but when not shown to have prejudiced the prisoners is not an objection that would justify with reference to S 253 (—337) and S 167 of the Evidence Act, an interference with the verdict of the jury.—Per Field J. in 6 C 739 But See 33 A 355 7 C N 188, 12 Cr 537 (0)

[Note.—Justice Field's ruling had's support in the English ruling *Hill v. Fates* 12 East P. C. 229. See also Archbold p 237]

4. **Effect of a juror not summoned serving on the jury.**—In England it has been held that where a person whose name is not on jury panel, and who has by mistake been summoned as a juror, has served on the jury, the jury should be discharged and a fresh jury constituted.—See *R. v. Phillips* 11 Cox C C 112

down in S 276 of crim Pro. Code is such as can not be cured by the provisions of S. 337 of that Code [33 A. 355 12 Cr. 537 (0)]

RULES FOR SELECTING JURORS BY LOT.

(I) Rules in Bengal.

1. **For Courts of Session.**—(i) In order to nominate jury for the trial of any prisoner or

other person to be tried by jury, a Sessions Judge shall cause to be put together in one box, cards or pieces of paper containing the names of all the persons summoned to attend, except such of the said

persons as shall have been excused by the Sessions Judge from serving on that day in consequence of their having served as jurors on the previous day or for any other cause. Such cards or pieces of paper shall be as nearly as may be, of equal size, and shall bear the name of one person summoned to attend. *The Sessions Judge shall then, in open Court draw or cause to be drawn, out of the said box, one after another, as many of the said cards or pieces of paper as may represent the number of jurors required to try the case, and if any of the jurors whose names shall be so drawn shall not appear or if any be objected to, and the objection be allowed, then such further number shall be drawn as may be necessary to complete the number of jurors required for the case.*

- (ii) In cases in which not less than one half of the jury must be Europeans (S 160 and 451 read with S 7, Act III of 1884) or both Europeans and Americans (S 451 read with S 7 Act III of 1884), jurors shall be chosen as follows:

First—Not less than one half of such jury shall be chosen by lot in the manner prescribed by Rule 1 from a box containing the names of only Europeans or Americans, or Europeans and Americans, until the necessary majority is complete.

Second—To the names of jurors so chosen shall then be added the names of all the other jurors summoned to attend, and the number necessary to complete the jury shall then be chosen by lot in the manner prescribed by Rule 1.

- (iii) In cases in which not less than one half of the jury must be neither Europeans nor Americans (S 275), the jurors shall be chosen as follows:—

First—Not less than one half of such jury shall be chosen by lot, in the manner prescribed by Rule 1 from a box containing the names only of such persons as are neither Europeans nor Americans until the necessary majority is complete.

Second—To the names of jurors not so chosen shall then be added the names of all the other jurors summoned to attend and the number necessary to complete the jury shall be chosen by lot in the manner prescribed by Rule 1.

- (iv) (1) When the jurors have been finally elected, their names shall be entered on the fly-leaf prescribed for records of Sessions Trials (Cr. R & O p

220). The "Foreman" (S. 240 Cr. P. O) being specially designated as such. See Hen. R. & O

2. **District Magistrate Court.**—The above rules *mutatis mutandis*, shall apply to the selection of jurors in cases before District Magistrates, in which the accused is a European British subject, and claims to be tried by a mixed jury [S. 451 (i) Cr. P. C.] Such jurors shall be selected from the persons summoned under the provisions of S 462 of the Code to attend for the purposes of the trial. Rule no 1 of the 25th June 1885. *Willis's addenda* p. 90

(2) Rules in Madras.

1. As to Madras rules for selecting jury by lot, See the High Court proceedings no 1333 dated 11th April 1883
2.

(3) Rules in Bombay.

Rule no. 3.—A week before the commencement of the Sessions, folded papers bearing the names of the jurors in the list (prepared under rule 3) aforesaid, shall be put into a ballot-box, and as many of them as the Sessions Judge may deem necessary shall be drawn by lot in open Court. The names of such persons as have served within six months of the date of the commencement of the Sessions are to be excluded from the ballot

Rule no. 6.—At the commencement of the Sessions, the names of the jurors summoned to attend shall be put into the ballot-box, and as many of them as the Court may think necessary shall be drawn to sit as jurors for the trial of the case coming on first.

Rule no 7.—The rest of the jurors summoned shall be asked to attend at such time as the Court may specify, and the requisite number shall be selected from amongst them at the beginning of each case or day, in the number above specified to serve as jurors in the case or cases standing for trial See Bomb. R & O

For rules made by the High Court in the North-Western Provinces.—See U. P. R. and O

277. (1) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the Names of jurors to be called accused shall be asked if he objects to be tried by such juror.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and Objection to jurors the grounds of objection shall be stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of Objection without grounds stated the person or all the persons charged.

Notes.

1. **Analogous Law.**—In England the time for objection or as it is technically called challenge, comes after a full jury has appeared, but before any juror is sworn. [Archbold, p. 207] In

America, a challenge must be taken when the juror appears, and before he is sworn, but the Court may, in its discretion for good cause, set aside a juror at any time before evidence is given

in the action." [See also *People v. Carpenter* 38 Hun 491=4 N. Y. Cr. R. 39.] A juror may be peremptorily challenged at any time before he is sworn whether he has taken his seal in the jury box or not. [*People v. Carpenter* 3 N. Y. Cr. R. 92]

2. If opportunity to challenge is not given.
—It has been held that although it is a serious

error for a Judge to proceed with the trial without giving the accused an opportunity of challenging the jurors, in accordance with this section, a conviction will not be set aside in the absence of prejudice [23 C N exi] In England the error is a material error and would necessitate a new trial [See *Archibald* 207 *Gray* R. 6 St Tr. (N. S.) 177]

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed. —

(a) some presumed or actual partiality in the juror.

(b) some personal grounds, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years.

(c) his having by habit of religious vows relinquished all care of worldly affairs;

(d) his holding any office in or under the Court.

(e) his executing any duties of police or being entrusted with police-duties.

(f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury.

(g) his inability to understand the language in which the evidence is given, or when such evidence is interpreted the language in which it is interpreted.

(h) any other circumstances which, in the opinion of the Court, renders him improper as a juror.

Notes.

1. Objection to jurors.—The allowing of an objection to a juror coming within cl 3 of S 314 Cr. P. C. (=S 278) is within the discretion of the Court, and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous—16 W R 56.

2. cl. (d).—A clerk in the office of the District Magistrate is not disqualified on that account from sitting on the jury—7 C 42

3. Analogous Law.—The presumed partiality mentioned in this section is substantially the same as the objections for imputed bias enumerated in S 177 of the N Y Crim. P. Code—See *Whitely Stokes Anglo-Indian Codes*, Vol II p 163

4. Any other circumstance.—The following grounds on which a juror may be challenged in America as shewing implied bias may be usefully studied in this connection

(1) **Consanguinity or affinity** within the ninth degree, to the persons alleged to be injured by the crime charged, or on whose complaint the prosecution was instituted or to the defendant.

(2) bearing to him the relation of guardian or ward, attorney or client, or client of the attorney, or counsel for the people, or defendant, master or servant, or landlord or tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted or in his employment on wages.

(3) being a party adverse to the defendant in a Civil action, or having complained against or being accused by him in a Criminal prosecution,

(4) having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of indictment

(5) having served on a trial jury which has tried another person for the crime charged in the indictment

(6) having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside or which was discharged without a verdict, after the cause was submitted to it

(7) having served as a juror in a Civil action brought against the defendant, for the act charged as a crime

(8) if the crime charged be punishable with death, the enjoining of such conscientious opinions as would preclude his finding the defendant guilty in which case he shall neither be permitted nor compelled to serve as a juror—S 377 N. Y. Cr. P. Code

5. Court may act without a challenge.—The Court, even without challenge taken, may and ought to excuse a juror on the point when called, if he is obviously unfit to perform his duty, from physical or mental infirmity. [*Waller* R. 8 St. Tr. (N. S.) 211; *Archibald* p 217.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury;

Provided that no objection to such juror or other person is taken under section 278 and allowed.

280. (1) When the jurors have been chosen, they shall appoint one of their number to be Foreman of jury, foreman,

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Swearing jurors Oaths Act, 1873.

Notes.

1. Form of oath.—The Madras High Court has prescribed the following forms of oath.

(i) "I shall well and truly say and true deliverance make between our Sovereign Lord, the King, Emperor of India, and the prisoner at the bar and a true verdict give according to the evidence. So help me God,"

or

(ii) I solemnly affirm in the presence of Almighty God, that I will judge truly between the King-Emperor of India, and the prisoner at the bar and will give a true verdict according to the evidence"

[N. B.—The words in italics may be omitted if the

juror objects.]—See *M. H. Cir.* No. 1512 of 18th August 1873 and No. 102 of 23rd Jany. 1877.

2. Jurors not sworn under the older Codes.—Under the Code of 1861 it was held that "it was not necessary, in a trial by jury before a Court of Session under the provisions of the Code of Criminal Procedure, that the jurors should be sworn."—[3 B. 11 54]

3. Omission to swear.—*Quere*—Is the omission to swear the jury in a Sessions Case one which would be covered by S. 13 of the Oaths Act 1873.—20 W. R. 19. See 11 C. P. 16.

[Note.—See the following cases, —16 B. 359. 5 B. R. 651; 16 M. 105; 1 Weir 827 (F. N.); 10 O. C. 337]

282. (1) If, in the course of a trial by jury at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

(2) In each of such cases the trial shall commence anew.

Notes.

1. Trial must be *de novo*—After the first two

witnesses for the prosecution and had their statements read out to them, and they admitted that their evidence which they had heard was correct, *Held* that the trial was defective in view of the provisions of S. 282 Cr. P. C.—36 A. 451.

2. New trial cannot be waived.—In England, it has been held that it is irregular for the judge

even with the consent of the accused, to read over from his notes the evidence given before the former jury.—*R. v. Bertrand* (67) L. R. P. C. 520

3. If the illness is only temporary.—In the famous Crippen trial [*R. v. Crippen* (11) 1 K. B. 149], one of the jurors was taken ill. He left the jury box attended by doctors and a jury bailiff, who however were not sworn for the purpose. After an absence of three quarters of an hour during which none but the doctors had spoken to him, the jurymen returned and the trial proceeded. Held that as there was evidence to show that the jurymen had not been tampered with, there was no mis-trial. In America, in the case entitled *Gorsen v. Commonwealth* [51 Am. Rep. 531—106 Penn. St. 477], one of the jurors after retirement was taken very ill. He was put in bed in a communicating room, under the care of a physician who did not speak either to the him or to the others on the subject of the trial. Held that the verdict of guilty was not vitiated. In 11 Cr. 402 (C), five persons were appointed jurors under S. 138 Cr. P. C. Of these persons only four dealt

with the case, one being ill and unable to attend, held that the report of the jury was illegal

4. Juror deaf and partly blind.—A Judge is bound to discharge a juror on discovery during the course of trial that he is deaf and partly blind. In such a case a *denovo* trial must be held.—See 19 M. 375
5. False evidence given in a trial vacated under this Section.—The fact that the trial was vacated owing to the incapacity of a juror under S. 242, and the accused tried *denovo* cannot be pleaded in bar of the prosecution of a witness under S. 193 I. P. C. who gave false evidence in the course of the vacated trial.—19 M. 375
6. English Law.—If a juror is incapacitated the jury must be discharged and a fresh jury empanelled, who may be the remainder of the former jury, with vacancies filled up by a new juror. In such cases the defendant would be entitled to his challenges afresh, and all the jurors should be

Discharge of jury in case of sickness of prisoner

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar

Notes.

1. Misconduct of the jury.—There is no provision in the Criminal Procedure Code for discharge of jury for misconduct. Ss. 252 and 253 are the only Sections which provide for a discharge before the verdict is given. At the Calcutta High Court Sessions, the jury in a case wanted to give their verdict against the accused before even hearing the witnesses for the defence. The defence Counsel cited *R. v. Fowler* 4 B. and Ald. 273 and pressed for a discharge of the jury for misconduct. There being no provision for adopting such a course, the difficulty was met by a *nolle prosequi* being entered under the instructions of the Advocate-General under S. 333 Cr. P. C.—See 7 C. N. 1111

[Note.—The English law permits such a course—See Archbold 353]

2. ~~misconduct of the jury~~

Sessious Judge is not authorised to discharge, on that account, the jury in the middle of the trial and to traverse the case from one Sessions to another, to be tried by a fresh jury.—4 B. R. 639

[Note.—In such a case the jury may be directed to attend at the adjourned sitting under S. 293 infra]

D.—Choosing Assessors.

284. When the trial is to be held with and of assessors, two or more shall be chosen, as the Assessors how chosen Judge thinks fit, from the persons summoned to act as such.

Notes.

1. Object of appointing assessors.—The real object of appointing assessors is to assist the Court, and the discussion and statement of points by a Judge sitting with assessors cannot be said to be otherwise than in furtherance of the object of getting the best assistance for the proper adjudication of the case.—7 B. L. 63 at p. 68
2. Objection to trial with assessors instead of jury must be taken before finding is recorded.—A jury case was by order of the Government tried with the aid of assessors but no objection was taken to the trial before the Court had recorded its finding, on an objection

being taken before the High Court, held, that the omission to take the objection at the trial was fatal to the contention that the trial was invalid.—23 M. 632

3. Trial with non-summoned assessor is invalid.—Out of six assessors summoned to appear only three attended. Of these three two were discarded as not appearing sufficiently intelligent. The Sessions Judge appointed the third as assessor, and sent for two persons, a Revenue Court maktar and a pleader to fill up the other two places. Held that the last mentioned persons not having been summoned to act as assessors, the

trial in fact was held with only one legally appointed assessor and was therefore invalid. [(31) A. N. 207] Where one of the two assessors was a person who had not been summoned and whose name had been removed from the list of assessors held that the trial by the Court of Session was illegal [35 A. 570]

4. "Summoned to act as such."—*See* 326 and 327 Cr. P. C. contemplate as the ordinary or normal procedure that all assessors should be summoned on the first day on which a Criminal Sessions commences, however many trials it may be proposed to hold in the course of that sessions. Where therefore the sessions commenced on the 7th June and closed on the 15th June and a person who was summoned to serve as an assessor on the 14th June failed to appear on that day but appeared on the 17th and was chosen as an assessor on a trial which commenced on the 17th, held that he was summoned to act within the meaning of S. 284 Cr. P. C. and the trial in which he took part was not invalid.—17 Cr. 17 (A)

5. Nazir of the Court acting as assessor.—In the absence of assessors duly summoned, the Nazir of the Court was directed by the Judge to act as an assessor, and the Judge noted that no objection was taken to the course taken by him, and in the end the accused was convicted, held, that the Nazir as an official of the Judge trying the case, was a most unsuitable person and the trial must be taken to be held with one assessor only and was therefore illegal.—13 O. C. 377

5A. Change visitor to the Sessions Court.—The trial of an accused person was fixed for a certain date when only one duly qualified assessor was present in Court, and capable of acting as such, whereupon the Judge ordered another person who happened to be present in Court, but who was not in the official list of assessors to act as an assessor, held that having regard to the provisions of S. 284 Cr. P. C., the trial was illegal 3 Pat J. 141.

6. Selection of assessors.—The law does not as in the case of jurors, provide for objections being made to an assessor. The choice of jurors is by lot but the choice of assessors is entirely with the Sessions Judge, who in the exercise of this power, should pay every consideration to any reasonable objection raised. In selecting assessors, the Judge must have regard to the nature of the case, to the person who is tried, to the nature of the evidence to be brought against him and to the public feeling. The

assessors ought not to be pleaders, nor young men fresh from college, and devoid of experience. They must be persons of the independent condition in life, men of judgment and experience.—*Per Jackson J.* in 23 W. R. 35 at p. 39.

7. Zemindars as assessors.—"As a reason for his (the assessor's) removal (from the list of assessors), the learned Sessions Judge gives that the Magistrate recommended this on the ground that he was a large Zemindar and his position in life and status was much better than that of persons of the class from which the assessors are ordinarily selected. If this be the case, we are surprised to find that this recommendation should have been made and should have met with approval. It is surely not too much to ask from Indian gentlemen of position and rank that they should assist in the administration of justice, as the sitting assessor can, if the list be properly prepared, occur very rarely, and probably only once in the course of three or four years"—*Kane and Ryces JJ.* in 35 A. 570.

8. Hereditary Rajas.—It is contrary to the usage of the country and eminently undesirable that gentlemen of high position, such as an hereditary Raja, should be placed on the list of assessors.—(37) A. N. 167.

9. Assessors likely to render efficient assistance should be chosen.—It is desirable that it should be in the power of the Court to select from among the assessors who are in attendance, those who may seem most likely to give efficient assistance in any particular case. Though the law provides for the choosing of "two or more," it is not desirable that ordinarily more than two should be chosen, because the larger the number of assessors, selected for each case, the greater the burden on the body of those registered as liable to serve.—O. P. Cr. Cir. Pt II No. 33

10. Prostitution of assessors to be maintained.—It is very desirable to maintain the position of assessors in public estimation and to make their duties as little irksome as possible. No assessor should be summoned too frequently. When assessors are summoned, the notice should be sent to the assessor and they must and respect for them to be necessary.

11. Trial with one assessor.—*See* Notes under S. 285 following

285. (1) If in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absent himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

(2) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

Notes.

1. Application of S. 285.—Section 285 applies only to the case of a trial which has commenced

with the aid of two or more assessors, who at the commencement of the trial were capable of

acting as assessors, but one or more of whom were subsequently prevented from attending the trial by illness or other sufficient cause.—See 21 A. 106 25 B 694 3 Pat J. 141

2. **Physical infirmity.**—Where before a Sessions trial began, it was found that one of the three assessors who attended was deaf and the trial proceeded with the aid of the remaining two and it was subsequently discovered, after the public prosecutor had closed his case, that another assessor was so deaf as to be incapable of understanding the proceedings, *held* the proceedings were null and void [21 A 106 2 Weir 349]

[Note.—Ep 19 M 375 (a case tried by jury in which a juror was found during trial to be deaf and partly blind)]

3. **The General Rule.**—When a trial before a

the proceeding on account of deafness etc the trial is really commenced and ended with one assessor only and is therefore illegal [See 21 A 106 3 Weir 349] Where after an accused person had claimed to be tried, a Sessions Judge chose two assessors but immediately dispensed with the attendance of one of them who was suffering from fever and proceeded with the trial with the aid of the other only *Held* that the action of the Sessions Judge was illegal [15 B 314]

4. **The minimum.**—The law is that the trial must begin with two or more assessors, but it would be sufficient if at subsequent stages at least one assessor is present and that assessor had sat throughout the trial and heard all the proceedings [24 M 523 6 C N 715] Where during the course of a trial with 3 assessors one assessor died at an early stage of the proceedings and another became too ill later to attend, and the third assessor was also obliged to retire at the beginning of the address by the pleader for the accused and did not return till it was finished, *held* that the law contemplated the continuous attendance of at least one assessor throughout the trial and that condition not having been fulfilled the trial must be set aside [13 A 337]

5. **Absent assessor cannot be allowed to resume.**—In a criminal case commenced with the aid of two assessors one of them was absent during a portion of the trial though he subsequently resumed his seat and gave his opinion (*Held Per Dums J*) When the absentee assessor

was allowed to resume his seat as assessor, the Court ceased to be a Court of competent jurisdiction and the irregularity was not curable by S 537 *infra* (Per Benson and Bhattacharya JJ). "though the proper course for the Court was to proceed without the absentee assessor, the irregularity was one which might be cured under S 537 *infra* [21 M 523] If an assessor is absent once he is to be considered to have been wholly absent. The judgment of the Sessions Judge arrived at with the aid of such an assessor is null. [6 C N 715] Where the Sessions Judge allowed one of the assessors to absent himself for one of the days during which the trial proceeded, and to return on the following day, *held* that the procedure was contrary to the intention of Ss 285, 295 Cr. P. C. The Judge ought either not to have given leave or should have adjourned till a day when both the assessors could attend [14 C 695] Even if the portion of the proceeding taken during the absence of the absentee assessor is read to him on his return, a trial held with his aid will be invalid. He should not be allowed to resume his seat at any time after he had once absented himself. [8 C P 9]

6. ~~~~~

interested or otherwise unfit to sit as an assessor the Sessions Judge should get the High Court to set aside the order by which the incompetent assessor was appointed and all the subsequent proceedings in the trial. In such cases, the Sessions Judge ought to choose another assessor and proceed with the trial *de novo* [(12) M N. 378]

7. **Assessor spoken to by influential men.**—

The fact that the assessors have been spoken to by some of the influential men of the place interested in getting a conviction, is not a stigma to them and is no ground for the transfer of the case to a different Court under S 326 *infra*—(57) A \ 139

8. **Trial without assessors.**—In a case, in which

the prisoner pleaded that he killed his wife but said that he was not of right mind at that time, *held* that the plea was one of "not guilty" and the Sessions Judge was not justified in going into the question of guilt or innocence without the aid of assessors [5 N F. 110] The trial will be invalid if a portion of the trial which consists in the taking of additional evidence takes place after the discharge of the assessors [15 A 126]

L.—Trial to Close of Cases for Prosecution and Defence

286. (1) When the jurors or assessors have been chosen, the prosecutor shall open his case
Opening case for prosecution by reading from the Indian Penal Code or other law the

description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

(2) The prosecutor shall then examine his witnesses.

Notes.

(1) Rules regarding Prosecution evidence.

1. Once the trial has commenced in cannot be postponed for examination of witness on commission.—An application for commission applied for by the prosecution during the trial and after the jury had been sworn, was refused on the ground that the trial and commission could not go together.—19 C 113
2. Trial should proceed *de die in diem*.—Sessions cases should not be tried piecemeal. Before commencing a trial, a Judge should satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but once commenced, it must proceed.—19 C 113
3. The meaning of "opening the case."—Counsel for the prosecution opens the case for the prosecution to the jury by giving the outline of the evidence and the leading features of the case. In doing so he ought to state all that it is proposed to prove as well as declarations of the prisoners as facts, so that the jury may see if there is any discrepancy between the opening statements of the counsel and the evidence afterwards adduced in support of them; unless such declarations amount to a confession when it would be improper for a counsel to open them to the jury, the reason being that circumstances under which the confession was made, may render it inadmissible in evidence. The general effect only of the confession said to have been made ought to be given.—Archibald pp 218, 219
4. Prosecutor in opening address should give names of the witnesses not examined before.—There is nothing in the Code which restricts the prosecutor at a Sessions trial to witnesses who have been examined in Court of the committing Magistrate; but in fairness to the accused the prosecutor should state in his opening address the names of witnesses whom he proposes to call, who have not already been examined under S. 208 or S. 209, and the purpose for which they are to be produced. The mere fact that a witness has not been examined before a committing Magistrate is no ground for refusing to take evidence of a relevant witness tendered for the prosecution.—1 P. R. 1889.

[Note.—According to English practice, notice of the intention to call additional witness with a copy of the evidence which they are expected to give ought to be given to the prisoner.—Archibald p. 453]

5. The order in which prosecution witnesses should be examined.—It is compe-

tent to a Sessions Judge to suggest to the prosecutor that it would be convenient if a particular witness were called at an earlier or later stage of the trial, but it is not within his province to refuse to allow the prosecutor to call his witnesses in the order he chooses.—Per Chamber J. J. C. 6. O. C. 53

6. Is the prosecution bound to examine all witnesses present at the occurrence?—It is the duty of the public prosecutor at a trial before the Court of Sessions to call and examine all material witnesses sent up to the Court on behalf of the prosecution, and the Judge is bound to hear all the evidence upon the charge. The public prosecutor is not bound to call any witness who will not in his opinion speak the truth or support the points he desires to establish by his evidence, but in such circumstances he should explain to the Court that this is his reason for not calling those witnesses and he should offer to put them in the box for cross-examination by the accused at their discretion. In the absence of any such explanation or of other reasonable grounds apparent on the face of the proceedings, inferences unfavourable to the prosecution must be drawn from the non-production of witnesses. 7 A. 904; 14 A. 521; 15 A. G. 16 A. 84 (F. B.) ('94) A. N. 57; 15 W. R. 34; 5 C. 614; 8 C. 121; 10 C. 1070; 14 C. 245; 11 B. R. 1162; Rat 591; 2 Weir 373; 2 Weir 379; 3 S. 209
7. Public prosecutor commits serious error of judgment in not examining material witnesses.—It is not within the province of the Judge to dispense with the evidence of any of the prosecution witnesses, and if the Public Prosecutor does so, he commits a serious error of judgment. The whole evidence should be put before the Court, and the Public Prosecutor is at least bound to tender the witnesses for cross-examination before the Sessions Court if so required [2 Weir 379]. It is the duty of the prosecution to call for examination all the witnesses present at the commission of an offence, even if some of them are to give accounts different from the one relied on. It is also the duty of the Judge not merely to receive and adjudicate on the evidence submitted by the parties, but also to inquire to the utmost into the truth of a case. [Rat 591]
8. Prosecution not bound to call "unnecessary" witness.—In a trial in a Court of Sessions or the High Court on its criminal side, the public prosecutor is not bound to call all the witnesses returned in the calendar as witnesses for the Crown, or to put such of those witnesses, as he does not examine, in the witness-box to be cross-examined by or on behalf of the accused, if he believes that the evidence of the witnesses is likely to be false or is unnecessary. 10 A. 81 (F. B.).

9. **Witnesses examined before committing Magistrate against the wishes of the prosecuting Inspector.**—In conducting a case for the prosecution, all the persons, who are ought to be examined before committing the Magistrate against the wishes of the Sub-Inspector who was conducting the prosecution, held, that that was not a valid ground for the non-production of the witnesses in the Sessions Court and the conviction of the accused under the circumstances would be illegal. [Retrial ordered]—10 C. 1070
10. **Duty of the Crown.**—The doctrine that the Crown is not bound to call witnesses on whom it does not rely must not be pressed too far. It is its clear duty to produce all persons who lay claim to a first-hand knowledge of the incidents under trial, and if the prosecution do not choose to place them in the witness-box, it must at least tender them to the defence for cross examination. The Crown is not so much concerned to prove a particular theory as to acquaint the Court with all the relevant evidence, and it is for the Court to determine how much of that evidence is to be credited, and what inferences it warrants—3 S. 200.
11. **Is the prosecution bound to tender suspected witnesses?**—In a Sessions trial the prosecution is not bound to call any witness or to tender witness called before the committing Magistrate for cross-examination. The prosecution cannot be forced to put forward a witness on whose evidence no reliance can be placed. It would be sufficient of the prosecution makes such witnesses to be present in the Court, so that the defence can call them if they like—14 C. 245. 8 C. 121. 5 C. 614. 15 W. R. 34. 14 A. 521. 15 A. 6
12. **Prosecution bound to tender witness whose cross-examination was reserved before committing Magistrate.**—It is open to the public prosecutor to decline to examine at the Sessions trial a witness, whom he had examined before the Committing Magistrate, but whose cross-examination by the defence was reserved. It is, however his duty to tender the witness for cross-examination in the Court of Session, and if he declines the Court ought to call the witness for cross-examination—11 B. R. 1162. See R. v. Higgins 10 Cox 562
13. **The accused not entitled to have a witness withheld by prosecution, in the box for cross-examination.**—There is no provision in the Code analogous to the English practice entitling a prisoner to have a witness for prosecution who is not called, to be put into the witness-box for cross-examination. When the Judge did not comply with the request of the Counsel for the accused to be allowed to cross-examine the witnesses for the prosecution who had been examined by the Magistrate but whom the Public Prosecutor thought it unnecessary to call before the Sessions Court, held that omission had not prejudiced the accused—5 B. R. (C.C.) 85

[Note.—The accused may under S. 201 *infra* apply to have the witness examined.—*Ibid* at p. 86.]

14. **Function of the public prosecutor summoned up.**—It is not the object of the Counsel for the prosecution to get a conviction at any price. It is his duty to see that the case against the prisoner is brought out in all its strength, but it is not his duty to conceal or in any to diminish the importance of its weak points. His function is not to inquire into the truth but to put forward with all possible candour and temperance, that part of it which is unfavorable to the prisoner.—Harris Principles of Criminal Law. p. 418. 8 C. 121
15. **Duty of prosecution to call search witnesses.**—The fact that the prosecution believed that some persons who were present at a search had formed an opinion unfavourable to the prosecution story regarding it, is no reason why those persons should not be called by the prosecution, in as much as what those persons would be required to state in their depositions was what they observed and not what they thought. The prosecution is in duty bound to call such persons, unless it is of opinion that they would misrepresent facts and would mistate what happened—2 C. N. 438.
16. **Prosecution is not entitled as of right to examine additional witnesses.**—Where a witness is not examined by the Crown before the committing Magistrate, nor under the supplementary powers of S. 210, the Crown cannot demand as of right that such witness shall be examined at the Sessions trial—14 A. 212

(2) Procedure in Examination.

17. **Examination should be oral.**—The examination alluded to in the section means oral examination of the witnesses present (except in cases where evidence is taken by commission, or in any case where a witness is deaf or dumb). Such oral examination is therefore, the general rule, and it is of the utmost importance that the rule should be followed in all cases, where the witness is present to be examined. If a witness before a Magistrate

was not true in important particulars he may not be able to repeat the same statement, and may omit something important mentioned in his former evidence, or may deny on oral examination that he did make a particular statement before the Magistrate. The demeanour of the witness may be important for the assessor or Judge towards

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18. [Note.—It is extremely objectionable, in a Sessions trial to read to the prosecution witnesses their depositions before the committing Magistrate and to ask if what was there recorded was not true. [2 Weir 340. 7 A. & 2 N. P. 100. O. S. 86. 5 C. P. 33. W. R. (p. 1) 35.] In a Sessions

that it is not sufficient even with the consent of the parties to put in the deposition taken by the Committing Magistrate, and to allow the witnesses to be cross-examined therein [9 M. 53]. In the latter case, the attorney for the accused, suggested the procedure for expediting the trial and to this course both the Government prosecutor and the Court consented. The High Court did not interfere as there had not been any failure of justice.—See 13 W R 10.]

Witnesses must be examined de novo.—In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new, and the witnesses had not been examined before. To read to a witness his deposition in a former trial is not an examination of the witness in the presence of the accused.

W R (Sp) 1 13 38, 2 N 1 100 O S 86, 5 C. 1 33 Sp 1 W R 14 7 W R 8 8 W R 57 6 W R 11 12 W R 3 15 W R 6, 1 B L 37

19. [Note.—In 13 W R 10, the High Court declined to interfere, as the irregularity of procedure was not one by which the prisoners had been prejudiced the evidence having been read over and used at the express request of the prisoner. This view is directly opposed to that taken in the leading case 12 C N 140 [See also 9 B R 356] which lays down that "except where the law expressly permits waiver, the rights of an accused person should not be held to be lost by his consent to a procedure or to the admission of evidence which the law does not authorize."]

19A. **Evidence of "Gosha ladies"**—The deposition of Gosha ladies examined before the Committing Magistrate in the presence of the accused are not admissible in the evidence at the trial before the Sessions Court without examining those ladies in the latter Court—4 M. 11 (appx) xv.

20. **The order in which witnesses ought to be examined.**—Witnesses should be called up in such order as will make the evidence as much as possible one unbroken narrative—7 M S D 705.

21. **Can a Sessions Judge decline to examine prosecution witnesses.**—In a trial before a Court of Session, the Judge refused to examine 11 and of 17 witnesses produced on behalf of the prosecution. *Held*, on appeal by the Government that it was such an irregularity as was likely to have caused a failure of justice and it was therefore necessary that further proceedings more regularly conducted should be taken [(66) A. N 68]

22. **Judge cannot "stop a case"**—In a trial before the Court of Sessions, the Judge after having examined five prosecution witnesses out of seven, and there being no further direct evidence of the offence, asked the jury whether they wished to hear any more evidence, and on their stating that they did not believe the evidence, and wished to stop the case, the Judge recorded a verdict of acquittal. *Held*, that the procedure adopted was not warranted by law. The Judge was bound to examine the two remaining witnesses for the prosecution. No hindrance as to the reliability

or otherwise of the evidence ought to have been arrived at by the Judge or Jury until the evidence is before them and has been considered.—[20 M. 414]

23. **Judge cannot reject witnesses sent up by committing Magistrate**—It is the duty of the Sessions Court to examine all the witnesses sent up by the Committing Magistrate. That Court is not justified in rejecting any of the witnesses so sent up unless it has good reason to believe that such witness came into the Court-house with a predetermined intention of giving false evidence.—15 A 6

24. **Investigating officer should be examined.**—In all important cases and especially in cases of murder and identity, the police officer making the investigation should be examined as a witness regarding the circumstances of the investigation. It is generally important to the trying authority to know why, when and where the accused persons were arrested. It is often important to ascertain what the witnesses said when they were first questioned by the police, and whether such statements agree with those subsequently made by the witness in Court.—Rat 173

25. 1.

in charging the Jury, without doing so.—21 M. 86

26. 7.

the Committing Magistrate's Court, and each witness was thereupon placed in the witness-box by the counsel for the defence, it was held that counsel for the defence was not entitled to commence his examination of the witness by questioning him as to what he had deposed to the Magistrate's Court. Questions as to his previous deposition were under the circumstances only admissible by way of cross-examination, with the permission of the Court if the witness proved himself a hostile witness.—20 A. 155

27. **Cross-examination cannot be reserved.**—There is no provision of law which authorises, at a Sessions trial, the Judge to allow the witnesses for the prosecution to be examined one day and to permit the cross-examination of these witnesses to be reserved at a subsequent date.—2 Weir 381

28. **Witness cannot be turned out before cross-examination is finished.**—A Sessions Judge cannot stop the cross-examination of a witness and turn him out of the box before his examination is finished, because in the Judge's opinion he was not speaking the truth.—(100) A. N 144

29. **Undefended cases.**—Where an accused person is not defended, the Court should, in the interests of justice, test the statements of the witnesses for truth by prosecution by questions in the nature of cross-examination.—Per, *Prattinham C. J.*, in 7 A. 160.

(3) The Record in sessions trial.

30. **Record of evidence.**—The depositions of witnesses should be recorded in the first person and not in the third person.—S B. L. (up) 21.
31. **How to maintain and arrange the record.**—The principal documents in a Sessions case should be put in a prominent place on the record, and should not be buried in a mass of paper. [8 W R 30 57] There ought to be only one *Sessions record* which should be *continuous* and should contain accurately and comprehensively the whole of the proceedings in the trial, including examination of the accused [14 W R 36] A *Sessions note* should contain the record of

the defence set up by the prisoners in the Sessions Court [15 W R. 10] In cases of gravity such as murder and especially as regards confessions the records should be in plain and legible writing [Rat 837]

32. **Material Exhibits.**—When there are a number of persons under trial and a number of articles in evidence great care and precision are called for in recording the evidence so as to show how the different articles are connected with the different accused.—10 C P 23
33. **Petitions.**—On every petition made before him, the Judge should make an order granting or refusing it. An order merely to file it is improper.—See 6 C N 518

Examination of accused before
Magistrate to be evidence

securator and read as evidence

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the pro-

Notes.

1. **Shall be read as evidence**—If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Sessions Court, the whole of it should be read out.—5 M H (up) 4

2. **Object of the examination.** The discre-

meet facts standing in evidence against him, so that these facts should not stand against him unexplained 14 A 212 13 A 315; 5 A. 253 1 C L 436 6 C L 431, 6 C 86 6 C. 279 10 C 140 2 C N 702 7 C N 315 6 B R 91. 100. 710 10 M 295 1 M H 199, 5 C P 11 5 C P 9 1 Bar S 320 4 L B 244 1 L B 232

3. **Examination how to be taken down.**—

The examination of an accused person should be taken down in the language in which it is delivered, and as far as possible in the words used by him.—24 W R 51 See Rat 633 9 Bar S 86 21 C. 612

4. **Attestation.**—The Magistrate's attestation at the foot of the examination, when duly recorded in the terms of S 205 (=361) is sufficient *prima facie* evidence of such examination unless the

5. **The attestation should be in the Magistrate's handwriting.**—See S 361 (2) Cr P C *infra* ("such Magistrate or Judge shall certify under his own hand") It is not necessary for the validity of the examination that it should have been taken down in the Magistrate's own hand; it is enough if the examination is conducted in his immediate presence and careful control

[Rat 687] and he append the certificate required by S 361 (2) Cr P C in full. It is necessary to see that such statement has been deliberately made and recorded, that after being recorded it has been shown or read to the accused, and that the examination has been attested by the Magistrate, following a certificate to be given under his own hand [15 W R 83 20 W. H. 50 7 W R 19 23 W R 28] Mere initials is not sufficient [15 W R 83 21 W R 5]

Note.—Under the old Code, the certificate need not have been in the Magistrate's own handwriting.—See 5 W R. 55 Rat See 7 W R 49 23 W R 28]

6. **When the examination has not been recorded in full.**—When the examination of the prisoner by the Magistrate has not been recorded in full so as to include the questions as required by S 205 (= S 361) Cr P C it cannot be given in evidence at the trial before the Court of Sessions under S 366 (= 287) without further proof.—2 B H 395 2 B H 421 1 *phyl* 2 B H 422 Gann *Eppn* 2 B H 422 7 B H 50 Rat See 12 C L 120

Note.—Where a Committing Magistrate failed to record the examination of the prisoners or to attest it as required by S 205 C P (= S 361) and the Sessions Judge refused to admit in evidence and also to postpone the case for the purpose of summoning the Magistrate and taking his evidence the High Court refused to interfere.—12 W R 41

7. **Non-compliance with the provisions of S. 364.**—Where the provisions of S 205 Cr P C (= S 361) are not observed and there is no certificate by the Magistrate that the examination of the accused was taken in the hearing and in the presence of that officer and there is no statement that that examination contains the whole statement of the accused, a Sessions Judge acts rightly in rejecting the evidence and not allowing it to go to the jury.

12 W R 44 14 W R 10.

8. **Signature of the accused.**—The signature of the accused person to a statement made under S 361 Cr. P. C. should be made in the immediate presence and under the careful control of the Magistrate himself. To take the signature of the accused in an adjoining room before a clerk, and not in the immediate presence of the Magistrate is not sufficient compliance with the section [1st 687]. A confession which has not been signed by the accused is inadmissible in evidence against him [10 B 11 166].
9. **Admissions by a co-accused.**—The admission of an accused person cannot be taken to be corroborative evidence or any evidence at all against any body other than himself. S W. R. 25 W. R. 43. See 13 W. R. 14. 23 W. R. 24. 25 W. R. 43. 10 B. 311.
10. **Confession by a co-accused.**—If the confession of a co-accused is unsupported by other evidence its evidentiary value (against the other accused) is of the weakest kind.—*Per Barth C J* in 4 C. 483 (F. B.). 2 C. N. 749. 5 B. 85. 10 B. 310. 15 B. 66. 19 B. 195. 1st 186. 7 A. 160. 17 A. 324. 22 A. 445. 10 M. J. 147 (F. B.). 7 M. 102. 22 M. 491. 11 P. R. 1900. 1st Sec 10 C 328. 20 A. 434.
- [Note—If it is made in his absence, the confession of a co-accused is not entitled to any weight against an accused person.—10 C 970. 7 C. 65. 19 W. R. 37. 23 W. R. 43. 1 B. 475. 6 B. 121. 11 B. 11 196.]
11. **Evidentiary value of a confession of a co-accused.**—It has been held that the confession of an accused can be only taken into consideration against the other accused and cannot be evidence against them under S. 30 of the Indian Evidence Act [15 B. 66; 7 M. 11. (pp) xv]. Though the confession of a co-accused is evidence against the other accused, it can only be used in corroboration of other independent evidence. It cannot by itself be the basis of the conviction, and when supported by circumstantial evidence, the latter must be sufficient, standing by itself to support the conviction [24 W. R. 42; 4 C. 483 (F. B.); 1 A. 664. 675. 10 B. 319. 11 B. 475. 11 B. 11. 196; See 1 M. 163. 13 W. R. 14].
12. **Court has no option.**—It is not optional with the prosecution to place on the record, the confessional statements of persons treated as accused [15 M. 352]. The examination of the accused before the Magistrate should be put in as evidence in the sessions trial, whether it is told for or against the prisoner [13 W. R. 63].
13. **Statement of the accused must be taken in its entirety.**—If the statement made by the accused is to be used against him, it must be taken in its entirety [8 W. R. 38. 25 W. R. 15. 25 W. R. 23. 1 Bar. 8. 324. 1 Bar. 8. 327. Cr. R. 19 of 1888. See 7 W. R. 39; 7 W. R. 5. 10 B. 1. 332. 18 A. 78; 11 M. T. 316]. A confession must be considered as a whole, but where there is evidence to contradict the extenuating portion it may not be considered [1 P. R. 1472. See *Per v. Huppus* (1824) 1 C. and P. 671. *Per v. Stebbins* (1830) 1 C. and P. 397. *Per v. Clarke* (1830) 4 C. and P. 221. 10 C. 873. 1st 370. 21 W. R. 50].
14. **Confession by itself may be basis of conviction.**—The statement of a prisoner, whether taken as confession or examination, may be received as evidence [5 W. R. 1]. A voluntary and genuine confession is legal and sufficient proof of guilt [7 W. R. 41]. A prisoner may be convicted on his own uncorroborated confession [6 W. R. 73].
15. **Approver who has forfeited pardon.**—It is doubtful whether the deposition of an approver, taken before the Committing Magistrate may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn [7 C. 1. 65. 12 C. 1. 326; See 23 C. 50].
16. **Proof of identity.**—A deposition by an accused person is inadmissible in evidence against him in another proceeding, without proof of his identity [11 C. 580; (1837) 1 B. 70; see 21 W. R. 5]. But where the accused has admitted the charge both in his examination and in his defence, the conviction would not be illegal for want of evidence of identity [3 L. B. 208 (206)].
17. **Illegal pardon makes the statement inadmissible.**—Where the statement is made by an accused person to whom an illegal pardon has been tendered his deposition cannot be used against him.—2 A. 260. 24 B. 213; 5 N. P. 217. See 1 B. 610.
18. **Meaning of the term committing Magistrate.**—The phrase "Committing Magistrate" in Ss. 247 and 249 is merely a compendious way of referring to the Magistrate or Magistrates who held the preliminary enquiry on which the committal was made.—31 M. 40.
19. **When the examination cannot be said to be duly recorded.**—Where an accused person was induced by the police to make a confession of having taken part in commission of an offence, and the Committing Magistrate admitted it in evidence and examined the accused with respect to it and the accused admitted it, held that the accused being examined about a confession which was not admissible in evidence, the questions and answers to them could not be said to be duly recorded and were therefore legally inadmissible in evidence under S. 257 Cr. P. C.—1 L. R. 244.
20. **Accused making a statement to the Jail Superintendent.**—A statement was made by an accused person to the Superintendent of a District Jail with a request that it might be placed on record. (He had previously to this said to the Magistrate in answer to the question if he wished to make a statement that he did not wish to do so.) The statement was held to be admissible in evidence, under S. 257 Cr. P. C. as evidence of intention relevant to a charge under S. 124-A.—32 M. 3 (15).
21. **Time for tendering the examination.**—The examination of the accused should be put in before the accused is called upon to enter upon his defence.—2 Wren 361. See Madras Criminal Rules of Practice. Rule No. 241.
22. **Procedure.**—Before examinations are received in evidence under Ss. 247, 249 Cr. P. C. or S. 33 of the Evidence Act, care must be taken to see

that they are in proper form and duly attested or otherwise strictly proved. Such examinations when not so received are to be detached from the proceedings in the preliminary enquiry and annexed to the record of the trial.—Wilkins 114

23. **Statement need not be read out to the prisoner.**—It is not necessary for a Sessions

Judge to read out in prisoners' confessions made to them before a Magistrate, and ask them if they have any objection to the reception of these confessions. The examination of prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *prima facie* proof of the circumstances.—14 W R 9

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Proposed amendment to the section.—In section 288 of the said Code

(i) For the words "duly taken in the presence of the accused before the committing Magistrate" the words "duly recorded in the presence of the accused under Chapter XIII" shall be substituted.

(ii) After the words "as evidence in the case," the words "for all purposes" shall be added

ARRANGEMENT OF NOTES.

S 248 = S 219 (1872) as amended by Act XI. of 1871

1. Object and application of the Section.—

- (1) Object of the section
- (2) S 248 does not lay down the value or weight to be attached to statements admitted under the section
- (3) The object of the Legislature in framing the section
- (4) Scope of the section
- (5) Application of the section
- (6) Legitimate use of the powers under the section

2. Rules for admission in evidence statements before committing Magistrates.

- (1) Conditions precedent for admission.
- (2) Evidence of all witnesses examined by Magistrate cannot be admitted in a lump

- (i) Opportunity of explanation must be given
- (ii) The rules illustrated and explained

3. Use of statements made before committing Magistrate.

See S 249

- (i) Cases for using statements under S 248

4. Procedure.

- (1) When the witness is absent
- (2) Procedure preliminary to admission under S 248
- (3) Procedure when statements are introduced by the defence
- (4) General

I. OBJECT AND APPLICATION OF THE SECTION.

(1) Object of the Section.

1. **Object of the Section.**—This section is intended to provide for the contingency that may arise when a witness, who is produced before the Court of Session, holds back information and evidence and tells a difficult story in that which he gave in the preliminary inquiry before the Magistrate. It is only in extreme cases of delay or expense that the personal attendance of a witness before the Court of Session should be dispensed with and the evidence given by him before the committing Magistrate referred to. 2 A 610 See T W R 8

2. **Scope of the section.**—This section applies to all witnesses examined by a Magistrate before committing a case to the Court of Session.

and may be referred to the statement made by him at the trial, but a statement made on any

other occasion cannot be used except to corroborate or contradict the evidence given by him at the trial. 22 M J 270

[Note For example, statements made by witnesses to Advocates or Pleaders in their chambers.—5 Bur T 38]

(2) **S. 248 does not lay down the value or weight to be attached to statements admitted under the Section.**

3. There is nothing in the Section which prescribes the value or weight to be attached to the evidence admitted (under the section). Once admitted, the power given by this section in respect of the evidence is exhausted, the discretion of the Judge extending only to the question whether the former evidence is to be treated as evidence in the case. Once admitted it is on the same footing with all other evidence in the case, that is to say it is to be considered by the jury or by the assessors and the Judge, according to the nature of the

trial, as part of the material upon which the verdict or the finding is to be given. The value of the previous evidence is a matter entirely beyond the scope of the Section, as it is also of the Evidence Act. Its value is a question in the particular case for the jury or for the assessors, subject to the directions of the Judge in summing up or for the Judge, in cases where he is a Judge of the fact. Whether any portion or the whole of the evidence thus admitted is entitled to credit and if so to such a degree that a conviction may be based upon it wholly or in part, are very important questions for the jury, or assessors, or for the Judge as the case may be, but they are in no way affected by this Section.—*Per Planchon J* in 51 P. R. 1857.

(3) The object of the Legislature in framing the Section.

4. "It appears to me that the Legislature in framing this enactment desired merely to authorize the Court to take a particular statement made by a witness before the Committing Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent therewith was made by the witness before the Court itself, if the Court could see from the evidence of that same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief, *not that the Court should disbelieve wholly the testimony of witnesses given before it, and have recourse to the testimony of the same persons which was given elsewhere before another judicial officer on the occasion of making the investigation preliminary to final trial. The discretion which is conferred by the passage 'if the Court thinks fit' in S. 289 (-S. 288) is to be exercised upon substantial materials rightly placed before the Court and reasonably sufficient to guide the judgment of the Court to the truth of the matter and not as, was the case here upon mere speculation and conjecture.*"—*Per Planchon J* in 12 B. L. (appx)-15.

(4) Scope of the Section.

5. S. 288 is not intended to be used for the purpose of enabling the Court to take a witness' deposition wholly from the committing Magistrate's record and to treat it as evidence before itself. 7 A. 562 (84) A. N. 376. 28 A. 683. 21 A. 111. 1 C. N. 49. 12 B. L. (app) 15. 27 C. 295. 37 P. R. 1917. 12 M. 123.
- [Note.—A Court of Session is not at liberty to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh.—24 W. R. 11.]
6. Conviction cannot be based on statements before committing Magistrates alone.—S. 284 Cr. P. C. allows evidence taken before the committing Magistrate to be treated as evidence in the case but a conviction based on such evidence alone will not be justified.—21 A. 211. Rat 894. 12 M. 123. 21 W. R. 11. 21 W. R. 66.
7. Evidence admitted under S. 288 Cr. P. C. in corroboration of a retracted confession.—Evidence brought in under S. 288

Cr. P. C. cannot be accepted as a proper corroboration of a confession made to a Magistrate and retracted at the Sessions trial, especially when the confession was not voluntary.—27 C. 295. 21 W. R. 49. 7 C. N. 315. 12 M. 123. 10 M. 295. 15 P. W. 1915. But see 19 B. 728. 21 B. 316. 20 A. 133. 21 M. 53.

(5) Application of the Section.

8. S. 288 does not apply to statements recorded under S. 164 Cr. P. C.—Statements of witnesses recorded under S. 164 Cr. P. C. are admissible under the provisions of Ss. 115 and 157 of the Evidence Act for the purpose of contradicting the statements made by them in Court but they are not admissible for any other purpose. They are not statements to which the provisions of S. 288 Cr. P. C. apply.—17 O. C. 363. 15 P. W. 1915. See 23 C. 361. 7 W. R. 8.
9. S. 288 does not apply to statement before investigating officer.—Where a witness makes a statement to a police officer or to an investigating Magistrate, it is no evidence against the accused, even if the statement before the investigating Magistrate be made in the presence of the accused; for S. 284 Cr. P. C. does not apply to the case as it is not made before a committing Magistrate or a Magistrate holding an enquiry under Ch. XVIII Cr. P. C. A direction by the Judge to the jury that such a statement is strong evidence against the accused is misdirection.—31 M. 127. 12 B. 663.
10. "....."
11. Evidence taken on commission.—Evidence taken on commission issued by the Chief Presidency Magistrate during the course of an enquiry cannot be used as evidence at the High Court Sessions under S. 507 Cr. P. C. or S. 33 of the Evidence Act.—19 C. 113.
12. The section does not apply to pro.....
13. Statements of approver before committing Magistrate.—Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity the pardon was accepted, and the person to whom it was tendered made a statement as a witness before the Magistrate. The case having been committed

- (6) *Legitimate use of the powers under the section.*
14. Value to be attached to depositions admitted under section 288.—Such depositions are on the same footing as the other evidence on record [25 A. 613 : 31 P. R. 1887]. The deposition of a witness taken before the committing Magistrate if admitted at the sessions trial under S. 288 Cr. P. C. can be read as substantive evidence in the case. Such evidence may be used as much in favour of the defence as in support of the prosecution.—21 M. 414
15. Legitimate use of the powers under the section.—There can be no question that previous statements of witness may be admitted in evidence to contradict him but the use of such a statement as substantive evidence of the facts alleged by the witness on the prior occasion is fraught with the greatest evil and could never have been intended by the Legislature.—22 A. 415 10 C. N. cxliii Rat 720 But See G O L. 53
16. When the Sessions Judge is bound to enquire.—Great caution is enjoined on the part of the Sessions Judges before acting under S. 288 Cr. P. C. It is improper to bring on the record without further enquiry the evidence of a witness before the committing Magistrate who says that his evidence in the Lower Court was given under pressure and threat by the police—4 C. N. 49. 7 C. N. 345.
17. Statement of witnesses in a different case.—S. 288 does not apply to former statements made by witnesses in a different case incriminating the accused in his absence. They can be used

18. The words "duly taken" in S. 288.—Where the committing Magistrate refused to allow any cross examination of prosecution witnesses during the judicial enquiry in his Court before commitment—held that their depositions could not be treated as evidence at the sessions trial under S. 288 Cr. P. C. in as much as they were not duly taken within the meaning of that section.

21 C. 612 But See 12 C. N. 1014.

19. The application of S. 288 is to the discretion of the Sessions Judge.—The purpose of S. 219 Cr. P. C. (—288) is to make depositions given before Magistrates in the preliminary enquiry evidence for the purposes of the trial in the Court of session only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But we think the exercise of his discretion considering it as a matter of fact or law is open to review by the Court of appeal. When the case is under trial in a Court of Session, the Sessions Judge has the depositions given in the Magistrate's Court before him. If he finds that the statements of the witnesses in his own Court differ materially from those previously made by the same witnesses, it is his duty to examine them as to discrepancies and this is more especially his duty when the prisoners are undefended and contradictory testimony is given for the prosecution. But if he thus examines the witnesses he ought (See Taylor on Evidence Ss. 1300 and 1301 and the Indian Evidence Act S. 155) in ordinary cases to make the depositions upon which he has examined evidence in the case. . . . If the Sessions Judge has omitted to examine witnesses on obvious and important discrepancies in their statements this Court will in general direct that such examination be made."—Per West J in 11 B. R. 281.

II. RULES FOR ADMISSION IN EVIDENCE OF STATEMENTS BEFORE COMMITTING MAGISTRATES.

(1) Conditions precedent for admission.

20. (1) The evidence must have been recorded in the presence of the accused by the Committing Magistrate.—35 A. 260 : 21 A. 111 : 3 P. R. 1904 : 21 W. R. 5 23 C. 361 : Rat 729.

[Note.—But when the witness was again examined

21. (2) The witness whose evidence is sought to be put in— the Court
1 W. R. 14
5 C. 958 :
23 P. R.

[Note.—But when the witness was again examined by the Committing Magistrate in the presence of the accused and admitted his former statement recorded in the absence of the accused as true, it might be regarded as incorporated in the record—35 A. 260]

22. . . .
23. (1) The particular passage or passages in the previous deposition with which it is sought to contradict the witness must be put to him—7 A. 602 : 4 C. N. 49 : See 31 C. 142 (F. B.).
- (2) Evidence of all witnesses examined by the Magistrate cannot be admitted in a lump.

24. The section does not authorise a Judge to admit the evidence, before the Magistrate, of all the witnesses or a number of them together, thereby causing a complete change of the course and practice of law especially laid down in S. 288 Cr. P. C. [9 M. 83]. The section applies to individual witnesses each case itself [Idid].

(3) *Opportunity of explanation must be given to witnesses.*

25. The Judge is bound to put to the witnesses, whom he proposes to contradict by their statements made before the committing Magistrate, the whole or such portions of their depositions so as to afford them an opportunity of explaining their meaning or denying that they had made such statements and so forth.—7 A 862 4 C N 19 See 31 C. 112 (F.B.).

(4) *The rules illustrated and explained.*

26. Where the witness did not reside from his statements made before the committing Magistrate.—The admission of such deposition by the Sessions Judge under S 288 Cr P C was improper.—4 C N 49.
27. Great exercise of caution necessary.—

committing Magistrate was given under pressure and threat by the police, the Sessions Judge will be acting discreetly if he first makes some enquiry by examining the police officer as to the restraint, which the prisoner alleged to have been used in obtaining the statement.—1 C N 49 Rat 960 7 C N 315; See 21 A 175. 22 A. 145 27 C 295

28. Procedure to be followed in admitting statements of witnesses under S. 288. See V Procedure (2).
29. Discretion of the Judge.—Depositions of witnesses taken before the committing Magistrate may in the discretion of the Judge be admitted in evidence at the trial of the accused in the Sessions Court.—28 A. 683
30. Depositions taken by the committing Magistrate.—cannot be admitted in evidence without examining the witnesses afresh by the Sessions Judge.—21 W. R. 11; 36 M. 159

31. Admission of statement of approver made before the committing Magistrate.—A case having been committed to the sessions, the approver totally repudiated his statement before the committing Magistrate—held—that his repudiation did not prevent the Sessions Court from considering the evidence of the approver under the provisions of S. 288 Cr. P. C.—21 A 175 6 C. L. 63.

32. Deposition must have been taken in the presence of the accused.—The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by S. 219 Cr. P. C. (—S 288), that is it must have been duly taken by the committing officer in the presence of the accused. The certificate of the Magistrate is a *prima facie* evidence, under S. 60 of the Evidence Act of the circumstances mentioned with reference to the facts necessary to render the deposition admissible under S. 219 Cr. P. C.—21 W. R. 5

33. What the word 'examined' in S. 283, means.—S 284 appears to contemplate that a witness shall be first examined and that after that his evidence before the committing Magistrate may be treated as evidence at the sessions. It cannot be said that the mere examination of a witness as to whether he made the deposition before the Magistrate is an 'examination' within the meaning of S. 288. The section does not authorize a Judge to admit the evidence, before the committing Magistrate of all the witnesses or a number of them together even with the consent of both the parties.—9 M. 63; See 8 B. R. 638.

34. Portions of depositions sought to be brought on the record must be put to the witness.—The Judge is bound to put to the witnesses whom he proposes to contradict by their statements made before the committing Magistrate, the whole or such portions of their depositions as he intends to rely upon in his decision, so as to afford them an opportunity of explaining their meaning or denying that they had made any such statements and so forth.—7 A 862; See 11 B. R. 251 [Per West J.]

III. USE OF STATEMENT MADE BEFORE COMMITTING MAGISTRATES.

(1) *Evidence brought on record under S. 288 is substantive evidence.*

35. Evidence brought on the record under S 288 Cr. P. C. must be treated as substantive evidence and there is nothing illegal in basing the conviction on such evidence, if it is supported by other evidence.—*Per Scott Smith and Bramwell J.*—37 P. R. 1917 51 P. R. 1857; 29 A 683. 22 A. 145. 21 A. 111. (88) A. N. 350; Rat 684

[Note.—The evidence can be read as substantive evidence and may be used as much in favour of the defence as in support of the prosecution.—21 M. 413.]

36. In corroboration of retracted confession.—Evidence brought in under S 284 Cr P C

cannot be accepted as proper corroboration of a confession made to a Magistrate and subsequently retracted.—37 P. R. 1917; 12 M. 123; 2 Weir 609 (72-72) L. B. 447 (195) 27 C. 295.

(2) *Statements before committing Magistrate repudiated at the trial.*

37. ————— it. o. ad ho
- Sessions Court but transferred under S. 288 Cr. P. C. to the record of the Sessions Court, have no evidentiary value at all.—15 P. W. 1915; 22 A. 415; 12 M. 123; Rat 960. 12 B. L. (ap) xv.
38. Conviction based on repudiated statement.—A conviction based solely on evidence given by the witnesses before the committing

Magistrate and retracted by them at the trial is unsatisfactory.—51 P. II. 1847; 17 P. II. 1919. 21 A. 111; 25 A. 683. Rat 891; See Rat 833. Rat 966 21 W. R. 49; 12 M. 123; 2 Weir 371; 7 A. 862. See 21 A. 173; 10 C. N. cxliii.

[**Note.**—Where the statement of a witness before the committing Magistrate was brought on the record as evidence under S 283 Cr. P. C. by the

could be relied on, *held*—that the Sessions Judge did not show a proper discretion in allowing the former statement to be treated as evidence.—1 C. N. 345]

40. **Repudiated statement must be corroborated in material particulars before being acted on.**—The evidence given by a witness before the committing Magistrate and the Coroner as having actually seen the accused murdering the deceased was wholly retracted and repudiated before the Court of Sessions and the witness averred that the former statement was given under threat and coercion. *Held*, that the evidence before the Magistrate could not be treated as substantive evidence under the section and without corroboration on all material particulars, the accused could not be convicted.—10 C. N. cxliii [22 A. 445 Fil.]

(3) **Rules for using statements under S. 283 Cr. P. C.**

40. **By counsel for the accused.**—Rules—The counsel for the prisoner, in a sessions trial, is not entitled to refer to the depositions given before the committing Magistrate for the purpose of contradicting the witnesses in the sessions trial without having drawn their attention to the alleged contradictions in their depositions before the committing Magistrate and without giving them an opportunity of explaining.—*Per Princep O C J* 31 C. 142 (F. B.) [overruling 6 C. L. 390] See Rat 343 11 B. II. 281. Con 5 W. R. 54

IV. PROCEDURE.

(1) **When the witness is absent.**

45. **General Rule.**—It is only in extreme cases of

Note.—The deposition of an absent witness is only admissible when the prisoner has had the right and opportunity to cross-examine. [21 W. R. 12] A Sessions Judge acts improperly—in excusing the attendance of a material witness on the ground that his attendance could not be procured without an expense of Rs 500 (which he

41. **The evidence must be that of a witness.**—The evidence of a person taken in the presence of the accused, who, being found implicated in the crime is committed along with the accused to the Sessions cannot be used under S 283 in as much as the person is not a person produced and examined as a witness in the trial within the meaning of S. 284—23 P. R. 1883.

42. **Preference over statements made at the trial.**—The testimony of a witness given before the committing Magistrate may by special provisions of S 283 Cr. P. C. be accepted as substantive evidence if he is examined at the trial before the Sessions Court, and may be preferred to the statement made on any other occasion by him, but cannot be used except to corroborate or contradict the evidence given by him at the trial—36 M. 159

43. **Statement may be used by Judge in favour of the defence.**—Such evidence may be used as much in favour of the defence, as of the prosecution and the power of the Court is not restricted to permitting the production of the evidence before the committing Magistrate for the sole purpose of contradicting the witness at the sessions trial—24 M. 414 14 P. R. 1891 See 3 P. R. 1904

43A. **Preference to statements without making them exhibits.**—A Sessions Judge having read to the jury deposition of witnesses taken before the committing Magistrate, which did not appear to have been ever read over to them, and were not recorded in the Sessions trial, the High Court draw his attention to S 145 of the Evidence Act and asked him to note for his future guidance that when he admits such statements he should record them as exhibits in his own proceedings.—Rat 924

44. **Use of the statement in appeal.**—Unless the appellant shows that the evidence taken before the Magistrate had been used in evidence in the Sessions trial, the evidence cannot be referred to in appeal.—3 B. L. (191) 1411

45A. **Dead witness.**—When it is proposed to read as evidence the deposition of a witness alleged to be dead, the death of the witness should first strictly be proved unless it is admitted on the other side and the reading of the deposition not objected to.—1 B. L. (19) 50

(2) **Procedure preliminary to admission of statements under S. 283 Cr. P. C.**

46. When a Session Judge admits a deposition of a witness taken before the committing Magistrate as evidence in the trial before a Sessions Court under S 283 Cr. P. C., he should in his proceedings distinctly note that he has done so and give the de-

to a previous deposition, the parts thereof to which the cross-examination is directed should be

set out in the Judge's minute of the proceedings the deposition itself, need not in such a case, be made a portion of the evidence in the Sessions Court unless the Government pleader desires that it should be so recorded or the Sessions Judge adopts it under S. 258 Cr. P. C.—Rat 343.

(3) *Procedure when the statements are introduced into the record by the defence.*

47. The pleader or counsel for the defence of the accused may introduce, as *part of his own evidence* a previous deposition made by a witness and in that case, the depositions must be numbered and translated in the minute of the proceedings.—*The prosecuting counsel or pleader has a right in such a case to question the witness as to the apparent discrepancies and contradictions between the two statements.* ** A witness may be cross-examined on evidence previously given by him without the introduction of the previous deposition as evidence by the cross-examining counsel. But before contradicting the witness in this way, his attention *is to be called to the part of the writing that is to be used for this purpose.* The Judge may require production of the document and then use it at his discretion. A cross-examination is necessary in order to introduce the alleged contradictory writing.—*Rat 343 (Bhagiran) Rat 313 (Geronthan).* Rat 720.

(4) *General.*

48. Question as to admissibility should be determined immediately on tender.—When the evidence of a witness given before the committing Magistrate is tendered in evidence, the Sessions Judge should consider and determine the question of its admissibility *then and there*. If he admits the same, he should record his reasons.—1 B R 156

49. Comparison of the two statements.—The devious Judge should compare the deposition given before the Magistrate with the deposition given before him, so as to enable him to put questions in cross examination, the answers to which might clear up discrepancies or possibly elicit facts favorable to the prisoner. 5 W. P. 34

50. **A retracting witness is not necessarily hostile.**—The mere facts that at a sessions trial, a witness tells a different story from that told by him before the Magistrate *does not make him necessarily hostile*. The proper inference to be drawn from contradictions in the whole texture of the story is not that the witness is hostile, to this side or that, but that the witness

is one who ought not to be believed unless supported by other satisfactory evidence.—13 C 53

51. Witness must be regularly examined.—To read a previous deposition of a witness and then ask him if it was true, instead of regularly examining him, is irregular. Such a procedure amounts to putting a leading question to the witness, and also is on implied intimation that the same story is expected from him again.—
5 C. P. 33. 2 N. P. 100; D. S. 86. W. R. (sp) 35-
13. 1. See W. R. 11.

52. Judge should intimate his desire to admit a previous deposition to the prosecution and the defence.—Before a Judge presiding at a Criminal trial can use, as evidence, on which in whole or in part to form his judgment the deposition of a witness taken before the committing Magistrate, *he is bound to let it intention*, or the possibility that he may do so, be known to the accused and the prosecution in order to afford the accused and the prosecution an opportunity for testing such statement by cross-examination or otherwise dealing with such statement as part of the case which may be taken into consideration by the Judge. Otherwise it is impossible for the prosecution or the defence to deal with the matters which may influence the Judge's mind in coming to a decision—
(56) J. N. 236

53. Depositions not to be referred to till after the witness has been examined.—The former deposition of the witness ~~cannot be read before taking his evidence~~. After taking the fresh evidence, the former deposition may be referred to to refresh the witness' memory; to obtain his explanation of the discrepancies or to contradict his present testimony. [1 W. R. 14]. The deposition of a witness before the committing Magistrate, ought not to be referred to in his examination in chief [13 W. R. 19 See 24 W. R. 11; 34 P. R. 1883]

51. Right of
ing used
upon which
inspect a
a witness
benefit of
of the facts, (2) to check the use of improper
documents and (3) to compare his oral testimony
with his written statement but I doubt whether
he is entitled except for their particular purpose
to question the witness as to other and independ-
ent matter continued in the same series of writ-
ings—*170 Field J. in S. C. 739.*

289.. (1) When the examination of the witnesses for the prosecution and the examination

Procedure after examination of witnesses for prosecution. (if any) of the accused are concluded. the accused shall be asked whether he means to adduce evidence.

(2) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in case tried by a jury, direct the jury to return a verdict of not guilty.

(f) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Notes.

S. 289 S. 251 (1872) S. 372 (1861)

1. **Omission to examine the accused.**—It is not obligatory for the Sessions Judge to examine the accused under S. 312 Cr. P. C. more especially when the accused has not challenged the evidence. S. 289 of the Code makes such examination optional for the Judge, not imperative.

[A. C. J. 55. But see 111 C. 84]

2. **the accused and that they should not rely upon**

the admissions made by him in the course of the trial, for convicting him—24 M. J. 329. *Bay v. Beltrami* 4 Moore P. C. (N. S.) 460. 10 Cox C. C. 616. 2 C. 23. 12 W. R. 3. 10 W. II 69. 23 W. R. 59. 18 M. J. 330. 9 W. 83. 26 R. 50.

- 2A. **Hearsay evidence.**—The moment a witness commences giving evidence which is inadmissible, e.g. hearsay evidence, he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the jury, to reject the hearsay evidence and on the legal evidence alone—7 W. II 25.

3. **Gap in prosecution evidence cannot be filled by statements by accused.** It has been held that in a prosecution for libel, the *must affirmatively prove* that the defendant published the libel complained of. Admission as to publication cannot be used to fill a gap in the prosecution evidence. [36 M. 177]. A gap in the evidence of the prosecution cannot be filled up by any statement made by the accused in his examination. [27 M. 237. 29 M. 372. 26 C. 10]. A Sessions Judge failed to notice certain damaging statements of the accused made by him before the committing Court and the Judge upon other evidence acquitted the accused, *but* that the order of acquittal could not be interfered with by the Chief Court. [16 P. R. 1891]

4. **Previous conviction.**—An examination of an accused person in respect of previous convictions which it may be necessary or permissible for the prosecution to prove is without legal warrant or justification.—*J. v. Jacob J.* in 25 R. 121 (149) 28 C. 133.

- 4A. **Conviction on evidence adduced by co-accused.**—An accused person, in the absence of evidence in prosecution file against him,

should not be convicted on the evidence given against him by the witness called by the co-accused in his defence. 5 M. T. 75.

5. **When a Court may acquit.** It is only in a case in which there is no evidence that the accused committed the offence that a Court can acquit under S. 289. Where there was direct evidence, which if believed, would establish the offence, the fact that the Judge did not himself believe the evidence was no ground for withdrawing it from the consideration of the assessors or from the jury.—2 Weir 382

6. **Meaning of the expression "there is no evidence."**—The words "there is no evidence" in S. 289 should not be extended so as to mean "an unsatisfactory, trustworthy or conclusive evidence." The meaning of the third paragraph of S. 289, is that if at a certain stage of a session

of assessors has no such power because only he considers the evidence unsatisfactory, unsatisfactory or inconclusive, a Court acting in this way, acts without jurisdiction and its order in discharging the accused is illegal.—10 A. 111. (88) A. N. 153. 10 W. R. 20. 10 H. 111. 11 S. 271. 10 C. 81. 9 C. P. 24. 8 W. R. 875. 24 M. 523.

7. **Duty of the Judge when there is no evidence.** When there is an evidence against a prisoner, the Judge ought to charge the Jury for an acquittal and not leave the jury to say whether the prisoner is guilty or not. 7 W. R. 30. 26 W. R. 19

8. **Judge is not to supplement the evidence by summoning additional witnesses.**—Although a Sessions Judge has a discretion to summon a necessary witness who has not been put up, it is not for him, as a general rule, to supplement a defective inquiry in the part of the Magistrate and Police. 2 Weir 382.

9. **Judge cannot allow cross-examination to be reserved.** There is no provision of law which authorises, at a summary trial, the Judge to allow the witnesses for the prosecution to be

23. **Examination of prosecution witness after the accused has made his defence.**—An accused person should be called upon to enter upon his defence as it is his duty to produce his evidence when the case for the prosecution has been brought to a close. Where there is one witness for the prosecution, it was recalled after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence to rebut the evidence of the witness, the High Court quashed the conviction and ordered a new trial [6 B. L. 600 (N) 13 W. R. 11]. This can be allowed to be done only to correct a mistake and not to apply the prisoner [3 N. P. 271] where the prisoner had full notice of the evidence to be given by such witness and made his defence in allusion to the evidence of the witness, the High Court refused to interfere [13 W. R. 36]. It would be improper in such a case to refuse to summon witnesses proposed to be called by the accused, to meet the fresh evidence [8 W. C. 714].
24. **Nature of the evidence should be noted in the minutes.**—The Section provides that the accused is to be called on to enter upon his defence and to produce his evidence. It he makes any statement in defence, it should be recorded. If he does not voluntarily make any statement and declines to answer any question put by the

Court, the fact shall be noted, and when there is nothing else to show the nature of the defence, a note of the address to the Court, if any (under the following section) should be recorded. *The record is a complete unless it shows the nature of the defence set up*—15 W. R. 16.

25. **Written statement.**—There is nothing in the law which prohibits a written defence. If presented it should be received—2 A. 356, 357, 16 W. R. 33. *But See* (33) A. N. 1.
26. **Cross-examination of witnesses by Court.**—It is not intended that under S. 163 of the Evidence Act a Judge should have power to cross-examine witnesses for the prosecution; and as general rule witnesses should be left by the Court to a pleader to be dealt with as laid down in S. 133 of the Act, it not being the province of the Court to examine witnesses, unless the pleaders on either side have omitted to put some material question or questions.—6 C. 270.
27. **Threatening of witnesses by Court.**—It is illegal on the part of a Court to threaten witnesses with the penalties of the law unless they are evidently giving wilfully false evidence, or persistently refusing to give evidence of facts which must be within their knowledge—14 A. 212.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely and making such comments as he thinks necessary in the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

Notes.

1. **Duty of the Defence Counsel.**—The duty of the defence counsel is to act as an advocate and not to any extent as Judge. He has before him as his object the acquittal of the accused. He is to put himself in the place of the accused and so is not under any obligations which the accused would not be under. Thus he is not obliged to divulge facts with which he may be acquainted but which are unfavourable to the prisoner.—Harris Prin. of Cr. Law p. 419.
2. **Counsel in opening should state only facts which he proposed to prove.**—It is contrary to the administration and practice of the criminal law that a defence counsel should state to the jury as alleged existing facts matters which the prisoner may be held to have by way of instructions, but which they do not propose to prove by leading evidence. *See R. v. Shumman* 15 Cox C. C. 122. *Archibald* p. 222.
3. **Nature of defence should be noted in the minutes.**—See Note No. 24 under S. 289.
4. **Accused not bound to account for his movements.**—Unless there has been *prima facie* sufficient legal evidence to convict an accused of an offence, he would not be bound to account for his movements at or about the time of the commission of the offence. [10 C. 970]. An accused person being merely in the defensive was not

duty to say one but himself. He cannot be convicted merely because he has not tried to explain the circumstances appearing in evidence against him. [Rai 686. Rai 5.] The accused in a criminal case is merely on the defensive and unless there is any positive admission of a fact by him omission on his part to explain what indeed can be explained without his explanation should not be pressed against him. [25 H. 331.]

5. **No adverse inference can be drawn on failure of accused to produce his witnesses.**—See Note No. 20 under S. 289 above.
6. **Accused entitled to examine witnesses.**—An accused person is entitled to have the witnesses named in his defence examined. [2 W. R. 6. 3 W. R. 37.] It is illegal to examine the witnesses in the defence in the absence of the accused. [1 B. L. (S. N.) 8.] The conviction with no quashed if the accused is not allowed an opportunity to examine material witnesses [3 W. R. 21. 21 W. R. 60].
7. **Refusal to examine defence witnesses present in Court.**—There is no instruction in a case of false evidence if a Judge points out to the jury the contrast between the evidence for the prosecution and the course followed by the prisoner (namely, a simple denial of the charge coupled with a refusal to examine the witnesses in attendance), so long as the Judge

left it to the jury to decide between the opposing statements and to credit whichever they thought most worthy of belief.—2 N. R. 60.

8. **Accused person may cross-examine witnesses called by co-accused.**—An accused person must be allowed to cross-examine witnesses called by another co-accused for his defence if the case of the other is adverse to that of former.—21 C. 401.

9. **English Law.**—In England an accused person defended by counsel, is not allowed to make a statement in addition to the defence of counsel except under very special circumstances [Reg. v. Ruler 8 Car and P. 531.] Nor can a prisoner so defended reserve the right to address the jury [Reg. v. White 2 Camp. 28.]

10. **Trial before day fixed is illegal.**—The trial of the accused in the absence of the witnesses for the defence and before the day fixed in their

summons, is a serious miscarriage of justice or at all events is an irregularity sufficient to prejudice the accused in his defence. In such a case conviction will be reversed and a new trial ordered.—M. H. C. Pro. 1882.

11. **Plea of private defence urged by pleader.**

—If the accused pleads not guilty, and does not admit the act, but his plea advances in his argument the plea of private defence the duty of the court is to accept the plea if it appears upon the evidence either from the prosecution or from defence that the act was done by the accused in self-evidence.—1 C. N. 515.

12. **Reference to well-known treatises.**—A court will exercise a wise discretion in allowing a well-known treatise such as Taylor on Medical Jurisprudence to be referred to in cases depending upon medical evidence.—10 C. 140; 12 C. L. 64.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Notes.

1. **Accused's right to have witnesses named in the list summoned.**—Under S. 363 Cr. P. C. (=S. 291) a prisoner is entitled as a matter of right, to have any witness named in the list, summoned and examined [23 W. R. 56; 13 W. R. 34; 13 W. R. 1; 12 W. R. 22; 2 N. P. 148; See 2 W. R. 6; 3 W. R. 21; 5 W. R. 65.] It is for the accused person and not for the Judge to say what amount of evidence is proper to be placed before the jury in order to establish his case. A Judge cannot refuse to enforce the attendance of certain witnesses on the ground that there is ample evidence on the point. [7 C. N. 156.]

2. **Right to enforce attendance.**—A party has a right to call upon the Court to compel the attendance of witnesses who have been summoned but had neglected to attend.—G. C. N. 543; 10 C. 931. Rat 594; See 4 N. 329.

3. **Adjournments for enforcing attendance.**—When process has once been granted against certain witnesses for the defence, the Court is bound to assist the prisoner in causing their attendance, if they fail to appear on the day of hearing. The Court acts arbitrarily in refusing to adjourn the case for the purpose.—2 Weir 383; 10 C. 931. Rat 594; 4 B. R. 938; See 12 W. R. 44; 15 W. R. 34; 18 W. R. 20; 23 W. R. 58.

Note.—When the accused has not his witnesses in attendance, the Judge should call on the accused to state the grounds of his defence, and if necessary postpone the case to give time to the accused to produce his witnesses [23 W. R. 68].

4. **Witnesses not forthcoming.**—Where it was not shown that there were any witnesses forthcoming other than those whom the

Sessions Judge did examine, the High Court refused with reference to S. 363 Cr. P. C. (=S. 291) to interfere with the Sessions Judge's proceeding.—12 W. R. 73.

5. **Witnesses for defence who go against the accused.**—When a prisoner makes a distinct

statement or any part of it.—11 W. R. 8.

6. **Witnesses implicated in the charge.**—An accused person is entitled to have his witnesses summoned and examined, even if those witnesses were named as implicated in the offence with which the accused is charged.—6 B. L. (4p) 65.

7. **Witnesses other than those named in the list.**—When the accused has refused to give a list of his witnesses, to the committing Magistrate, the Sessions Judge is not obliged to summon any at the trial unless he is satisfied that their evidence is material [19 A. 502] The summoning of the witnesses by the accused person through the Sessions Judge is not a matter of "right" [4 W. R. 29] But a Sessions Judge has an inherent power, if he thinks proper, to summon other witnesses than those named in the list delivered to the committing Magistrate.—[6 A. 669]

8. **Witness refused by the pleader for the accused.**—It is no part of the Judge's duty to examine a prisoner's witness, when his pleader has refused to do so.—(83) A. N. 189.

292. If the accused, or any of the accused, adduces any evidence, the prosecutor shall be entitled to reply.

Proposed amendments to the section.—In section 292 of the said Code, for the words "adduces any evidence" the words "examines any witness under the provisions of section 290" shall be substituted, and the following proviso shall be added to the section, namely:—

"Provided that the prosecutor may in any case, with the leave of the Court, be heard in reply on a point of law."

Notes.

1. **The change in the Law.**—"We have restored this clause substantially to the form which it had in the Code of 1872 and in the High Court's Cr P Act 1875. We think that the right of reply should depend on the fact whether the accused does or does not produce evidence"—*Sol. Opin. Rep.* The following will show the change in law as between the Codes of 1882 and 1898.

Code of 1882.

If the accused, or any of the accused have stated when asked under S 289 that he means to adduce evidence the prosecutor shall be entitled to reply.

Code of 1898.

If the accused, or any of the accused, adduces any evidence, the prosecutor shall be entitled to reply.

2. **Effect of the change.**—Under the Code of 1882, it was ruled that the prosecution was entitled to reply only when the accused had stated, in reply to the question put to him under S 289 of the Code, that he meant to adduce evidence. If during the cross-examination of witnesses for prosecution an accused person put in documentary evidence to support his defence before he had been asked under S 289, whether he meant to adduce evidence the prosecution would have no right of reply [See ('90) 17 C 330 ('90) 14 B 136 ('86) 14 C 215 ('84) 10 C 1024. *But See* ('85) 11 M 339 ('92) 11 A 212 ('93) 16 A 88 the three latter rulings laying down that the Crown had the right of reply, if documentary evidence had been put in by the accused during the examination of witnesses for the Crown, i.e. before the stage of S 289 had been reached]. The words "when asked under S 289" do not appear in the Code of 1898, and there is a conflict of judicial opinion as to the scope of the amended section. For example, the view taken in the rulings in (1906) 30 B. 421 (1908) 10 C N CCLXXII (1907) 4 L B 5 (7), (1904) 8 C N CCIX and (1902) 6 C N CCCIII is the same as that in ('85) 11 M 339 and ('92) 11 A 212 and ('93) 16 A 88 and is in conflict with (1916) 43 C 426 63 P L 1811 (1910) 7 L B 84 (1909) 11 B R 177 and (01) 31 C 1050.

3. **Proposed change of Law.**—It has been proposed in the Bill to further amend the Code of Criminal Procedure 1898 (No 20 of 1917), to substitute for the words "adduces any evidence" in S 292, the words "examines any witness under the provisions of section 290." The effect of the change will be to settle, once for all, the question whether, the putting in of documentary evidence as exhibits during the cross-examination

of the prosecution witnesses is adducing evidence within the meaning of S 292.

4. **The law as expounded by Beaman J.**—"Merely putting in papers through a witness

which the accused can fairly get in to his own advantage by cross-examination while the case is in the hands of the prosecution deprives him of his right to the last word. But documentary matter which ought properly to come in as evidence in rebuttal, ought not to be put in during the cross-examination of the witnesses for the prosecution."—11 B R 177

5. **Sanderson C. J. on the rule as to right of reply.**—"S 292 must be read in connection with S 289 and must be construed accordingly. Reading the two sections together, the right to

for the prosecution is concluded (S 289) The accused does not lose his right of reply, if he gets certain documents exhibited in the case by putting them in, during the cross-examination of the witnesses for the prosecution" [43 C 426]

6. **The Judge's discretion.**—When evidence oral or documentary is adduced by the defence through the mouths of the prosecution witnesses, it is for the Court to decide in each particular case, whether that evidence is such as to take the prosecution by surprise, and to assign the right of reply accordingly, but the Court must exercise its discretion cautiously and sparingly in such circumstances. S 292 is intended to give the right of reply to the prosecution, whenever at any stage evidence is recorded for the defence, of which prosecution cannot be deemed to have had notice and the prosecution must be presumed to have had notice of all relevant facts with the knowledge of its witnesses—*Per R. Knight Fagure in* 1 S 81 [30 B 421 10 C 140 10 C N. *celebrum R v Holchester* 10 Cox 226 R]

Note.—This view is disapproved by Beaman J.—10 11 B R 177]

7. **Hartnoll J. per curiam:**—"I am of opinion that it is doubtful as to what meaning should be attached to S. 292.—It may have been intended that it should stand in a time relation to S. 289, in which case the fact that the defence has put into evidence documentary evidence during the cross-examination of the prosecution witnesses would not take

away the right to the last word of the defence; on the other hand, it may have been intended that, if the accused produced documentary evidence at any stage of the trial, the prosecutor should be entitled to reply. I incline to the latter view but I consider the matter doubtful. That being so, I am of opinion, that the benefit of the doubt should be given in favour of the accused"—7 L. B. 18.

[Note.—1 L. B. 5 in which the defence was held to have lost the right of reply because the counsel for the accused had put in a newspaper report as an exhibit during the cross examination of defence witnesses was dissented from]

8. Previous statements put in under S 288 Cr. P. C.—In a trial at the High Court Sessions, the accused put in a statement under S. 162 made by him to a police constable during the cross-examination of a witness and immediately after the case for the prosecution was closed and before he was asked by the Court whether he meant to adduce evidence, put in depositions of certain witnesses for the prosecution taken by the committing Magistrate, for the purpose of contradicting their evidence as given in the Sessions trial. *Held* (Per Gend J.), that the statement as well as the depositions formed part

31 O. 1050

- D. When some of several accused call evidence.—The law formerly was that where two or more prisoners were charged with distinct offences in the same indictment, the calling of

evidence on behalf of one, does not give the Crown a right of reply as against the others [2 Hrd 247. See *R. v. Truitt* 15 Cox 299 Archbold pp. 223 224; Halsbury's Law of England Vol. IX p. 369 (footnote)] The rule is however thus laid down in 19 B. 361: "Where one of the accused tried jointly, adduces evidence, but the other accused do not, they must all follow one another in their defence under S 290, and the prosecutor will be entitled under S. 291 to reply generally on the whole case."

[Note.—In England, the rule laid down in 19 B. 360; would apply, when the evidence given applies equally to the case of all the accused—See *R. v. Hayes* 2 Mand Rob 155. *R. v. Davis* 17 T. L. R. 164].

10. The Reason of the rule.—Where the defence calls no witnesses, the prosecutor ought not,

principle that where the defendant adduces evidence only as to his character, the right of reply, though allowed by law, is in practice never exercised [See Archbold p. 223 Henderson's Cr. Pro p. 661]

11. When the rule applies.—The right of reply would seem to depend not on what may be said but on what is done, and if no evidence is produced, there should be no right of reply by the Prosecutor.—*Rat* 938.
12. Private prosecutor's right.—Their Lordships of the Full Bench hearing a case on review from the Sessions allowed a private prosecutor to reply, he having appeared originally before the Sessions—S C. N. 278.

293. (1) Whenever the Court thinks that the jury or assessors should view the place in which View by jury or assessors. the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

Notes.

1. "Whenever".—But not after the opinion of the assessors or the verdict of the jury has been recorded. If, in the Sessions trial, the Judge should think it necessary or desirable to visit the place of the alleged occurrences, he should give due notice to the parties and should proceed thither with the assessors before the case is closed. [1 C. L. 143]. Once the assessors gave their opinions, it only remained for the Judge to give judgment under 309, subsection 2—[9 Bar T. 133]
2. Observation of the locality by the Judge alone.—It is not competent to the Sessions Judge to take into account any observations of the locality made by him alone after the assessors had given their opinions. If at an earlier stage, he thinks that the assessors should view the place,
3. "jury or assessors".—jury at

up, to view the locus in quo.—Archibald p 224. See R. v. Martin 12 Cox C C 201.

4. Judge should not delegate examination of witnesses on the spot to assessors.—In case of a view of the scene of an alleged offence, it is the duty of the officer conducting the jury or assessors to the spot not to suffer any person to speak to them. The Judge therefore cannot delegate to the assessors his own function of examining witnesses on the spot.—5 W. R. 59.
5. If the Jury receives evidence in the absence of the Judge.—Where it is alleged that the jury upon the view have received evidence in the absence of the Judge and of the prisoner, it is for the Court before which the trial

takes place to investigate the facts and ascertain whether the alleged irregularity has occurred.—*r. v. Martin*: L. R. 1 C. C. R 378

6. Object of inspection.—A Court cannot take a view of the locality for any purpose other than that of understanding the evidence adduced in Court. The Court ought, in every case, in which it has held a local inspection, to acquaint the parties with the opinion it has formed.—[*Per Woodroffe J*] A Court may inspect the locus in quo in cases where he cannot follow or understand the evidence without himself seeing the features of the land, and he does not by merely so doing, disqualify himself from trying the case.—[*Per Chatterjee J*] in 37 C 310.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Notes.

1. Scope of the Section.—S 294 provides that, if a juror or assessor is personally acquainted with any relevant facts, he must be examined and cross-examined as a witness.—37 C 340
2. Trying Judge as witness.—A person having

and the giving of evidence by him does not preclude him from dealing judicially with the evidence of which his own forms a part. A Sessions

R 60

3. Analogous Law.—Compare S. 413 of the N. Y. Cr. Pro Code

time. A Sessions Judge is a competent witness

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, till the conclusion of the trial.

Notes.

1. When a trial should be adjourned.—See Note No under S. 291 *supra*. As to traversing the case. See Note No. 2 under S. 283 *supra*.
2. Analogous Law.—Where a prisoner has been put upon his trial, given in charge to the jury, and after the case has been opened, some of the witnesses are found not to be present owing to some unforeseen accident it may be proper to adjourn the trial generally, but where the witnesses are absent owing to some mistake, for example, as to the date of trial, the proper practice is to adjourn the case for reasonable time for the prisoner to be tried by the same jury.—R v. Lewis 22 Cox C C 141. See also S. 415 N. Y. Cr. Pro Code
3. Continuation of trial commenced before the predecessor.—The Code of Criminal

Procedure does not empower a Sessions Judge to try a case partly on evidence not recorded by

the Sessions Judge gave judgment on evidence recorded partly by himself and partly by his predecessor the High Court pronounced the proceedings void on the ground that the Cr. P. Code provides specially that a Magistrate may pronounce judgment on evidence recorded by his predecessor and partly by himself, but there is no such provision in the case of Sessions Judges. [3 M 112 21 W R 59 21 W. R 47 W R (Sp) 32 1 P R 1809 7 C P 1]

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and subject to such rules, the presiding Judge may order whether and in what manner the jurors shall

be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

Notes.

1. **Bombay Rules.**—"In every case involving the punishment of death or of transportation for life in which the trial lasts for more than one day, the jury shall be kept together during the trial by the Sheriff or Deputy Sheriff or such other officer as the presiding Judge may appoint for that purpose, and in every other case in which the trial shall last for more than one day, it shall be in the discretion of the presiding Judge whether the jury shall be kept together in manner aforesaid or shall be allowed to return to their respective homes"—*Bomb Gaz* 1875 pt. I p. 653.

2. **Practice before Penal Code came into operation.**—By the practice of the Supreme Court at Bombay, before the Penal Code came into operation, on a trial for treason or felony, the Jury (as in England) was kept together during the night under the charge of the officer of the Court, but on a trial for misdemeanour, it was in the discretion of the Judge, whether they should be kept together, or allowed to return to their homes for the night, the latter being generally

ing whether the offence under trial could be old,

law, have been a felony or misdemeanour.—3 B H 20

3. **The English practice.**—If the jurors separate without leave, the jury must be discharged and a new trial had.—R v. Kinnear 3 B. and Ald 452 E 1, Ward 10 cor 573.

4. **American Law.**—(1) Jury mingling with the populace.—Where the Jury separated and mingled with the populace during the pendency of the trial owing to the hotel in which they put up at night being destroyed by fire, in a capital case, but the accused refused to assent or waive any right resulting to him from the separation, *held* that the accused was entitled to a new trial.—*Early v State* 28 Am Rep 409. (2) Where no communication is possible.—Where the jury were permitted after the case was submitted to them, to go to a privy 75 yards distant unattended by an officer, but it was not shown that any person did or could communicate with them *held* that there was no error in procedure.—*State v State* 60 Am Rep 70

5. **If the accused objects too late.**—Even in capital cases if the Court permits the jury to separate before submission of the case and the defendant does not object until after the verdict there is a waiver and the irregularity will be overlooked.—*See Henning v State*—65 Am. Rep 756.

F.—Conclusion of Trial in Cases tried by Jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided

Duty of Judge

298. (1) In such cases it is the duty of the Judge—

(a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to given;

(d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding

Illustrations.

(a) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(a) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned ;

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not ;

(c) to decide all questions which according to law are to be deemed questions of fact ;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a) As is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what

is the verdict of a majority.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable,

Procedure where jury differ

the jury may deliver their verdict, although they are not

unanimous.

303. (1) Unless otherwise

Verdict to be given on each charge.
Judge may question jury

ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Questions and answers to be recorded.

(2) Such questions and the answers to them shall be recorded.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand

as ultimately amended.

305. (1) When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment accordance with such opinion.
 Verdict in High Court when to prevail.

(2) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

(3) If the Judge disagrees with the majority, he shall at once discharge the jury.
 Discharge of Jury in other cases.

(4) If there are not so many as six who agree in opinion, the Judge shall after the lapse of such time as he thinks reasonable, discharge the jury.

306 (1) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.
 Verdict in Court of Session when to prevail

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted the Judge shall pass sentence on him according to law.

307. (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.
 Procedure where Sessions Judge disagrees with verdict

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall after considering the entire evidence and after giving due weight to the opinions of the Session Judge and the jury, acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it, and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

(1)—Re-trial of Accused after Discharge of Jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.
 Re-trial of accused after discharge of jury

Proposed amendment to the section.—In sub-section (2) of section 308 of the said Code, after the word "shall," where it occurs for the second time, the words "unless he proceeds in accordance with the provisions of section 562" shall be inserted.

Proposed amendment to the section.—In section 307 of the said Code—

(1) In sub-section (1) —

(i) For the words "the accused" the words "any accused person" shall be substituted.

(ii) After the words "to submit the case," the words "in respect of such accused person" shall be inserted.

ARRANGEMENT OF NOTES.

PROCEDURE IN JURY TRIALS.]

S. 297 = S 275 para 1 (1872) = S. 379 (1801) . S. 298 = S 276 (1872) S. 299 = S 257 (1872)
S. 300 = S 263 para 1 (1872) = S 372 (1861) S. 301 = S. 263 para 1 (1872) = S 352 (1861)
S. 302 = S 263 para 3 (1872) = S 352 (1861) S. 303 = S 263 para 2 (1872) S. 305 = S 97
and 98 (Act X of 1873) S. 308 = S 263 paras 3 and 1 (1872) S. 307 & 263 paras 5 and 6
(1872) . S. 309 = S 100 (Act X of 1873)

- (1) General Remarks as to procedure
- (2) Questioning the jury (§ 303)
- (3) Miscellaneous rules

II. Judge's duty with regard to facts.
(S. 298).—

- (1) His duty defined
- (2) Presentation of facts
- (3) Discussion of evidence etc

III. Judge's duty with regard to law.
(S. 298) —

- (1) Meaning of "laying down the law"
- (2) His duty to lay down the law.
- (3) Laying down the law in respect of specific offences
- (4) Law as to reception of evidence
- (5) Miscellaneous

IV. Admission and Relevancy of Evidence.

- (1) Rejection and admission of Evidence
- (2) Evidence which may or may not go to the jury

V. The Summing up of the Evidence
(S. 297, 298) —

- (1) Evidence to be set out in detail.
- (2) When the summing up may be shortened.
- (3) Object of summing up
- (4) Judge should refrain from expressing decided opinion
- (5) Judge's duty with regard to the Evidence
- (6) Evidence of accomplices

VI. The charge to the jury (S. 297).

- (1) When and how to be made.
- (2) Duty of the Judge in joint trial of accused
- (3) Confessions
- (4) The charge in relation to specific offences
- (5) Special directions in the charge.
- (6) Procedure

VII. Duty of the Jury. (S. 299).

- (1) Duty of the Jury defined.
- (2) Sufficiency of evidence
- (3) Distinction between functions of Judge and Jury

VIII. Powers of the Jury. (S. 299).

- (1) The Province of the Jury
(2) Special Verdict
(3) Miscellaneous

IX. " " " 37 "

- (1) Misdirection on evidence
- (2) Misdirection on law
- (3) How to find out whether there was misdirection.
- (4) Expression of definite opinion on evidence
- (5) What is not misdirection.
- (6) Effect of Misdirection

X. The Verdict. (Ss. 300, 301).

- (1) Meaning of the term "verdict"
- (2) Special verdict
- (3) Construction of Verdict,
- (4) Procedure
- (5) When a verdict is final

XI. Wrong verdict due to mistake (S. 301).

XII. Reconsideration of Verdict (Ss. 302, 304).

XIII. Verdict when to prevail.

- (1) In High Court (S. 315).
(2) In the Sessions Court (S. 308).

XIV. Discharge of Jury and Retrial after discharge [Ss. 305 (2); 308].

XV. Trial by Jury of case triable with the aid of assessors. [S. 209 (3)].

- (1) Appeal on facts
- (2) Where some of the charges are triable by jury
- (3) Procedure
- (4) Where a trial cannot be held by Jury
- (5) The verdict in a trial by Jury of case partly triable with assessors

XVI. Reference to the High Court (S. 307).

- (1) Definition of terms
- (2) Effect of Reference under s. 307
- (3) Practice and Procedure
- (4) Procedure on Reference before the High Court

XVII. Review under the Letters Patent.

1. GENERAL RULES OF PROCEDURE.

- (1) General Remarks as to procedure.

1. **Plea of insanity.**—A Judge in his charge to the jury told them that in his judgment the

accused was at the time of the trial exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was

insane at the time he committed the offence *Held*, that the issue as to whether the accused was of unsound mind at the time of the trial and incapable of properly making his defence, was a preliminary issue to that put by the Judge and should have been first submitted to the jury.—19 W. R. 26. See 19 W. R. 45.

2. **Examination of witnesses after the Jury has gone.**—It is not competent to a Sessions Judge to examine witnesses in a Jury trial after the Jury has gone and in the absence of the accused, with a view to determine whether he should or not differ from the jury and refer the matter to the High Court.—7 B R 979

3. **When the conviction is set aside on the ground of misdirection.**—The accused is entitled to have his case retried by a jury and as a matter of procedure and in justice to the accused, this course should be followed.—14 C N 493 4 C N 576 *Con* 10 M J 147

4. **Failure to consult jury on point of evidence is fatal.**—In a case of murder, the Sessions Judge after considering the evidence discredited the confession and all the evidence and discharged the prisoner, not considering it necessary that the case should go before a Jury. *Held* that the Sessions Judge had no right to withdraw the case from the jury and to discharge the accused without taking their opinion as to the weight to be given to the evidence.—16 W. R. 20 See 10 A. 414

5. **Identification of stolen property.**—A Judge does not misdirect in omitting to enter into details regarding the identification of stolen property.—1 W R 22.

6. **Jurisdiction of High Court to send prisoner to jail beyond Presidency town.**—In hearing a case under S 307 Cr. P. C. the High Court does not exercise original jurisdiction, but it hears the cases as a court of reference in the exercise of the jurisdiction vested in it by cl 28 of the Charter, and if the accused is convicted and sentenced, he may be ordered to be imprisoned in a jail within the limits of its appellate jurisdiction and beyond the Presidency town.—29 C 286

7. **Common law must be warily used.** [19 B 719] Under S 263 Cr. P. Code, the functions both of the Judge and of the jury are cast upon the High Court, and this differentiates its position very widely from that of the Courts of England [1 B 10] It is more than doubtful whether the English authorities were present to the mind of the Indian Legislature, when enacting the provisions of the Cr P. C. specially adopted in India relating to trials by jury [15 B. 452 *Per* Gaudy J]

(2) Questioning the Jury (S. 303).

8. **Question cannot be put when verdict is unanimous and unambiguous.**—The Indian

authorities preponderate against questioning jury, where the verdict is general and has been delivered without ambiguity and without impleteness, and where there is no reason to do a misconception or disobedience of the doc of law.—*Rat* 244: 8 C. 734. 9 C 53: 5 C 7 W. R. 22: 19 B 735: 6 B R. 258: *Ra* 2 A J. 475: 11 Cr. 557 (C): 7 L. B. 140: 1 829 (C). There is no provision in the Code empowers the Judge to question the jury their reasons for an unanimous verdict, there is nothing ambiguous in the verdict and no lurking uncertainty in the minds of the jury themselves regarding it [28 B 412: 469: 13 Cr. 556 (M): 36 M. 555. 22 M. J 21 W. R. 1 6 B R 258].

9. **Questions as to grounds of verdict.**—Law does not prevent a Sessions Judge from asking the jury regarding the grounds of the verdict and such a course is desirable in the interests of justice.—*Per* *Prinsep J and Garth C J*, (1 A 1 *Contra*) [21 W. R. 1: 1 C. L. 275: *Con* 1 B 50]

10. **Scope of S. 303 Cr. P. C.**—Although S Cr P. C. empowers a Judge to ask a jury questions as are necessary to ascertain what verdict is, it was never contemplated that

from it, he should proceed as directed by S 10 C. 140. See *Rat* 412

11. **They find themselves in difficulties which have to be resolved in that way.**—*Rat* 289

12. **The law as to questioning the jury.**—The present law in India is, like that of England designed to secure a certain and complete decision on the matter in issue at the trial; and both Judge and jury have a duty as regards certainty and completeness S 303 Crim. Pro. Code enact the doctrine of the English law which is thus stated by *Blackburn J* in *Winston v. The Queen*, (1861) 1 Q B 269 (315) "It is the duty of the Judge to take care that the verdict of the jury is imperfect, and if the jury have completely omitted to answer the questions left to them, he ought to point out the omission and to have it corrected. When, however, the Judge receives an im-

perfect, the judge has no right to question the jury as to the reason for the jury's verdict. The High Court in a reference under S 307 lean to regard the answers to questions propounded

after delivery of the complete verdict [*Per Justice J.*] The questions referred to in S 303 are only such as are necessary to ascertain what the verdict is. In the absence of any express provision of the law to the contrary, a clear and concise finding of the jury on the main facts should be allowed even though a verdict of not guilty has been delivered.—[*Canby J.*] in (1900) 15 B 542

13. When the Judge ought to question the Jury.—Where a jury returned a verdict of not guilty of culpable homicide, the Sessions Judge ought to have required them to find expressly whether or not the accused was guilty of any minor offence [2 B R 371 See 12 C N 530, 6 H. L. (App.) 84 Rat 842] In the case of an ambiguous verdict, it is the duty of the Judge to ask the jury such questions as are necessary to ascertain what the Jury really meant by such verdict. The provisions of S 303 empower him to do so [7 C N. 135 See 30 M 469-13 Cr. 596 (M) 3 L B. 73] when a special verdict is ambiguous or defective in regard to matters forming part of the offence e.g. intention, knowledge etc it is the duty of the Judge to ascertain its meaning by questioning the jury—[Rat 710] Where it is not clear of which of the several offences with which the prisoner is charged the jury find him guilty, the Judge can put questions to the jury to find this out [8 B L 557]

14. Verdict of "guilty of murder under grave and sudden provocation."—The verdict was in terms a verdict of murder as it did not find that the provocation had destroyed the power of self-control. It is not a necessary consequence of anger or other emotion that the power of self-control should be lost. Whether there was a destruction of the power of self-control should have been ascertained by the Judge by questions addressed to the jury—20 B 215.

15. Questioning with a view to bring out points of variance is improper.—A Sessions Judge is not at liberty to put questions to the jury with a view to bring on record, the points on which his opinion is at variance with the jury—[Rat 442 20 B 215 15 B 452 14 B 115]

- 15A. *juror*
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- 15B. Questions and answers must be recorded.—The questions put to the jury and the answers given must be recorded in the exact language used and not merely their substance—S O 739 See B M T 315

(3) Miscellaneous rules.

16. Swearing of Jurors.—"The Jurors, shall be sworn under the Indian Oaths Act 1873." See 21 Cr 1 C.

[Note.—The ruling in 3 H. L. 56 to the contrary was overruled by the Legislature by enacting See 281 in the Cr. P. Code of 1882—10 B 359; See also 20 W R 18]

17. Failure to consult the jury on a point of evidence before discharging the prisoner.—vitates the order of discharge. The Sessions Judge has no right to pronounce his own judgment on the credibility of the evidence and to withdraw it from the consideration of the jury—16 W. R. 20 See 6 B R. 671.

18. *prisoners with jury or assessors, even, if one of the charges, is not triable by a Court of Session—*
13 W R 59

19. When Jury are not unanimous.—The Judge is not bound to summon a new jury.—1 W. R. 41

20. When a District ceases to belong to a Division to which Jury trial has been extended.—Jury trial in that district ceases—8 W R 39 8 W 11 53

21. Commissioner of Cooch Behar.—The Commissioner of Cooch Behar has no power to hold a trial by jury in the Goalpara District—8 W R 39 8 W R 54

22. Power of Government.—The Government has power to order that certain persons charged with a certain class of offences should not be tried by jury but by the Judge with the aid of assessors—21 M 632

23. Traversing a case.—Where in a Sessions trial the defence asks for a postponement for non-attendance of a summoned witness, the Judge cannot discharge the jury in the middle of the trial and to traverse the case, to be tried by a fresh jury at the following sessions—4 B 11 439

II. JUDGE'S DUTY—WITH REGARD TO FACTS.

(1) His duty defined.

24. (1) The Judge must leave the discussion upon questions of facts entirely to the jury
4 C N 190 14 M. T 412 1 W R. 21 21 W R. 72 (86).
25. (2) It is not incumbent upon a judge, to read the whole of the deposition of the witness to the jury
30 C 281. See Rat 580
26. (3) It is the duty of the Judge to sum up the evi-

dence as recorded before him and to state his own reasons for considering a prisoner guilty

7 W R. 25. 13 W. R 34

[Note.—But he must always add that it is for the jury to form their own opinion

10 C 370 25 C 230 Cr R 15 of 85 W R (89)
5 4 C N 190 34 C 674 35 C. 531 10 C N.
153 7 M 191 M Cr. A 282 of 1905

27. (4) Where there is no evidence.—The Judge ought to charge the jury for an acquittal

and not leave the jury to say whether the prisoner is guilty or not—7 W. R. 39. 16 W. R. 19.

28. (7) Judge should avoid expressing any decided opinion upon the facts

1 W. R. 2 1 W. R. 25 W. R. (Sp) 5: 7 C. J. 216

29. (6) Evidence before the Committing Magistrate, unless contradictory of the evidence of the same witness at the Sessions, should not be put to the jury—7 W. R. 72 16 W. R. 19.

(2) Presentation of facts.

30. **Presentation of facts**—In charging a jury it is the duty of the judge to present the facts in their natural aspect and not to surmise far-fetched explanations of any point—[9 M. J. 340] The Judge should call the attention of the jury to the facts and then leave to them to consider, whether from those facts they conclude that a particular criminal act has been done, and if they so conclude, to direct them that the case comes within a particular section of the Code—[4 C. N. 193]

31. **Amplification**—If the necessary points in the case are more or less dealt with in the Judge's charge, the mere fact that some of them were not amplified as they might have been, does not amount to misdirection—27 B. 627.

32. What the Judge may say in his charge—

531 34 C. 698 10 C. 970. 25 C. 230

33. **Child's evidence**—Whether or not the child witness was competent to give evidence within the meaning of S. 14 Act II. of 1853, was a question for the Judge and not for the jury, the jury's duty being confined to a finding as to how much credit is to be given to his evidence—8 W. R. 60.

- 33A. **Duty to point out presumptions to be drawn from facts**—It is a serious misdirection for a Judge to fail to point out to the jury

that recent possession of the murdered man's jewels is a fact from which a presumption may be drawn that the accused is not merely the thief or recoverer of the stolen property but may also be the murderer.—17 C. N. 1077.

(3) Discussion of evidence etc.

34. **How the evidence should be discussed**. The duty of the Judge is to point out fairly and candidly the main and salient features of the case from the point of view of the prosecution and of the defence respectively. And in so doing he is entitled to take into consideration the speeches made upon both sides by the crown and the prisoner's counsel in considering his presentation of the evidence to the jury. But he is not bound to discuss every little particular or detail of the evidence on either side—1 Pat. J. 317.

35. **Statements of witnesses taken under S. 164 Cr. P. C.**—The Judge ought to tell the jury that the evidence of witnesses taken under S. 164 Cr. P. C. must be accepted with caution. He ought to point out that it is not always proper for the police to get such statements recorded for the purpose of pinning down the witnesses to some statement, especially at a time when they are not free from police influence—7 C. J. 240.

36. **Police custody**—It is the duty of the judge not of the jury to decide the point whether an accused person while making a confession was or was not in the custody of the police—31 M. 127.

37. **Verdict on each head of charge**—In a trial by a jury, the Sessions Judge ought to call on the jury to return a verdict on each head of a charge. If the trial is for the murder of two persons and the jury return a verdict of guilty, the judge should ascertain whether the verdict relates to the murder of one person or the other or of both. Rat 740

III. JUDGE'S DUTY WITH REGARD TO LAW.

(1) Meaning of "lay down the law."

38. **What is meant by laying down the law**—Where the Sessions Judge, both before and after summing up the evidence, placed, certain questions of fact before the jury, and directed them that, if they found certain facts proved, they were to convict, and that if on the contrary they found certain other facts proved they were to acquit. *Held* (Per For C. J. and Robinson J.: *Ormond J. dissenting*), there was no laying down of the law as required by S. 297, that the essential elements of the offence with which the accused was charged ought to have been explained and that there was a grave misdirection which would not be cured by S. 537.

5 L. R. 149 (F. B.)

39. **Duty of the Judge in laying down the law**—It is not sufficient for a Judge merely to read to the Jury the definition of the offence and

to leave it to them to find out whether the evidence made out the case against the accused. It is the duty of the Judge to call the attention of the jury to the different elements constituting the offence and to deal with the evidence by which it is proposed to make the accused liable. Failure to do so amounts to misdirection.—25 C. 711. 25 C. 736. 4 C. N. 193. See 30 M. 4 8 C. 739. 7 C. N. 198. 6 B. R. 258. 5 L. B. 149 7 Bar T. 20.

- 39A. **Duty of Judge is to explain the application of the law to the facts**—"It is for the Jury to say whether and how far the evidence is to be believed, and if the facts as to which evidence is given are such that from them a further inference of fact may be legitimately drawn, it is for the Jury to say whether that inference is to be drawn or not. But it is for the Judge to determine, subject to review, as a matter of law whether from those facts that

51. **Intention.**—A Sessions Judge in a case of culpable homicide not amounting to murder, omitted

to tell them that they must come to a conclusion as to whether, in causing the death of the deceased, the accused had the intention of causing death or such injury as was likely to cause death or of the knowledge that he was likely to cause death. Held that such omission was a clear misdirection.—35 C 531.

52. In cases under S. 411 I. P. C.—It is the duty of the Judge to direct the jury to find—(1) whether the property was stolen (2) whether it was dishonestly retained and (3) whether the accused knew or had reason to believe the same to be stolen property [15 B 369. 25 C 711] In a trial by jury of a person charged with dishonest receipt of stolen property, the attention of the Jury should be drawn to the necessity of satisfying themselves that the possession of the stolen property is clearly traced to the accused and that it could not have been placed in the accused's house where it was found by other members of his family [6 B 731 See 21 M 53] But it is not necessary to enter into details regarding the identification of the stolen property. [1 W R 22 (F. B.).]

53. Unlawful assembly.—Although the common object of an unlawful assembly is stated in the charge, the Sessions Judge ought in commenting upon the provisions of S. 149 I. P. C. to draw the attention of the jury expressly to the common object.—29 C 379. 34 C 698. 30 M 44

54. Decoy.—A Judge should explain to the jury what is necessary to constitute the offence of robbery. Where the Judge merely said "the accused are charged with decoy, decoy is committed when any number of persons not less than 5 conjointly committed robbery." Held, that there was an omission to lay down the law as required by S 297 and the whole trial was a nullity.—30 M 44. See 1 Weir 446. 2 Weir 619

(4) Law as to reception of evidence.

55. Admissibility of retracted confessions. In a trial by jury, it is the duty of the Sessions Judge to determine whether confessions retracted at the trial are admissible. If he finds them irrelevant under S. 24 of the Indian Evidence Act, he should so direct the jury. If there is no evidence on the record showing that they are invalid by reason of any improper inducement or threat, they should go to the jury with a direction that in the absence of evidence it is not to be presumed that they are inadmissible.—Rat 842. 1 W. R. 1. 23 B 316. 21 M. 53. 8 M. 1. 372. 20 A. 133.

Note.—When the case hinged solely upon a retracted confession, held there was misdirection in not pointing out to the jury that it was unsafe to rely upon a retracted confession unless corroborated in material particulars. See Weir 507; 509. 510. 18 A 78.

56. Heersy evidence.—The evidence of a person stating, before the jury upon oath, facts which constitute the charge against the prisoner but which he does not know of his own observation and which the jury themselves have to enquire into in order to arrive at their verdict, ought not to be allowed to go to the jury.—10 W. R. 57.

- 56A. For a detailed treatment of the subject See IV. Admission and Relevancy of Evidence (post).

(5) Miscellaneous.

57. Large number of rulings should not be cited before the Jury.—The duty of a Judge in charging the jury in a criminal case, is to tell what the law is as succinctly and clearly as he can. But to cite to the jury a large number of cases which the jury cannot possibly understand is calculated to confuse them and lead to a miscarriage of justice.—1 C. J. 159. 16 C N. 46

- 57A. Hypothetical defence.—It would be a most unbusinesslike practice for a Judge to put before the jury a hypothetical question before the evidence is given.—933 (F. . .)

58. Law as to abetment.—When in a trial by Jury one of the charges against the accused is of abetment, and the Judge omits to direct the jury as to the evidence of abetment and to explain the law on the subject, his omission amounts to misdirection.—21 Cr 775 (C).

59.

1 W. R. 139.

60. Where jury settle verdict by casting lots.—Where it is alleged that the verdict of the Jury was arrived at by casting lots and the Sessions Judge held an enquiry into the matter in the course of which he examined, besides all other persons all the jurors.

Held that the statement of a juror as to what happened in the jury room is inadmissible.—40 C. 693.

IV. ADMISSION AND RELEVANCY OF EVIDENCE.

(1) Rejection and admission of evidence.

61. Rejection of defence evidence.—Rejection of important evidence for the defence and admission of evidence without the prisoner having an opportunity of examining an admittedly important witness, vitiates the trial by the jury and the conviction will be quashed.—21 W. R. 18.
62. Reference to documents not legally proved.—Where a Sessions's Judge allowed

certain documents to go upon the record, which were not proved, for the purpose of comparison of handwriting, and left it to the jury to form their opinion whether the accused wrote the disputed signature, the High Court held that there was no such irregularity as to warrant an interference.—Rat 162.

63. Judge to exclude inadmissible evidence.—In trials by jury it is the duty of the Judge

to see that evidence which is not admissible in itself should not be allowed to go in, to the prejudice of the accused, whether or not it is objected to on his behalf.—25 C 736.

64. **Admission of illegal evidence.**—The admission of illegal evidence, in a trial by jury should be dealt with by the Appellate Court on the same principles as a misdirection or omission to give a proper direction [6 B 117]. Where part of the evidence which has been

on the record or to quash the verdict and order a new trial 19 B 749. *But* See 10 L W 379.

[Note.—The fact that the Judge told the jury to put the evidence out of their minds entirely will not cure the verdict.—46 C 885]

(2) *Evidence which may or may not go to the jury.*

65. **Wife's evidence against the husband.**—In a criminal trial in the absence of the evidence of a wife is admissible for or against her husband or a person charged jointly with him. B L (sup) 11 § B 11 50.
66. **Hearsay evidence and anonymous letter.**—Where a Judge, in his charge to the jury admitted as receivable evidence a hearsay statement against the accused and also an anonymous letter which was put in without an attempt to show how or by whom it was sent, held that the jury had been misdirected [Retrial ordered].—24 W. R 77.
67. **Hearsay evidence**—or evidence which the witness does not give of his own observation should not be allowed to go to the jury specially when the evidence is presented to them in the form of written deposition.—10 W R 57 18 M J. 250.
- 67A. **Inadmissible evidence obtained on commission.**—Where such evidence is allowed to go to the jury but it did not appear that the accused was prejudiced—the High Court upheld the verdict.—Cr 11 of '95.
68. **Statements not admitted by witnesses.**—In a trial for murder, the Judge read to the

Jury statements purporting to have been taken under S. 364, but which had not been admitted in the course of their depositions by G. and M. the two principal prosecution witnesses, (to whom prison had been given under S 337 Cr P C) held that the improper reception of such evidence constituted a decision erroneous in point of law calculated to prejudice the prisoner 17 C. 642. See 27 B. 626.

69. **Admission of Documentary evidence without legal proof.**—Where in order to meet the defence of *alibi* set up by the prisoner the prosecution put in and the Court admitted in evidence two endorsements by a stamp vendor on two pieces of stamp-paper, although no evidence was adduced to prove that the prisoner had signed them, held that the documents should not have been received in evidence and the Judge in directing the Jury to consider the effect of the endorsements had clearly misdirected them.—3 B L 43.
70. The words "in any case."—The words "in any case" in S 167 Evidence Act are wide and include criminal trials by jury 19 B 749.
71. **Bare statements of prisoner.**—Bare statements of prisoner are not admissible in and ought not to be alluded to by the Judge as evidence. Nor evidence taken before the Magistrate unless contradictory of the evidence of the same witnesses as given before the Sessions Court is evidence in the trial or proper to be put to the jury
§ W R 72.
72. **Evidence before committing Magistrate.**—A Judge should not refer to evidence before the committing Magistrate without making the depositions exhibits in his own proceedings. Rat 224.
73. **Reference by the judge statements not admitted in evidence in charge to the jury.**—Improper reception of such evidence by the jury constitutes an erroneous decision in point of law.—17 C 612 27 B 626.
74. **Dying declaration subsequently retracted.**—Where the complainant is credible after making a dying declaration and in her subsequent examination at the trial denied that she recognised her assailant held that it was a previous misdirection to allow the dying declaration to go to the jury.—21 Cr 183 (C).

V. THE SUMMING UP OF THE EVIDENCE.

(1) *Evidence to be set out in detail.*

75. **Evidence to be set out in detail.**—A Sessions Judge, in summing up to the jury should be careful to set out the evidence fully and should record in his charge what evidence he does read to them [Rat 919 820 5 B 11 (C C) 85 9 W R 51]. Where the Sessions Judge did not sum up the evidence to the jury calling their attention to the material facts in it, leaving them to form their opinion on it, but only treated it generally and called it "very poor evidence" which "standing alone amounted to nothing" held that the charge was defective [23 B 316].

Note. But an omission to read material portions of the evidence is not in itself sufficient for the reversal of a verdict of the jury if such omission has not prejudiced the accused.—5 B L 257 19 B 749 74 12 14 W R 166 10 B 11 (C C) 187 27 B 626 (GB) Rat 644 846 3 B 102.

76. **Extraneous matters should not be discussed.**—A Judge should not discuss points of law in summing up to the jury, and he should avoid all extraneous and unnecessary arguments, merely summing up the evidence, and showing how the law applies to it.—8 W R 87.

77. Evidence on both sides to be placed.—The Judge points the evidence for the defence and the evidence for the prosecution.

The Judge is bound to sum up the evidence for the defence as well as for the prosecution, this being essential to a proper charge to the jury. [Rat 720.] A Judge in summing up should give a full and detailed statement of the evidence on both sides; he should point out its legal bearing and what weight the jury ought to attach to several parts.—5 B. H. (C. G.) 85. 19 B. 711. Rat 748. 800. 13 W. R. 23, 14 W. R. 66; 10 W. R. 7.

(2) When the summing up may be shortened.

78. Where rival contentions have been put before jury with elaboration and skill by the advocates on both sides.—The Judge may shorten his summing up but he cannot must reference to matters of prime importance especially if they favour the accused, merely because they have been discussed by the advocate. 27 B. 626; 27 B. 414. 3 S. 102. 29 C. 379.

(3) Object of summing up.

79. Object of summing up.—The C. P. does not contemplate the reception of a verdict from the jury without their having the assistance of a summing up by the judge. since a careful summing up may often change the hasty and superficial impression of a jury.—Rat 258.

- 79A. Maturity of understanding of the accused.—The omission to refer the question of the maturity of understanding of an accused to the jury is ground for setting aside a conviction.—Rat 27.

(4) Judge should refrain from expressing decided opinion.

81. Evidence how to be placed.—In charging a jury a judge can express his opinion as to the evidence but in doing so, he must always add that it is for the jury to form their own opinion. [10 C. 470. 23 C. 320. 13 C. N. 153. 7 C. J. 246; 7 C. J. 509. 4 C. N. 190. W. R. (pp) 5].
82. A Judge in charging the jury should avoid expressing any decided opinion.

83. When the Judge should charge for acquittal.—Where there is no evidence against a prisoner the Judge ought to charge the jury for an acquittal, and not leave the jury to say whether the accused is guilty or not.—7 W. R. 39.

84. The Judge may state his own impression

the duty of the Judge in summing up, is bound to advise a

jury on questions of fact and may tell the Jury the impression which the evidence has made upon his own mind. [13 W. R. 31. 4 C. N. 196].

(5) Judge's duty with regard to the evidence.

85. In arranging the evidence the Judge should have put to the jury, was pronounced defective, and a verdict founded thereon was set aside [10 W. R. 7].

86. Circumstantial evidence.—In cases of very serious offences and where the evidence is merely circumstantial, it should be read over in extenso to the jury.—5 B. H. 85.

[Note.—But where the trial is a long one, the Sessions Judge does not act illegally in reading to the jury only the important testimonies at the trial.—[Rat 850].

87. In cases where there are several accused.—It is of the utmost importance in cases where several accused persons are being tried together, on evidence which is not identical, that the evidence affecting each individual accused should be clearly and carefully placed before the jury and their attention should be prominently drawn to the considerations by which they may properly be guided in estimating the value of such evidence as against each accused.—29 C. 782.

88. In capital cases.—In capital cases, and all cases of a serious or complicated nature, the Judge ought to read over the evidence in extenso to the jury.—5 B. H. 85.

89. Absence of evidence.—Where the judge omitted to point out the absence of evidence very material to the case of the prosecution and directed the jury to attribute an undue importance to the statements and excuses made by the prisoner in the explanation of certain documents, the High Court set aside the verdict.

23 W. R. 21.

90. Evidence of character.—Evidence of character and previous conduct of a prisoner, being matters of prejudice and not direct evidence of facts relevant to the charge against the prisoner, ought not to be allowed to go to the jury. 10 W. R. 17. 10 W. R. 39; 6 B. L. (ap) 108. 19 W. R. 16. 2 B. H. 125.

91. Statements of witnesses under S. 164.—In a trial by jury the Judge ought to tell the jury that the evidence of witnesses taken under S. 164 of the Cr. P. C. must be accepted with a great deal of caution. He ought to point out that it is not always proper for the police officer to get such statements recorded for the purpose of punning the witnesses down to some statement, especially at a time when they are not free from police influence.—7 C. J. 216.

- 91A. Plea of alibi.—Omission by the Judge to refer to the plea of alibi of the accused and to the

care, accept it with the greatest caution, consider it in the light of the circumstances in which it is given and in the light of all the other circumstances in the case of which evidence is legally admissible. Then if you believe it, act on it even if there is no corroboration in the strict sense of the word. If you do not believe it, reject it"—See 9 A. 328 (F. B.); 1 M. 391-27 M. 271. See also Taylor's Evidence (10th Ed.) § 967; Phillips Ev. I. 32; Archbold p. 156 Russell on Crimes (7th Ed.) pp. 228-2293; Halsbury's Laws of England Vol. IX. 408.

[Note.—This view follows the dictum of Edge C. J. in 9 A. 328 (F. B.)]

"A Judge would mislead the jury that it would be unsafe to act upon, in other words believe the uncorroborated evidence of an accomplice, as he would advise the jury not to act upon the evidence of any other witness whose evidence might from any cause be open to suspicion. But in either case, he would tell the jury that if they believed the evidence, they might legally convict the prisoner."

100. The English Law.—A Judge should direct a jury to acquit if the evidence of the accomplice is not corroborated.

See R. 1. d P. 272: In ere there is I warn the it. Failure

to do so will be a ground for quashing the conviction. [R. 1. Tate (1895) 2 K. B. 640; R. v. Deuchamp (1897) 73 J. P. 221.] But where there is in fact corroboration, the failure of the Judge to caution the jury is not fatal [R. v. Warren (1900) 73 J. P. 353]. Where there is a doubt if the witness is an accomplice or not, the Judge

should direct the jury that his evidence should be carefully scrutinized. [R. v. Kildin (1897) 73 J. P. 406.]

101. The question of identity.—"A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history without identifying the persons, there is really no corroboration at all" [R. v. Fuller (1837) 5 C. and P. 106. 12 O. C. 118; 12 Cr. 537 (O) 2 Weir 796]

102. What amounted to misdirection:—

(1) Where the Judge while warning the jury not to convict upon the evidence of G. H. if they believed him to be an accomplice, expressed a strong opinion that he was not an accomplice—17 C. 642 (F. B.)

(2) Where the Judge while warning the jury in his summing up, said that the evidence of the accomplice had been corroborated by a fact which was no corroboration at all—See 23 C. 752; 5 W. R. 80 [F. B.] (45); 8 W. R. 19 (24); 10 C. 970; 17 C. 642; 2 C. N. 672; 10 Cr. 567 (U)

(3) Where the Judge incorrectly laid down the law as to corroboration—11 B. H. 186; 1 B. 475; 10 R. 231; 14 B. 331; 25 C. 339; 23 W. R. 24; 19 W. R. 37; 15 C. J. 323; 5 A. 120 (137)

103. If the Jury convict upon uncorroborated testimony.—It is no doubt the practice of the Judges, when the testimony of an accomplice is not confirmed, to recommend the jury not to give credit to his testimony. At the same time it is to be observed that if the Jury notwithstanding the recommendation believes the testimony of the accomplice, the want of corroboration is no legal objection to the verdict—3 Knapp 345 (356)

VI. THE CHARGE TO THE JURY.

(I) When and how to be made.

104. When to be made.

have finished addressing the jury.—36 M. 585.

105. Method to be followed.—In charging a jury a Judge is not bound to do more than lay carefully and plainly before them, the evidence as recorded by him, noting the discrepancies, and inconsistencies and pointing out generally the way in which it is favourable or unfavourable to accused—24 W. R. 54

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importance in favour of the accused must be placed before the jury.—6 B. R. 31. 6 W. R. 72.

106. Charge in the mofussil.—In reviewing the charge of a Judge to a jury in the mofussil, it is sufficient to see whether the tendency of the charge, taken as a whole has given a correct or

incorrect direction to the mind of the jury and it is not correct to apply to such charge the criticism which would apply to a charge of a Judge in England—12 W. R. 50. See 4 C. N. 196; 10 B. H. 75

107. Mode of charging the Jury.—In charging a jury, a Judge is not bound to do more than lay carefully and plainly before them the evidence as recorded by him, noting discrepancies and inconsistencies, and pointing out generally the way in which it is favourable or unfavourable to the accused.—[23 W. R. 54; See 10 B. L. (ap) 36.] It is the duty of the Judge in charging the jury to give a narrative and history of the case and to place the facts and evidence in a clear manner before the jury, so as to enable them to grasp the details and come to a right decision. All the facts of prime importance in favour of the accused must be placed before the jury. [6 B. R. 31; 23 C. N. 633.] It is the duty of the Judge to state to the jury what are the principal points in the evidence and how they bear for or against the prisoner in short to render the jury every assistance in his power towards coming to a right conclusion [6 W. R. 72.] A Sessions Judge in charging a jury should endeavour to speak in a

simple and direct manner. The charge to the Jury should not be involved and the language should not be extravagant so that the jury may not experience any difficulty in appreciating its true intention and meaning.—11 Cr 538 (C)

- 107A. When the Judge should charge for an acquittal.—Where there is no evidence against a prisoner the Judge ought to charge the jury for an acquittal and not leave the jury to say whether the prisoner is guilty or not.—7 W R 39

- 107 B. Charge should contain facts pro and con.—A charge should contain a statement of the evidence Pro and Con with a running commentary as to its agreement or disagreement with the other facts of the case.—1 W R 25 1 W R 2.

[Note.—Where a Judge's charge to a jury is calculated to confuse them, the verdict of the jury cannot be allowed to stand.—21 Cr 829 (C)]

108. Instance of a wholly insufficient charge.—A Sessions Judge charged the jury "You have heard the evidence. Do you find the accused guilty or not." *Held* that the charge was wholly insufficient and the accused was to be tried again before another jury.—(192) A N 201

109. Duty of the Judge in a protracted trial. Where a trial by the Jury has lasted over several days, the record must show that the Sessions Judge read over the testimony *in extenso* in his charge to the Jury.—Rat 850

110. Charge not to be of involved nature

understand is calculated to confuse them and to lead to a miscarriage of justice.—1 C J 159

111. Far-fetched explanation.—In charging a jury the Judge should not suggest far-fetched explanations. He should call attention to the facts as they stand in their natural aspect.—9 M F 340. See 4 C N 193 4 C N 196

(2) Duty of the Judge in joint trial of accused.

112. It is of the first importance in cases where several accused persons are being tried together on evidence which is not identical that the evidence affecting each individual should be clearly and carefully placed before the jury and that their attention should be primarily drawn the considerations by which they may properly be guided in estimating the value of the evidence as against each accused.—29 C 782 2 Weir 517 See 11 Cr 538 (C) 15 Cr. 19 (M)

Note.—In a joint trial of two persons if the Judge in summing up the case to the jury does not properly distinguish between the evidence against each, the conviction will be set aside.—See 2 Weir 509; R v Beauchamp (1909) 73 J. P. 223

113. Different trials in respect of the same crime.—Where different trials are held at different times and against different prisoners in respect of the same crime, a new charge specifying the particulars required by circular order

No 5 dated 6th February, 1861 should be delivered in each case.—W R. (ep) 15 14 W R 229

(3) Confessions.

114. Confession retracted by prisoner on being read over.—When the prisoner retracted his statement when read over to him and said that he was compelled to make it *held*—that

20 A 133 2 Weir 507 509 510

115. Admissibility of confessions.—In a trial by jury, it is the duty of the Judge to direct the jury to disregard confession which he finds to be irrelevant under S 24 of the Indian Evidence Act

to be presumed that they are inadmissible.—Rat 842 GC 272 25 C 711 6 B R. (CC) 10 See 11 B R 137. 20 W R 35

- 115 A. Confessions.—It is a misdirection for a Judge to leave the Jury to decide whether certain statements or confessions made by the accused and how much thereof are admissible in evidence. It is for the Judge to admit or exclude evidence in accordance with the law on the subject and for the Jury to weigh and value the evidence admitted.—*Leonard J* in 45 C. 657.

- 115 B Confession's of co-accused.—Where the Judge omits to invite the Jury to consider carefully the statement of the accused with reference to the charge framed against him, and also when the Judge omits to advise the Jury as to the attitude to be taken towards a retracted confession against a co-accused, there is misdirection. [21 Cr 775 (C)] 16 M J 250 25 C 711 6 B R (C C) 10 5 W R 80 See 1 B R 784 15 B R 973 Rat 849 10 B R (CC) 497 1 A 864 22 A 415.

It is the duty of the Judge when there is no other evidence than the confession of a co-accused to warn the jury that it should not be acted upon and tell them to acquit the accused. Omission to do so is misdirection.—4 C 183 (F. B.) 15 B R 975 33 M 16 1 M 163 7 M R (supp) 15 4 M T 355 See 15 B R 46 38 C 559

(4) The charge in relation to specific offences.

116. Forgery.—The Judge, in the case of an offence S 473 and 474 P C after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused and if they found this issue in the affirmative they must find the accused guilty. *Held* that the charge was defective and misleading and was in violation of the requirements of S 227 16 B 165.

117. Case of duce.—In a case of duce, the Judge should direct the jury to convict only if they find that all the prisoners had the intention of committing wrongful loss to the prosecutor.—W. R. (ep) 8.

118. In trials for murder.—The offence of murder being highly important, the Judge in discharge to the jury should discuss the evidence fully.

19 A 741.

In capital cases, and all cases of a serious and complicated nature the Judge ought to read over the evidence *in extenso* to the jury.—5 B. H. 85.

- 118 A. Murder.—In the case of murder the Judge is bound to point out the difference between murder and culpable homicide not amounting to murder and to direct the attention of the jury to the evidence and to leave them to find the facts and say in the light of his direction, of what offence the prisoner is guilty.—9 W. R. 31. Cr. R. 30 of '95 See Rtt 530

119. Illustration (a) to Sec. 209.—The illustration (a) to S. 209 is not to be taken as an express enactment laying down any substantive proposition of the law [3 L. B. 75 (overruled)] where the facts in the case are consistent only with an intention to cause death or to cause bodily injury suffi-

cient intention. It is only in doubtful cases that the Judge would be bound to explain the law as to the minor offence as well as the major offence.—8 L. B. 306 (F. B.).

120. Criminal Breach of trust.—A Judge is bound to expressly tell the jury that the test they were to apply was whether the circumstances of the case showed an intention of causing wrongful gain or wrongful loss and what those terms meant.—7 Bar T. 20

121. False evidence.—In a case of false evidence the Judge need not in his charge show how the false statements, even if made intentionally, are material to the case.—6 W. R. 84. See 10 C. L. 4.

122. Abetment of forgery.—As to how a Judge ought to charge the jury in the case of abetment of forgery by presence.—See 5 W. R. 65

123. Habitual theft.—The Judge should in this charge put clearly to the jury the following—(1) The need of proof of association (2) the need of proving that the association was for the purpose of habitual theft and (3) habit must be proved by an aggregate of acts

6 M. H. 120

124. Riot.—"In a case of riot it is essentially necessary to mention what an unlawful assembly is. The Jury are not experts in law. They might not be able to distinguish between a collection of five or more men without a common object and a collection of the same number of men with a common object"—17 Cr. 62 (C)

125. Trespass.—A Judge in charging a jury in a case of criminal trespass ought to explain to them the distinction between Civil and Criminal trespass. An omission to do so amounts to misdirection.—11 C. 142.

126. Unlawful assembly.—The Session Judge should in committing upon the provisions of S. 14 draw the attention of the jury to the common object.—24 C. 379.

(5) Special directions in the charge.

127. Recommendation to mercy.—A Judge ought not to introduce into his direction to the jury, any question as to recommending a prisoner to mercy, but should leave that entirely to the jury.—14 W. R. 46.

128. The benefit of the doubt.—A Judge is bound to qualify his remarks as to the absence of defence evidence by pointing out to the jury that the defence was not bound to call any evidence and that if they entertained any reasonable doubt as to the guilt of the accused, they were entitled to have the benefit of the doubt and should be acquitted. 11 Cr. 517 (C); 2 Weir 500 See R. v. Tynning 2 L. and Ald. 386. Re Hudson 1 Lew. C. C. 261 Ex. 148. 18 St. Tr. 1180; 11 C. N. 1053; 21 Cr. 661 (C); 1 M. T. 850.

- 128A. Where the prisoner makes an explanation—of the facts appearing against him, it is not for the Judge to tell the jury that it is incredible, without any qualification that it is merely his own opinion, and that the Jury are at liberty to draw their own conclusion.—2 Weir 387

- 128B. Absconding of the accused.—The Judge should point out to the Jury that absconding is a matter which is equally consistent with innocence as with guilt and that it could be considered only in connection with the rest of the evidence and that it is itself the circumstances of no weight.—11 Cr. 557 (C)

129. Chemical Examiner's Report.—A Session Judge is bound to warn the jury that before using the Chemical examiner's report, they must be satisfied on the evidence that the substances examined were in fact what they were said to be.—18 C. N. 180

130. Insanity.—Where in the opinion of the Judge the accused was exhibiting symptoms of insanity at the time of the trial, the Judge should in his charge, place the question whether the accused was capable or not of making his defence as a preliminary issue.—19 W. R. 26.

131. Provocation.—The Judge ought to tell the jury that in trying the case within the exception to S. 300, P. C. (1) the prisoner must have been deprived of the power of self control by grave and sudden provocation (2) that there ought to have been sufficient cause for such loss of self control and (3) that the provocation was not voluntarily provoked by the prisoner as an excuse.

9 W. R. 72 Cr. R. 30 of '93

132. Search.—The omission to bring to the notice of the jury the fact that the police to mis- if the clearly o the accused and satisfying themselves that it could not have been placed in the house by the other members of the family. [6 B. R. 731.] It is unfair for the Judge in his charge to the jury to charge a constable with breach of police regulations without examining him about it and where it was not alleged that his body was not examined before the search.—21 M. 83.

133. Omission to Examine a eye-witness.—The Judge should point out to the jury that from the omission to examine the eye-witness (the only witness who could give direct evidence of the crime) in a case in which the evidence is wholly circumstantial they would be justified in drawing an inference adverse to the prosecution. If he fails to do so, he misdirects, the Jury 21 C. N. 1152, [8 C. 121 Fd.]

134. Thumb impression.—Where the Judge gives the jury his own opinion upon the result of a comparison of thumb-marks instead of leaving it to the jury to form their own opinion—heht the charge is vitiated by misdirection—1 C J 345

Note.—A jury is not bound to accept the opinion of an expert upon thumb impressions without corroboration of their own intelligence as to the reasons which guided him to him to his conclusions—32 C 759

135. In warning the jury not to disbelieve a mass of otherwise consistent evidence because in in one or two material particulars, the witness made different statements, the Judge exercises a wise discretion, and there is no misdirection—1 W. R. 17 - See B L (sup) 11

136. First information.—The Judge should not comment on the F I without reading out to the Jury whole of it—35 C 531

(6) Procedure.

137. Principles to be observed in laying down the law.—It is not sufficient for a Judge merely to record the definition of the offence and to leave it to them to find out whether the

25 C. 711.

138. For principles for the guidance of a Judge in charging the jury.—See 10 B L 36

139. When Jury are in doubt as to the particular offence committed.—it is the duty of the Judge, to ascertain their doubts and to explain the law as applicable to the particular set of facts believed by the jury. He cannot hand over a copy of the Penal Code to them to decide for themselves—14 C. 161

140. Reference to arguments of pleaders.—In summing up it is open to the Judge to refer to

the arguments of pleaders, but he should not omit matters of prime importance—3 S 102.

141. Omission of defence pleaders to refer to defence evidence does not absolve the Judge.—The fact that the pleaders thought it unnecessary to place much reliance on the defence

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425 [F. B. Woodroffe J.] See R. v. Bridgwater;
29 Cox C 737

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slow to raise any special defence when neither the accused nor his advocate relied on it—[19 C. N 533 Fd 81, B 306 (F. B.) See 19 Cr 886 (Pat)] "I wish however to dissociate myself from the proposition that the mere fact that counsel for the accused has failed to present to the Court a special defence"

even on the prosecution evidence it would be the duty of the Judge in my opinion to draw the attention of the jury to such possible view of the case on the evidence, notwithstanding that it may have escaped the counsel for the accused"—*Per Mookerjee J.* in 19 C N 533 (F. B.)

142. Heads of charge—meaning.—The expression "heads of charge" must be construed reasonably

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10 R R 563 (1903) (N 232 310 694)

143. Heads of charge—When to be recorded.—The Judge should record them as soon as possible after the charge of the jury has been actually delivered when the facts of the case are fresh in his mind—See 2 Weir 429 10 C 281

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as charge on the jury should include such a statement as will enable an appellate Court to decide whether the evidence has been properly laid before the jury [(63) A N 232 21 Cr 691 (C)]

VII. DUTY OF THE JURY.

(1) Duty of the Jury defunct.

145. (1) It is in the province of the jury to weigh the evidence as to the truth or falsity of evidence and to judge of the intention—3 W R 54 2 Weir 346 14 M T 412

146. (2) The function of the jury is to ascertain the facts upon the evidence before them and for that purpose to be guided by the law which is applicable and which had been pointed out to them by the Judge.—21 W. R. 69

147. (1) The jury should take the law from the Judge. They cannot resort to a commentary on the law during their mutual consultation about the verdict, 6 R R 278

148. (4) The question of proof of previous conviction is one of fact and must be determined by a jury, —21 W R 19

(2) Sufficiency of evidence.

149. Child-witness.—The jury is not competent to decide whether a child is competent to give

evidence or not. They can only decide what amount of credit is to be given to his statements
8 W. R. 60.

150. Maturity of understanding of the accused is a question to be decided by the jury. The omission to refer the matter to the jury is a serious defect.—*Rat 27.*

151. Proof of facts.—It is for the jury and not the Judge to say what facts are or are not proved—
4 C N. 576 4 C N. 196.

152. Thumb-impressions.—The question as to the identity of thumb impressions is eminently a matter for the jury and not for the Judge
1 C J 365

A Jury is not bound to accept, the opinion of an expert upon thumb-impressions without corroboration of their own intelligence as to the reasons which guided him to his conclusions—32 C. 759

153. To form independent opinion.—The law requires a jurymen to exercise his own understanding on the case submitted to him. He should not follow blindly the opinion of his fellows. Where this is not done, the verdict is vitiated [25 W. R. 4 5 C 875]

153A. Duty of the jury to come to a definite conclusion as to the guilt of the accused.—Before the jury convict an accused of the offence with which he is charged, they must come to a certain conclusion on the matters brought before them. These matters must appear to them to leave no reasonable doubt, and prove with certainty that the accused and the accused alone could have been the man who committed the offence. By "certainty" is not meant that juries are not to act upon evidence unless it puts them in the position of having actually seen the thing done, but that they have to be satisfied upon the whole evidence beyond reasonable doubt.—*Per Lord C J* in 13 Cr 329 (L B)

154. As to their decision.—Juries are expected to give the best of their brains to the consideration of the matters brought before them and to give a sound and honest decision. Before the jury convict the accused of the offence with which he is charged, they must come to a certain conclusion on the matters brought before them 12 Cr. 329 (L B).

155. Verdict against each individual accused.—The Jury have to give their verdict on the facts as against each accused severally for they are not like the Judge in charge of the entire case as a whole—16 C N. 909.

(3) Distinction between function of Judge and Jury.

156. The Jury should take the law from the Judge.—In cases tried at the Sessions the jury are not entitled to resort to a commentary on the law during their consultation about the verdict. The duties of the Judge and the jury are made clear in 8s 238 and 249 Cr. P. C. *The jury should take the law from the Judge.*—6 B. R. 238, *See R v Parish* 8 C and P 94 (*Gregory v Tuffs* 1 C M. and R. 310, also *Jayanth Singh* 14 C. 164

157. Distinction between the functions of the Judge and jury with regard to evidence.—The question what the jury are to receive is for the Judge what they are to believe is for the jury. [Rat 432] It is the province of the jury to weigh the evidence as to its truth or falsity and to judge of the intention with which the offence is committed [3 W. R. 56] "what the Judge says to a jury upon the law is an absolute and binding direction on them. What he addresses to them upon the facts are only such observations as he thinks necessary and proper in assisting them to arrive at a conclusion upon the evidence which is wholly in their province to deal with as they think.—*Per Munkby J.* [20 W. R. 41]

VIII. POWERS OF THE JURY.

(1) The Province of the Jury.

158. The province of the Jury.—It is in the province of the jury to decide the credibility of witnesses. It is for them to decide the question of intention, 25 W. R. 25. 3 W. R. 58

159. Finding of guilty of a lesser offence.—The Jury may ignore the grave charges and find the accused guilty of a lesser offence on the evidence, 3 W. R. 41 22 W. R. 61. 23 W. R. 61

Note.—In a trial for robbery it is competent to the jury if they disbelieve the evidence as to the assault to bring in a verdict of theft [2 W. R. 13] or in a case of murder, a verdict of culpable homicide not amounting to murder [20 B. 215 *See Rat 182*] or in a case of decency, return a verdict of guilty as regards charge of theft involved in that of decency. [10 B. R. 632] A Jury is competent to convict the accused of the offence of attempt to commit rape, after holding that the charge of rape had not been established against the accused [13 O. C. 225]

(2) Special verdict.

160. (1) Grave and sudden provocation.—Although the charge was only one of murder, the jury had a right to bring in a verdict of culpable homicide, if there was grave and sudden provocation so as to deprive the prisoner of self-control.—20 B. 215

(2) To add to a verdict.—The Jury have the right to add words to their verdict after it is delivered in order to bring out its meaning. The Judge has no power to stop them if they attempt to do so.—30 C. 485

161. Special verdict.—The Jury may return a special verdict. It is optional with them to do so if they chose to do so it should be on naked facts.—16 B. 512. 19 B. 735; *Rat 710.* 20 B. 215

(3) Miscellaneous.

162. The jury may refuse to answer questions put them by the judge.—15 B. 152

68. Power to convict of offence other than charged.—The jury is competent to return a verdict of guilty with respect to an offence with which the accused was not formally charged—[13 O O 235]
34. Finding accused guilty of an offence other than charged.—A Jury is not competent to convict an accused charged with an offence under S. 397 I. P. C. of offences under S. 380 and 434 I. P. C. and abetment thereof as the latter offences are not minor offences within the meaning of S. 213 Cr. P. C.—Rat 211
- 34A. Physical condition of the accused as belying the prosecution case.—In a case

under Ss 147 and 325, some prosecution witnesses proved that the accused had given order to beat. The accused put in a written statement saying that he was 75 years of age, infirm and old and physically incapable of participating in a riot. The Jury saw the physical condition of the accused and came to a conclusion that he was incapable of taking part in the riot and declared him not guilty. *held* that the verdict of the jury was to be preferred to the testimony of the witness. It is competent to the jury to decide whether a person of the accused's physical condition was capable of taking part in a riot—6 C J 233

IX. MISDIRECTION AND NON-DIRECTION.

(1) *Misdirection Defined.*

65. The expression misdirection as used in the Criminal Procedure Code included not only an error in laying down the law by which the Jury are to be guided but also an error in summing up the evidence, for a defective summing up of evidence is an infringement of S. 297 Cr. P. C. and therefore a mistake of law—3 B 102 25 C 501, S. 5 B 11 85 27 B 514

jury as regards, such statements, *held* that this amounted to a misdirection—25 C 711

(3) *Omission to direct the attention of the Jury.*

(2) *Non-direction is not necessarily misdirection.*

66. As a general rule, non-direction, in the Judge does not amount to misdirection and the High Court will not interfere unless the circumstances were such as to make the non-direction amount to misdirection—Rat 644 21 B 528 (P.C.) 21 Cr 33 (F.B.) 3 B 102, 20 W. R. 41. See 25 C 501, 1 Pat J 317.

168. Omission to explain the law.—Where a Sessions Judge did not explain to the jury as to what was meant by theft but asked them to decide whether the accused was at the place of theft and whether he was there with an honest dishonest intention, *held*—there was misdirection and the verdict ought to be set aside—6 M T. 321 See 31 C 684 25 C 501 8 C 734, 5 L B. 149 2 Weir 500

Note.—A non-direction is not a misdirection unless it is a matter of prime importance, and especially if it tells in favour of the accused—[3 B 102] "Here non-direction is not necessarily misdirection. Those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood. Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by the prosecution and defence respectively." *Per Lord Alverstone C J* in *R v Stoddart* 25 T. L. R 612

67. When non-direction amounts to misdirection.—When the Judge omitted to direct the jury that the discovery of blood stained ornaments belonging to the deceased in the room of the accused, if believed, was a fact from which the Court might presume not merely theft or receipt of stolen property but also murder with which the accused was charged. *Held* that this was a serious omission detracting materially from the value of the verdict [17 C N 1077] Statements made by some of the accused persons if they do not amount to confessions and which do not in any way incriminate the persons making them, are not admissible in evidence against any person other than those making them. Where a Judge gave no such direction to the

169. Omission to explain the exceptions to S. 300 I. P. C.—Where the Judge did not explain to the Jury in clear terms, the exceptions 1, 2 and 4 to S. 300 I. P. C. and as to whether any of the intentions mentioned in the section were established against any of the accused—*held* there was misdirection. 9 B R 153 See 35 C 531.
170. Omission to refer to the plea of *alibi*—and the evidence bearing on the plea, in the charge to the Jury, is misdirection—18 M J 541, 3 B 125
171. Omission to warn the jury that statement of one prisoner is not evidence against others. The omission of the Sessions Judge to warn the jury that the statement of one prisoner is not evidence against his fellow prisoners is a material error and a misdirection fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately. 10 C N 153 [5 B 110 (F.) 18 M J 250 Cr R 21 of 13 b. 891 G W R. 17 [Note for other cases see 22 O N. 572]
172. Omission to refer to "heghest of the doubt"—Omission to tell the jury that if they had a reasonable doubt on every point the accused was entitled to the benefit of that doubt, is a misdirection 31 C 684 See Note No 125 above

173. Omission to explain medical evidence.—In a case of grievous hurt the omission of the Judge to refer to the medical evidence that the injuries were not dangerous to life in the case of a man of ordinary health, is misdirection. [100]

174. Failure to caution re confessions.—Where the Judge does not caution the jury that the confession of an accomplice should be corroborated in material particulars before it could be accepted,—held—this amounted to a misdirection—33 M 46 2 Weir 507 2 Weir 519. 8 W. R 19 6 W R 44 27 M 271 21 Cr 775 (C).

175. Failure to warn the jury.—That the case of each individual accused must be considered separately and that a confession by one accused involving himself alone could not be used against the others, amounts to misdirection—18 M T. 250. See 10 C N 153 6 B H 10

175A. Failure to explain what is robbery.—Where the judge did not explain to the Jury what is necessary to constitute the offence of robbery *heft*—there was misdirection, and S 637 did not cure—30 M 14 8 M T. 82.

176. Omission to refer to enmity between the parties.—Where the Judge omitted to place before the jury the evidence of enmity between the parties and to ask them to consider whether they could draw any inference from it against the prosecution case, *held* there was misdirection—2 L W 933

177. *Conduct of the accused.*

was committed was found in the house of the first accused's father but the first accused had stated that he did not live there but in the house of his mother-in-law (2) the common nature of the article and the extreme difficulty of identifying it (3) that the weapon was stained with human blood which was not necessarily human and that the defence was under no obligation to adduce evidence on the point, *held*, there was misdirection—(15) M N 544.

178. Omission to draw attention to important facts in favour of the defence.—Where the Sessions Judge in his charge to the jury, did not give a correct representation of facts appearing in the evidence and omitted to draw the attention of the jury to important facts in favour of the defence in the deposition of prosecution witnesses, *held* that the charge to the jury was defective and the conviction must be set aside.—21 Cr 670 (C)

179. Omission to point out weakness of prosecution evidence.—The omission of a Judge to point out to the jury the weakness of the evidence against the accused and the possibility of other persons being the guilty parties does not amount to a positive misdirection—5 W R 13.

180. Omission to refer to the fact that the accused were not named in the F. I.—Omission to state that four out of seven accused were not named in the first information amounts to misdirection—11 C 10. See 4 C N. 196.

181. Omission to read material portions of the evidence to the jury.—is not in itself sufficient for the reversal of the verdict of a jury. In each case, the question will be—has the accused been prejudiced? If he has not been,

the non-direction would not amount to misdirection—5 B R. 207 27 B. 627.

182. Omission to tell the jury that they are sole judges of fact, is misdirection.—Omission to tell the jury that they were at liberty to form their own opinion in regard to facts placed before them and about which the Judge expressed his own, is a misdirection.—34 C 698 35 C 531 10 C N. 153.

(4) Misdirection on evidence.

183. Retracted confessions.—The Judge misdirects the jury when he tells the jury, the law is that you are to look for corroboration in independent evidence; as there is no rule of law that a retracted confession cannot be treated as evidence unless it is corroborated in material particulars—23 B 316 2 Weir 507. 2 Weir 509 (*Kurrti*). 2 Weir 509 (*Sikhan*).

183A. What amounts to misdirection—

(1) Where the charge to the Jury places prominently before them all the circumstances that go against the accused, and does not call attention to any of those that are in their favour, *held* that there was been a misdirection sufficient to vitiate the trial—4 C. N. 196

(2) The omission of the Judge to tell the Jury that it was for them to consider whether upon the evidence adduced, the offence was established. 25 C. 230 10 C 970 Cr. R. 15 of '95.

184. Conduct of the accused.—This is no misdirection in a case of false evidence if the Judge points out to the jury the contrast between the evidence for the prosecution and the course followed by the accused viz., a simple denial of the charge coupled with a refusal to examine the witnesses in attendance—2 W. R. 60.

185. *Concurrence.*

expressed concurrence,—*held* that there was no misdirection to the jury.—7 W. R 22 See 13 C N 754

Note.—In 13 C N 754 the Judge expressed definite opinion and it was held that there was misdirection.

186. Telling the jury there was no force in defence argument.—It is misdirection to tell the jury that there is no force in the argument that the accused may not have foreseen and may not have intended that a decoy should take place—7 M T 191.

187. Telling the Jury.—"no reason to disbelieve" a particular witness.—It is a misdirection for the Judge to say that he sees no reason to disbelieve a particular witness. He ought to leave the question of believing or disbelieving to the jury—7 C. J 246

188. Dogmatic expression of opinion.—Where it is doubtful whether the isolated passages in which the Judge warned the jury that on questions of fact they were not bound by any opinion of his, were sufficient to outweigh the fact that throughout the charge he had expressed

- his own opinions in terms too decisive and unqualified, held that the charge was vitiated by misdirection.—18 C. N. 150
186. Evidence of accomplices.—Where the evidence of an accomplice is uncorroborated, the correct practice requires a Judge not merely to tell the jury that it is unusual to convict on such evidence, but that he should also tell them that it is unsafe and contrary both to prudence and practice to do so, yet that his omission to state this does not amount to an error in law—6 B. H. 57; 5 W. R. 80; 6 W. R. 91; 8 W. R. 19; 3 B. H. (O.C.) 57; Rat 849. See 10 C. 970; 29 C. 782; 21 Cr. 773 (C); 21 Cr. 502 (C); 27 M. 271 (277) 1 M. 391
190. Travelling beyond the charge.—Where a Sessions Judge in his charge to the jury said that there were two possible common objects of an unlawful assembly, while the accused were charged with only one of them, held that in as much as it was common with high consequently they had not an opportunity of meeting. The conviction was therefore set aside and a retrial ordered.—22 C. 276
191. Reference to matters outside the record.—Where the Judge invited the jury to act on the evidence of certain witnesses who named the accused at the time of the inquest, disregarding the absence of anything in the evidence of 2 out of 3 witnesses that they did so and the fact that the Inquest Report was not exhibited in the case—held—that there was misdirection on a material point—2 h. W. 133
192. Statements of witnesses before a police officer or an investigating Magistrate.—does not come within the purview of S. 285 Cr. P. C. A direction by the Judge that such statement is strong evidence against the accused is misdirection.—31 M. 127
193. When the Judge charges the jury to consider whether the approver's story is corroborated on material points or not but does not direct them to consider whether it is confirmed not only as to the offence, but as to the identity of the individual prisoner, as having participated in the offence, is to misdirect the jury.—29 C. 782. See 10 B. 319; 1 B. 175; 3 B. H. (O.C.) 57; 1 A. J. 110; 8 A. 306; 509.
194. Charge liable to misinterpretation.—Where the Judge instead of saying to the jury that if they disbelieved the witnesses on whose testimony the case hinged with regard to any one of the accused that was a circumstance to be carefully weighed by them in estimating the credibility of the testimony in so far as it affected the other accused also, merely said that the witnesses had deposed falsely against one of the several accused—held—that the language being capable of being understood in a contrary sense, amounted to misdirection.—2 Weir 501
195. Remarks addressed to a witness not examined on the point referred to.—It is wrong for a Judge in charging the jury to say that a constable committed a breach of the Police Regulations in

that he had a loose shirt on in conducting a search when he was not examined about it—2 Weir 503 See 8 M. T. 372.

196. Defence evidence which is not trustworthy.—Omission to call the Jury's attention to defence evidence where such evidence is trustworthy, is not material misdirection—7 C. 42.
197. Abandonment of witnesses named in F.I.—A Judge commits misdirection in not directing the attention of the jury to the fact that witnesses named in the First Information had not been examined and entirely new witnesses have been called—34 C. 323.
198. Reference to documents improperly admitted in evidence is misdirection.—3 B. L. 43; 15 B. 189.
199. Reference to previous proceedings.—Where in his summing up to a Jury, the Judge considers it necessary to refer to previous proceedings against the accused, he ought to deal with them in such a manner as to avoid, if possible, the minds of the Jury being affected by the result of the proceedings. It is his duty to warn the jury to pay no attention to the result of those proceedings, and his omission to so warn the jury amounts to a misdirection sufficient to vitiate the trial.—21 Cr. 531 (C) See 21 C. N. 1031; 9 C. J. 380
- 199A. Reference to previous trials.—It is misdirection for the Judge to tell the jury that the High Court had come to a certain finding in the previous case, and they were to consider that if they had any reason to come to a different conclusion—9 C. J. 350
- (5) Misdirection on law.
200. Incorrect statement of the law.—In a trial by jury, the Judge in charging the jury said "If you hold it proved that the three accused all act upon it with the intention of taking him and one of them struck the fatal blow, you will be justified in finding them all guilty of culpable homicide not amounting to murder, even if there is no evidence to show which of the three struck the blow and then read and explained to them the provisions of S. 31 1st C. Held, that the Judge misdirected the Jury in stating that any of the accused might be found guilty of culpable homicide even though his individual intention and the common intention was merely to beat, [3 B. 125] Where a Sessions Judge charged the jury as follows "It is a rule of law that where a person confesses a crime and implicates himself, if he implicates the other persons who have been tried along with him to the same extent as he implicates himself, then, if you accept his statement as being true and voluntary given as against himself, you can safely regard it as true, as against the other persons." Held that as the Judge did not caution the jury that such confessions should be corroborated before it can be accepted, it amounted to a misdirection.—[9 Cr. 401 (M)] As to the law See 4 C. 453 (F.B.); 2 C. N. 749; 6 W. R. 44; 10 B. 319; Rat 496; Rat 476; Rat 848; (25-00) 1. B. 288; 7 M. H. (app.) xv; 1 M. 163; 12 M. 116; 1 A. 164; 1 A. 675 &c.

be in accordance either with usual or with good practice. — *direction* — *the* *case* *the* *Jury*

(7) Expression of definite opinion.

214. Expression of definite opinion without leaving option to the jury. — Where in a charge of rape the judge in his charge to the jury said: "You will observe that this actual intercourse was against the girl's will and without her consent etc." instead of saying as he ought to have done, "you will have to determine upon the evidence in the case whether the intercourse was against the girl's will etc." and wound up by saying, "you have seen the witnesses and I have no doubt that you will return a just verdict." — *held* — that this was clear misdirection as the Judge instead of leaving to the jury to decide what in their opinion was proved, stated in definite terms what had been proved and laid down the facts so positively as to leave no option to them for taking a different view. — See 23 C 230 10 C 970 13 C N 734 10 C N 153 Rtt 748 1 W R 2 1 W. R. 25 W. R. (Sp) 5 13 W R 34
215. Misleading nature of the summing up. — Where the summing up of the judge is calculated to produce an impression on the mind that he wished the jury to give a verdict which they would not have given on a correct presentation of the facts. — *held* — that the Judge had misdirected the jury. — 4 M T 134
- 215A. Charge so framed as to leave no option. — When the charge is framed in such a way as to leave no option to the jury but to adopt the view taken by the Judge, it amounts to a misdirection so, where in a case under S 366 1. P C the Judge said, "when a man carries off a young girl at night from her father's house, the presumption is that he did so with the intent (to force or seduce her to illicit intercourse)." — *held* that the way in which the question of intent was put to the jury, left them no option [14 A 25] Where a Judge says to the jury that the finding of the stolen property with the accused two months after the commission of the offence, was after "so short" a time, as to justify the conviction of the accused for larceny itself, *held* that the question whether the possession was recent or not should not have been put to the jury in the positive way which the Judge adopted [26 M 467 45 C 557 See 2 Weir 515]
- Note.** But where the view taken by the judge is warranted by law and no other view can legally be taken, it will not amount to misdirection. — [See 5 W R 3 17 W R 45]

(8) What is not misdirection.

216. (1) Presumption against the accused. — It is no misdirection for a Judge to tell the jury that if the prisoner could not prove how he became possessed of certain articles (however small in value and common in use they may have been) it was their duty to convict him, for the presumption in such a case was legally valid that he knew that the property had been unlawfully acquired. — 5 W R 3
217. (2) Pointing out that the defence cannot be true. — Where O deposed that he and R were 4 days in company at M, and the Judge charged the jury that if they found that R was not in company with O, during these 4 days at M, but was at N, it did not matter where O was, because, it was clear that he could not have been in company with R at M and must have therefore given false evidence, when he said that during these 4 days he was in such company at M. — *Held* [Seton, Karr J dissenting] that there was no misdirection. — 7 W R 105 (F. B.)
218. (3) Failure to amplify defence evidence. — Where in charging a Jury, the Sessions Judge deals with all the points of importance urged on behalf of the accused, the mere fact that some of the points were not amplified as they might have been does not amount to misdirection. — 27 B 220
219. A slight error not prejudicing the accused does not amount to misdirection. — 5 W. R. 1 6 B R 47 7 W R 105 (F. B.)
220. Expressions misunderstood by bystanders or counsel in a case, do not constitute misdirection if they ought to have been understood by any reasonable man, having regard to what was proved in the case. — 10 C 1070

(9) Effect of misdirection.

221. Effect setting aside a verdict on the ground of misdirection. — When a case has been tried before a jury and the conviction has been set aside on the ground of misdirection the accused is entitled to have his case retried by a jury, and as a matter of procedure, and in justice to the accused, this course should be adopted. — 4 C N 576 14 C N 493
222. Material misdirection. — A material misdirection by a Judge to the jury is not covered by S. 537 Cr P C 4 C N 576
223. High Court may, in case of misdirection, make an independent estimate of evidence. — When a misdirection is of such a character as would lead to a failure of justice, the High Court may weigh the truth of the evidence against the accused, and may then convict or acquit him according to the view it takes of the evidence or may if it thinks fit, direct a retrial. — 26 M 4

X. THE VERDICT Ss. 300, 301.

(1) Meaning of the term "verdict."

224. The "verdict" in S. 423 Cl. (1) Cr. P. C means the entire verdict on all the charges framed in a case of a trial for various offences as provided by S. 236 Cr. P. C. The term is not limited to a verdict on a particular charge on which the accused

is convicted and the conviction which is appealed against. — [22 C 377] — By the term "verdict" should be understood the collective opinion of the jury as a body arrived at after mutual consultation and ascertained and announced by the foreman. — [26 M 585]

224A. No form prescribed.—The law does not prescribe any special form in which the jury are to return their finding: they are at liberty to deliver it in any form they like, and if that finding is not *exhaustive* as to the facts in issue which go to make up the charge, it is the duty of the Judge to put such questions as shall elicit a complete finding.—8 B L 557.

(2) Special verdict.

225. The Cr. P. C. does not permit the recording of what is known in English law as a "special verdict"—i.e. where the jury state their findings on the facts themselves, leaving it to the Judge to apply the law to those facts and himself find the prisoner guilty or not guilty.—13 Cr 556 (N) 8 B L 557 See Rat 442

Contra—15 B 452. 19 B 735: Rat 710 20 B 215

226. [Note per contra.—In (1895) 20 B 215 it was held that the jury were not to find a simple verdict of guilty or not guilty. They may find a special verdict, a string of facts to which the Judge applies the law. The option is theirs, not his. In (94) 19 B 733 the jury in a trial for rape, returned a verdict that the prisoner did the act with consent—held that the verdict was a special verdict and it was the option of the jury to return a verdict in that form. The Judge was bound to record the verdict and apply the law thereto].

227. *Jardine J.* on special verdicts.—"In England the jury may find either a general verdict on the whole matter in issue or a special verdict on the particular facts. They may refuse to answer questions. The option is that of the jury, not of the Judge. If the jury chooses to return a special verdict, it must be on the naked facts; it must state positively the facts themselves and not merely the evidence adduced

Judge. Whether the findings of fact were sufficient and clear, was often a question raised afterwards. So in general verdicts there might occasionally be ambiguity or the jury might exceed their function. It is the office of the Judge to instruct the jury on points of law, and of the jury to decide on matters of fact"—[15 B 412]. In the absence of any express provision of the law to the contrary a clear and concise finding of the jury on the main facts should be allowed even though a verdict of not guilty has been delivered. [*Per Canby J.* in *ibid.*].

[Note.—The following rulings should be consulted. 19 B 735: Rat 710: 20 B. 215: 6 B. R. 278.

(3) Construction of the verdict.

228. To constitute an offence under S 326 of the Penal Code, the act must have been done voluntarily. This is the very essence of the offence. Where the Jury returned a verdict of guilty "but not voluntarily" under S 326, held that the verdict

was in effect one of "not guilty" and the accused was entitled to acquittal. [12 C N. 330]. The finding of a jury that, although the accused killed the deceased, the crime was not murder, not because it fell under any of the exceptions allowed by law but because the accused had no object in killing him is not a legal finding, and does not amount to a conviction of culpable homicide not amounting to murder [1 W. R. 50]. Where a prisoner charged under Ss. 304, 325 and 323 I. P. C. was found guilty by the jury under S. 335, held that he was not acquitted of grievous hurt but was found guilty of the offence under S. 322 with the extenuating circumstances which would confine the punishment within the limits of S 335 [23 W. R. 61]. Where the prisoner was tried under 326 read with S 149 I. P. C. and the jury held that no case of rioting had been made out and convicted the accused under S. 326, held that the verdict was practically one of acquittal [16 C N. 1017: 31 C. 69: 41 C. 662].

(4) Procedure.

229. Verdict should be on each head of charge. The Sessions Judge ought to call on the jury to return a verdict on each one of the heads of charge. If the trial is for murder of two persons and the jury return a verdict of guilty, the Sessions Judge ought to ascertain whether the verdict relates to killing of one or the other or both.—Rat 748

230. Verdict when not to be accepted.—Whenever trial by jury exists, the verdict of the jury must be accepted unless it is manifestly and certainly wrong. A verdict based on voluntary confessions, is just as good as a verdict based on the testimony of creditable witnesses. It is the province of a jury to decide the credibility of witnesses.—25 W. R. 23: Cr. R. 84 of 1886

231. Judge cannot control verdict.—When a

that the Judge had no power to control the jury in this manner, but that he should have recorded the finding on the first count as the verdict in the case and sentenced the prisoner accordingly.—1 W. R. 22: See Cr. R. 62 of 1894.

232. Verdict should not be recorded partially.—A Sessions Judge acts illegally in stopping the foreman of the jury from adding the words, "the land and the crops are all theirs" (meaning that they belonged to the accused) to their verdict of guilty on a charge of rioting in connection with the land and the crops. The words were very material as showing that the case for the prosecution was not regarded as established or true by the Jury.—30 C. 483.

233. Individual opinions not to be disclosed.—In cases of disagreement among the jury, the individual opinions of members are never intended to be disclosed.—36 M. 585.

234. Based on confessions.—A verdict based on voluntary confessions is just as good as a verdict based on the testimony of creditable witnesses, 25 W. R. 23: See Cr. R. 64 of '86.

235. *They thought any of the exceptions allowed by the law, applied*—1 W. R. 50
236. **Fairness and impartiality.**—Where the District Magistrate and the Sessions Judge emphatically express their belief that it would be next to impossible to obtain a fair and impartial trial if the case be heard before a Jury, an order for transfer must be immediately made. It would be inexpedient to let the trial go on before such a jury because an erroneous verdict may in the end be set right by High Court.—25 O 727.
237. **Questions to the Jury.**—See.—(1) General Rules of Procedure.
238. **The Jury must give their verdict upon the whole of the evidence recorded.** 6 B R 31

XI. WRONG VERDICT DUE TO MISTAKE (S. 304).

242. **Scope of the terms "by accident or mistake".**—Where a Sessions Judge questioned the jury as to their reasons for returning a unanimous verdict of not guilty, "and such questioning led two of the jurymen to say that they had been misled as to some of the evidence by the notes of the foreman and that they would like to reconsider their verdict"
- Held*—that the case was not one in which a wrong verdict was delivered by "accident or mistake" within the terms of S 304
- 22 M J 335 See Rat 62 30 C. 443
- [**Note.** But where a verdict of acquittal by a majority is by mistake pronounced by the foreman to be "unanimous," the Court is not entitled to order a retrial and is bound to acquit—*See R v Wailes*, 18 R R. 402
243. **How far it can be corrected.**—When in a trial for offences of murder, culpable homicide and causing grievous hurt, the jury, at first acquitted the accused of murder but found him guilty on other counts, but on being questioned by the Judge about the grounds for their verdict, they revised it into one of guilty of murder, *held* that the Judge under the circumstances should have entered the verdict of the jury as one of guilty of murder.—21 W R 1.
244. **Note.**—But where the Judge's question was directed to find out merely of which part of the offence under S 304 P C the jury considered the accused guilty, and the latter thereupon changed their verdict to one under S 302 P C—*held*—that they were not entitled to do so as the Judge had not asked them to reconsider their first verdict under S 302 Cr. P C.—Rat 62
245. **Special verdict.**—
- (1) In a trial for rape the jury returned the verdict that the prisoner did the act with consent. The Judge thereupon required the jury to say whether the accused was guilty or not. The Jury again retired and brought a verdict of guilty with

239. **Judge cannot himself supply omissions.** In dealing with a special verdict, the Judge is confined to the facts positively stated in the verdict and cannot of himself, supply by intendment or implication any defect in the statement—Rat 710

(5) When a verdict is final.

240. *to record* [8 B 200]
241. **When a verdict is final within the meaning of S. 418 Cr. P. C.**—S 418 Cr. P. C gives finality to the verdict of a jury when there has been no error of law or misdirection and when the Judge has concurred with a majority of the jury—Cr R 58 of 1894

a recommendation of mercy—*Held*, that the second verdict could not be sustained, as the Judge did not require the jury to reconsider their verdict, nor gave them any fresh direction nor explained to them that a finding that the woman consented was tantamount to an acquittal

19 B 735

- (2) Where the jury in a trial for murder, returned at first a verdict of murder under grave and sudden provocation but upon the Judge saying that he could not accept a qualified verdict and required them to find the accused either guilty or not guilty, they returned a second verdict of not guilty—*held* that the procedure was wrong. The Jury have the power to return a special verdict on a string of facts to which the Judge applies the law. They are not simply to find a verdict of guilty or not guilty.—20 B 215
246. **Power under S. 301 when to be exercised.**—The power of amendment of a verdict provided by S 301 Cr P C must be exercised before or immediately after the verdict is recorded and cannot be exercised after the jurors have dispersed G F R 1913 (F.B.) See *R v Parkin* 1 Mood 45
247. **English Law.**—According to the precedents, a verdict may be amended even after the defendant has been discharged out of the dock. [See *R v Toller* 6 Cox C C 251 Archbold p 231]
- Upon discovery some days after the discharge of the accused, that the verdict of acquittal delivered by the foreman was really only the verdict of a majority and not an unanimous verdict as wrongly declared by the foreman, it was *held* that the Judge could not set it aside and direct a retrial. *See R v Under* 18 R R 402
248. **Foreman's announcement by mistake that the verdict was unanimous.**—Where the foreman publicly announced a verdict of "of no guilt" as the unanimous verdict of the jury in the hearing of all the jurors without dissent on

the part of any one of them, the Court has no jurisdiction in consequence of the subsequent statement of the foreman that the verdict was not in fact unanimous, to set aside a verdict given in open Court. *G P R. 1913 (F. B.).*

249. **Misconception of law.**—Where a jury found an accused person guilty of murder but refused to convict him because there was no eye-witness to the crime, *held*—that in charging the jury a

second time, the Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the jury if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived. *23 W R. 36 See 28 B. 412. 19 B. 735. 6 B. R. 238. 21 W. R. 1.*

XII. RECONSIDERATION OF VERDICT [S. 302 AND 304].

250. **For text.**—*See S 302 Gr P C.*

251. **Where jury is unanimous.**—Where the jury is unanimous their verdict must be received. Unless it is contrary to law, the Court is not competent in such a case to direct it to reconsider its verdict.—*5 C 571. 9 C. 53. 10 C 140; 19 B 735. 36 M 753*

252. **Where a reconsideration is essential.**—Where in a murder case the jury returned the following verdict "We have no doubt that the prisoner killed N, we think N gave no provocation, but we do not think it murder, because the prisoner had no object in killing him, *held* that the verdict could not be received and the Jury were properly directed to retire for reconsideration.—[*1 W R 50*] Where the Jury appear to be confused and to have failed to understand the remarks of the Judge, he does not act improperly in telling them to reconsider the verdict. [*2 Weir 514*]

253. **Further direction on law.**—The Judge is bound to explain the law again when the Jury on being asked about their verdict show by their conduct that they were not able to follow his summing up [*See (11) M N 190*] Where the Jury are not unanimous it is open to the Judge to further direct them on matters of law at the time of requiring them to retire for further consideration [*6 B R. 258*]

- 252A

against each prisoner on which evidence had been offered and the names of the witnesses whose testimony bore on each count, *held* that his procedure was not objectionable.—*2 Weir 514*

254. **English Law.**—A Judge is not bound, to receive at once the first verdict which the jury brings in. He may direct them to reconsider it if their verdict is meaningless or inconsistent. He may refuse to accept it. If however they insist on a general verdict of guilty or not guilty, the Judge must accept it.—*R v Meany 9 Cox 23. Archbold p 231 Halsbury's Laws of England Vol IX p 373.*

255. **In the case of a special verdict.**—Where the jury give their findings only on facts leaving it to the Judge to apply the law to those facts, the Judge is empowered to require the Jury to return a verdict of 'guilty' or not 'guilty'. *13 Cr. 586 (M) But see 19 B 735. R v Many 9 Cox 23.*

256. **Jury cannot bring a second verdict in direct contradiction of the first.**—Where a Jury has returned their verdict in accordance with the express direction of the Judge and it was

982] Where a Jury had in a case of rape returned a verdict that 'the prisoner did not act with them' he ct B

735]

257. **What does not really amount to a second verdict.**—In a case in which the accused was tried on charges of murder, culpable homicide and causing grievous hurt, the jury acquitted him of murder but convicted him on the other counts. The Judge thereupon questioned the jury as to the grounds of their verdict and the jury eventually intimated their willingness to convict of murder. *Held* that there could be no final verdict until the last of the questions put by the Judge to the jury was answered and as it appeared from the answers of the jury that their findings of fact disclosed that the verdict ought to have been one of guilty on a charge of murder, the Judge should have entered the verdict of the jury as one of guilty of murder. The first verdict was not a final verdict and the Judge need not have referred the case to the High Court at all.—*see 21 W. R. 1.*

258. **Stage at which the Judge may ask the jury to reconsider.**—After the verdict has been actually delivered by the jury, the Sessions Judge cannot under the provisions of S 302 Cr. P. C. require them to retire for further consideration. He can do so after ascertaining that the verdict is not unanimous but only before it has been actually delivered.—*1 L B 140*

XIII. VERDICT WHEN TO PREVAIL.

(1) *In High Court (S. 305.)*

259. **S. 305 is mandatory.**—"S. 305 Cr P. C. is mandatory. If the Judge agrees with the opinion

of the majority of the Jury, he shall give judgment in accordance with such opinion. On a verdict of murder being given, it is certainly not

competent to the Court to take any verdict on the lesser charge of culpable homicide"—*Per Holmes* J. 19 C. N. 653 (F. B.)

260. **Judge bound to accept a unanimous verdict.**—Under S. 305 Cr. P. C. the Judge is bound to accept a unanimous verdict of the Jury. It is only when the verdict is not unanimous that it lies with the Judge to take one of the courses specified in this section—3 L. B. 75 (F. B.) 8 B. & T. 247 (F. B.)

261. **Verdict obtained by duress.**—The jury after retiring for the whole day, sent word to the Judge that they could not agree. The Judge sent back word to the Judge that he did not believe it yet and suggested that they had better agree that night, as he was going away that night and would not be back till the day after and they would not be discharged till he returned. The verdict was returned within an hour. *Held* that it must be set aside as obtained by duress. *Pierce v. Peice*, 39 Mich. 412

(2) *In the Sessions Court (S. 306.)*

262. **Judge after accepting verdict cannot refer.**—It is not open to a Sessions Judge when he has once accepted the verdict of the jury and has postponed the case for passing sentence, to reconsider his order and refer the case to the High Court under S. 307, but he must pass sentence on the person awaiting sentence on the verdict—4 C. N. 693 See 23 C. 655
263. **Does the verdict of the jury cover the whole indictment?**—In a case in which two

persons were tried for murder but acquitted and it was alleged that the murder was the outcome of a conspiracy between those two persons and the present accused who was tried on the same indictment in a supplementary case, and it was argued that the charge having failed in the first case the trial ought not to go on, it was held that the opinion of the jury in this country does not necessarily cover the whole of the indictment and has the same serious character as a verdict here in England. "The responsibility in the verdict of a Jury in India is not in itself sufficient to justify the quashing of a conviction and the technicalities which are borrowed from the English Law and founded on ideas as to the sacred character of a verdict by a Jury whose findings of fact are unknown, cannot be imported so as to give such a character which by the express provisions of the law does not attach to Jury verdicts in this country"—18 C. N. 498 18 C. N. 580

264. **Jury's verdict must be recorded.**—Where the verdict of the jury has been delivered, the Sessions Judge is bound to say and record whether he agreed with the verdict or not. 15 W. R. 40
265. **Conviction and acquittal.**—When the finding is one of guilty, the Court is bound to pass sentence however minimal [2 Weir 306] but he cannot refrain from passing an adequate sentence merely because he does not agree with the opinion of the Jury [1 W. R. (let) 16, Mal. H. C. 11 11 11 11] The prisoner is entitled to be discharged from custody immediately on judgment of acquittal being pronounced and further detention is illegal [1 M. H. (app) 11]

XIV. DISCHARGE OF JURY AND RETRIAL AFTER DISCHARGE [S. 305 (2), 308].

266. **Scope of S. 308.**—Where the accused was indicted on five charges, viz. 302.31 1. P. C., 302.114 1 P. C., 302.109 1 P. C., 302.304 1 P. C. and the jury returned a unanimous verdict of 'not guilty' on the 1st and 4th counts and disagreed on the other 3 counts in the proportion of 5 to 4. The Judge took the verdict of acquittal on the 1st and 4th counts and discharged the jury under S. 305 Cr. P. C. and ordered a retrial on the three remaining counts under S. 309 Cr. P. C. The retrial came up before another special jury and the counsel for the accused took the preliminary plea of *autrefois acquit*. *Held*, that for the purposes of S. 403 Cr. P. C. the accused was

Judge not having ascertained the opinion of the majority, could not be said either to agree or disagree with the verdict within the meaning of cl. (1). The Court as composed of the Judge and the jury at the first trial must be held to have a legal session of the case and another Court therefore could try the case. 8 C. N. 491.

[Note.—To get rid of the difficulty a *de facto* jury was entered by the Advocate to nominal following the precedent in 2 C. N. 481 and 7 C. N. 221]

268. **Premature verdict owing to misapprehension.**—In a sessions trial, the Sessions Judge being of opinion that the prosecution evidence was worthless asked the jury at the conclusion of the prosecution case if they wished to go on further and hear the defence of the prisoners, the reply of the public prosecutor and his own summing up. The Jury misunderstanding the object of the question replied that they found certain of the accused guilty and the others not guilty. The Judge then pronounced the jury and ordered a retrial. *Held* that the action of the Judge in recommending the trial with a fresh jury was not authorized by law. The proper course for the Judge was to have explained to the jury that he had misapprehended the purpose of the question and to have directed them that it was their duty to hear the defence of the prisoners before expressing any opinion one way or the other. 2 Weir 47

jury and the process might continue until a verdict is passed on all the counts without the accused being "tried again" under S. 403 Cr. P. C. *Per Stephen J.* 11 C. 1072 See *Re B. v. B. (1911)* 2 K. B. 1095

267. **Procedure before discharging the Jury.**—Where the Jury was divided in opinion in the proportion of six to three and the presiding Judge without ascertaining what the opinion of the majority was, discharged the jury and ordered a retrial. *Held* (on an objection being taken to the retrial before another Judge and jury), that the

XV. TRIAL BY JURY OF CASE TRIABLE WITH THE AID OF ASSESSORS.

(1) Appeal on facts.

269. No appeal lies on matters of fact where an

by jury.—*Per Jenkins C. J.*

25 B 680 (F.B.) *Con* 3 C 765: 26 M. 243 (Foot Note) 18 W. R. 59: 24 W. R. 18 24 W. R. 30: Rat 961 9 B R 1057 *See* 26 M 243 [*Per Benson J*]

270. Appeal lies on facts.—The trial by a jury of an offence triable with the aid of assessors is not invalid on that ground, but the accused has a right of appeal on facts, as if the case were tried by assessor. 3 C 765: 18 W. R. 59 21 W. R. 18 Rat 961 24 M 243 [*Per Benson J*: Bhattacharya Ayyangar J *Contra*] *See* 26 M 243 (Foot note)

271. Trial of Cases to which the Govt. has not extended trial by jury is not invalid merely on the ground that a trial by jury has been held in the case. In such a case the charge may be treated as a judgment and the appeal may be heard on facts.—24 W. R. 80, *See* 6 M. J. 14.

(2) Where some of the charges are triable by jury.

272. (1) and others with the aid of assessors, but all the charges are tried by jury, the Judge is not competent to treat the trial so far as regards the latter charges as having been made with the aid of assessors.—1 C. L. 405: *See* 25 C. 555: 23 B 696 But *See* 7 B R 979. 9 B R. 1057. 26 M. 598

(2) In a trial for offences some of which are triable by jury and others by assessors and the Judge treats the jurors as assessors, he should take the opinion of all the assessors and not of only two of them. Failure to do so is fatal and S 517 cannot cure it. 26 M 598 21 M. J. 520

273. Legality of conviction not affected by mistake.—The legality of a conviction will not be affected by the fact that the charge which was triable with the aid of assessors had been tried by a jury.—24 W. R. 18 14 W. R. 32. *See* Rat 600 21 B 696: 25 C 555.

(3) Procedure.

274. How to record the verdict in case coming within S. 289 (3).—Where a Sessions Judge tried by jury an accused on two charges, one of which was not triable by jury, and dissenting from the verdict in the case to the High Court, held, that he should first have recorded the opinion of the jury as assessors regarding the charge not triable by jury, and should not have referred the whole case to the High Court. (He should have made reference only with regard to the charge triable by jury.—Rat 600 8 B R 525: *See* 21 B. 696)

275. No distinction as regards Procedure.—The law makes no distinction as to the procedure at the trial, between a trial by a jury and one with the aid of the assessors except as to the summing up in the case of the former and the manner in which the verdict in the former and the opinion of the assessors in the latter are respectively taken. It is at this latter point that there is a departure of ways and if the accused who is tried does not intervene at that crucial point and get the procedure applicable to trial with the aid of assessors enforced, he cannot afterwards be allowed to complain.—33 B 423.

276. Procedure when the mistake is found out.—Where the case which ought to have been tried with the aid of assessors is tried by jury and the jury return their verdict, it is not competent to the Judge, on finding out his mistake or if he differs from them, to treat the verdict of the jury as opinion of assessors. He is bound to proceed either under S 306 or 307 Cr. P. C. [The trial is not invalid.—*See* S. 536 Cr P C.] 25 C 555: 9 M 12

277. Where the case is partly triable by jury and partly with the aid of assessors the Judge is bound to constitute all the members of the jury as assessors for trying the non-jury offences. He cannot select only two out of five jurymen for the purpose.—26 M 598: 21 M T 520

(4) Where a trial cannot be held by jury.

278. (1) District being transferred to a different Sessions Division.—Trial by jury ceases in a district on the District itself ceasing to belong to a division to which trial by jury has been extended.—8 W. R. 39: 8 W. R. 63

279. (2) District not coming within the jury notification.—The Commissioner of Cochin Behar has no power to hold a trial by jury in the Gwalpara District.—8 W. R. 53: 8 W. R. 38.

280. (3) Withdrawal of trial by Jury in class of offences.—A particular class of offences was generally triable by jury. On account of some reasons the Government ordered that certain persons charged with these offences should be tried not by jury but by the Judge with the aid of assessors. Held that it was competent to the Government to pass the order it did.—23 M 632

281. Offence under S. 91 of the Registration Act 1888.—An offence under S 91 of the Registration Act ought not to be tried with the assistance of a jury. Where however such offence was tried by a jury and the Sessions Judge accepted the unanimous verdict of guilty and convicted the accused, the High Court considered it unnecessary to quash the proceedings.—14 W. R. 32. *See* 23 B 696

(5) The verdict in a trial by Jury of case partly triable by assessors.

- 281A. Where charges, some of them triable by jury and others with the aid of assessors are tried by jury,

and the Jury return by a majority, a verdict of "not guilty" on all the charges, the Judge is not competent to treat the trial, so far as regards the latter charges, as having been held with the aid of assessors, and convict the accused concerning with the minority. The Judge could either give judgment in accordance with the verdict under S 303 or submit the case for orders of the High Court under S 307—1 C L 493 2 C 355 See 23 B 606.

[Note.—The reference under S 307 can only be with reference to the charges triable by Jury, Rat 600]

282. Sessions Judge cannot arbitrarily treat jurors as assessors.—The prisoners were charged with dacoity and murder. The Jury returned a verdict of guilty on both charges. The Sessions Judge overlooked the provisions of S 269 Cr P C and treated the jury as assessors in regard to the charge of murder and acquitted them of murder. Held that the irregularity on the part of the Court could not deprive the jury of their power or their opinion of its proper legal effect.

4 M 42

XVI. REFERENCE TO THE HIGH COURT (S. 307).

(1) Definition of terms.

284. What is not a perverse verdict.—A verdict ought to be considered proper and not perverse if it is one which reasonable men might find on the facts in evidence.—[18 B] The mere fact that another jury might have on the same facts come to a different conclusion will not justify the interference of the High Court [See 2 C L 518 13 B L (np) 18]

285. Scope of the term "dissent" as used in the old Codes.—When a Court of sessions merely differs in opinion from the verdict of the jury, it is bound to submit the case to the High Court under S 203 of the Code of Criminal Procedure for the word "dissent" used in clause 4 of S 203 (=S 307) means a "complete dissent" such as to lead the Court to consider it *perverse* for the ends of justice to submit the case to the High Court—2 B 523

286. The expression "the opinion of the Sessions Judge and the Jury"—in Cl (3) of S 307 Cr. P. C. is equivalent to opinion of the Sessions Judge and the verdict of the Jury [18 C J 522] There is nothing in Cl (3) of the section warranting the interpretation of the term 'opinion' in it to mean other than the respective conclusion of the jury and the Judge, and the term is not used there to denote the reasons for such decisions [20 M 91]

(2) Effect of Reference under S. 307.

287. Effect of reference under S. 307 Cr. P. C.—No trial can be legally speaking, concluded until the judgment and sentence are passed, and the trial of a case referred by sessions judge to the High Court under S 307 Cr. P. C. remains open for the High Court to conclude and complete, either by maintaining the

283. Jury finding accused guilty of an offence triable with the aid of assessors.—The accused was charged with offences under Ss 382 and 397 I P C (both offences being triable by Jury) but found the accused guilty of voluntarily causing grievous hurt (S 321 I P C) - an offence triable by assessors. Held (Per Benson J) that the Judge in the circumstances was justified in treating the finding of the jury in regard to grievous hurt as the opinion of assessors. An appeal therefore lay on the facts of the case. Held (Per Bhaskaran Ayyangar J) The effect of S 238 Cr. P. C. is to invest a jury trying an offence triable by jury with authority to find as an incident to such trial that certain facts only are proved in the trial which constitute a minor offence, and return a verdict of guilty of such offence, though it may not be triable by jury. * * If they deem fit to do so, that is, return a verdict of guilty on a cognate or minor offence, while returning a

point of law [20 M 213]

verdict of the jury and ensuing judgment of acquittal to be recorded or by setting aside the verdict of acquittal and causing conviction and sentence to be entered against the accused [11 A 120] In a case referred to the High Court under S 307, there is no conviction or acquittal in the Sessions Court. It is the High Court which in such cases acquits or convicts and it is not until after conviction by the High Court that the accused can be asked to plead to the prior conviction under S 310 [30 M 141]

- 287A. Object of S. 307.—S 307 provides the only way in which the miscarriage of justice in a perverse verdict of a jury can be remedied by the High Court—13 M 319

(3) Practice and Procedure.

288. Procedure when the Judge partly disagrees. Where the Judge is not prepared to accept the (unanimous) verdict of a jury in its entirety, he cannot refer the whole case. He is bound to give effect to that part of it which he accepts, and pass sentence accordingly. — [12 C 780]

Note per contra: If the Jury return a verdict of not guilty on all the charges and the Judge agrees with the verdict with reference to some of them and disagrees with reference to the others he should, instead of accepting the verdict on some counts, refer the whole case to the High Court. By accepting the verdict of the jury on these charges, he ties the hand of the Court and precludes it from considering the whole of the evidence that was placed before the jury. 21 C N 315

289. Verdict need not be shown to be necessarily perverse and unreasonable.—It is not necessary to show that the verdict of the jury is perverse and manifestly unreasonable

before the High Court can set it aside—16 Cr 440 (M). 36 C. 629. 23 C. N. 747. See Note on 321 below.

290. Sessions Judge may adjust the sentence instead of referring.—If a Judge thinks that a jury is wrong in convicting a prisoner of culpable homicide and not of murder, he cannot interfere with the finding, but may sentence the prisoner to transportation for life instead of ten years' transportation.—1 W. R. 19.

291. Sessions Judge may refer case in which jury has not followed his directions.—A judge may under S. 263 Cr. P. C. (=S. 307) submit to the High Court a case in which he disagrees with the jury in their finding of facts as well as a case in which he complains that the jury has not followed his directions as to the law, and the High Court, in a case submitted under that section, may acquit the prisoner, if it so thinks fit, notwithstanding that the jury has found the accused guilty.—20 W. R. 1: 18 W. R. 45.

[Note per contra:—Where a jury convicted the accused contrary to the charge of the Judge, and the High Court held the charge to be a proper one, the High Court refused to interfere although it agreed with the Judge that the verdict was incorrect.—18 W. R. 45.

291A. Discretion when to be exercised.—S. 307 leaves the referring of a case to the High Court entirely to the discretion of the Judge, for it is only when he disagrees with the verdict of the jury "so completely that he considers it necessary for the ends of justice to submit the case to the High Court," he should do so. The discretion should however always be exercised when the Judge thinks that the verdict is not supported by the evidence.—13 M. 343.

292. Power to question the Jury.—It is open to the learned Judge, when he disagrees with the verdict and intends to make a reference to the High Court, to ask the Jury, the reasons for their verdict.—36 C. 429. 14 Cr. 660 (G). When the jury return a brief verdict of not guilty and the Judge disagrees with it, it is his duty to put such further questions to the jury as would bring out their meaning more precisely [35 P. W. 1915].

293. Sessions Judge might inform the jury that he was going to refer before asking them to reconsider their verdict.—Where the verdict of the jury seems inconsistent, the Sessions Judge may, after telling them that he would refer the case to the High Court, invite them to give their opinion and an opportunity of reconciling their verdict for the consideration of the High Court.—36 C. 629. See 29 C. 128. 7 C. N. 135. D.C. 1 132. 5 C. 1 221. 10 A. J. 175.

294. Condition precedent.

have been tried and that the Sessions Judge

should clearly be of opinion that it is necessary for the ends of justice to submit the case to the High Court.—6 B. R. 599.

295. When the discretion is to be exercised. The discretion given to the Sessions Judge by S. 307 Cr. P. C. to refer a case to the High Court should always be exercised when the Judge thinks that the verdict is not supported by the evidence.—13 M. 343.

295A. Judge in referring should discuss evidence.—In the case of a reference, it is the duty of the Judge to say in his letter of reference what evidence he disagrees with the Jury. Such evidence should be properly discussed by him in his letter. Mere reference to the charge to the jury is insufficient.—7 C. N. 345.

296. Reference by an officer who has ceased to be Judge after trial.—A reference under S. 307 of the Code, is not invalid in consequence of its having been made by an officer, who has held the trial, but who at the date of reference had ceased to be a Judge.—2 C. J. 48.

297. Only the trial Judge can refer. His successor cannot.—The Judge who may make a reference under S. 307 must be one who held the trial and heard the evidence, and not the officer who succeeds him as a Judge.—2 C. J. 48.

298. Sessions Judge to state exact offence of which in his opinion the accused is guilty.—When a Sessions Judge submits a case under S. 263 Cr. P. C. (=S. 307), because he disagrees with the verdict of the jury, acquitting the prisoner he is bound to state the exact offence of which, in his opinion, the prisoner should have been convicted.—3 C. 623. 2 C. L. 1: 20 W. R. 16.

299. Propriety of Reference.—It is not improper for a Judge to refer a case to the High Court under S. 307 Cr. P. C. merely because there is a weak link in the evidence for the prosecution, which he drew the attention of the Jury and asked them to pause and consider it before returning the verdict.—9 C. J. 432.

300. Where some of the charges are triable by jury and the remaining with the aid of assessors.—The Sessions Judge proceeding under S. 307 Cr. P. C. can refer the former charges only to the High Court. He cannot join both parts of the case in the reference. With regard to the latter charges, he can record the opinion of the jury treating them as assessors and deal with that part of the case according to law.—8 B. R. 599. 9 B. R. 1077.

301. Judge cannot decide to refer on evidence recorded after Jury had left.—Judge cannot examine witnesses after the jury had gone and in the absence of the accused to determine whether he should make any reference.

7 B. R. 979.

302. The discretion given to Sessions Judges by S. 307 Cr. P. C. should always be exercised when the Judge thinks that the verdict is not supported by the evidence.—13 M. 343.

303. Where in his charge the Judge had himself condemned the prosecution evidence,—he cannot refer the case to the High Court under S 307 in the case of an acquittal—7 C N 135.

304. Once the Judge accepts the verdict,—he cannot afterwards reconsider his opinion and refer the case under S 307.

4 C. N. 683 : See 20 W. R. 73.

305. T.

accused (2) the ground on which and in what respect he differs from the jury and (3) his view of the evidence and the credibility of the more important witnesses. He should state clearly and exactly what portions of the evidence he believes to be true and his reasons for arriving at his conclusions.

10 B. R. 173 : 6 B. R. 519. See 6 B. R. 599. 7 C. N. 345 : 3 C. 621. 20 W. R. 16. 7 W. R. 6. 2 C. L. 1.

[Note.—He should state—(1) the evidence for the prosecution and the defence, the facts which in his opinion are proved upon the evidence on record, and the conclusions to which these facts lead him. The fact that upon the same evidence in another trial, the High Court convicted certain other persons is no ground for reference.

6 B. R. 599.

306. Conviction by jury of a minor offence triable with assessors.—Where the jury found the accused guilty under S. 325 P. C. and not guilty under S. 301 and Judge made a reference under S. 307 Cr. P. C.—held—that the case should be sent back to the Judge, with a direction that he should pass orders and dispose of the case, as if the accused were tried by him with the aid of assessors on a charge under S. 325 P. C.

6 B. R. 1037.

307. Reference under S. 307 is discretionary with the Judge. *Blackburn v. The Queen*

14 M. 36.

308. Limits of reference.—A Judge may under S.

regard to the law—11 B. L. 14.

(4) Procedure on reference before High Court.

309. Cases where the High Court convicted in spite of acquittal by jury.—A majority of the jurors (1 out of 5) acquitted the accused on a charge of attempt to commit rape. The High Court found that the evidence for the prosecution was fully worthy of belief and consistent with probabilities and sentenced the prisoner.—[2 C. L. 1 : See 20 W. R. 16 : 19 W. R. 35]

The High Court in a case in which the jury had acquitted the accused after holding that his confession was induced and was not worthy of being accepted, held that the confession had been properly admitted, and convicted the accused thereon [11 B. L. 137. 20 W. R. 33. See Rat 842].

310. High Court can convict on reference of offences other than charged.—The High Court can convict the prisoner of an offence other than that charged but held proved by the jury, even though the latter did not convict the prisoner of that offence [3 C. 180]. In a case coming before it under S. 307, the High Court convicted the accused under S. 305 as minor to the offences under Ss. 306 and 378 with which the prisoner was charged [See 22 C. 1006]. Where the accused was tried and acquitted by the jury under S. 302 I. P. C. the High Court convicted him under S. 305-A I. P. C. [17 W. R. 217].

310A. T.

Court and should form its opinion after considering the entire evidence and giving due weight to the opinions of the Sessions Judge and the jury.—7 Bur. T. 290. 29 C. 128. 25 C. 852.

311. Where the conviction will be set aside. Conviction by a jury will be set aside, in a case of murder in which there is a total absence of all evidence to connect the accused with the crime [15 W. R. 46]. A verdict of guilty of dacoity was set aside on the ground of misdirection, the Judge having omitted to point out to the jury the danger of relying on the uncorroborated testimony of accomplices [6 W. R. 17].

312. High Court will not under S. 307 lightly interfere with findings of fact by the jury.—The prisoner who was charged with having committed murder was found by the jury to have been of unsound mind at the time when he

313. High Court will interfere only in exceptional cases.—“If we are to interfere in every case in which it may with propriety be said that the evidence would have warranted a different verdict, then we must hold that real trial by jury is absolutely at an end, and that the verdict of a jury has no more weight than the opinion of assessors.”—*Macpherson J.* in 13 B. L. (ap) 19. 14 Cr. 600 (C).

314. Mistake of Jury due to misdirection.—When there is a serious omission in the Judge's charge to the jury, detracting materially from the value of the verdict and opinion of the jurors, the High Court will set aside the verdict, if the omission has, in its opinion materially affected the conclusion at which the jurors have arrived. But it will not interfere with such a verdict, unless a clear case is made out for such interference.—17 C. N. 1077.

315. High Court bound to consider facts.—In a reference under S. 307 Cr. P. C., the High

Court is bound to consider the facts and come to its own conclusion, giving due weight to the opinions of the Judge and of the jury. The High Court cannot refuse to go into the facts merely because it might appear on a perusal of the letter of Reference and the Judge's charge to the jury that the verdict was not unreasonable.

36 C. 629 9 C. J. 432. 29 C. 128. 15 C. 269.

316. The whole case is thrown upon on reference.—In hearing a case which is referred to the High Court under S. 307 Cr. P. C. the High Court is not confined to the points of difference between the Judge and the jury; but the whole case is thrown open to the Court and it must be decided after giving due weight to the opinions of the Judge and the jury.—10 B. R. 632 29 M. 91 29 C. 128 36 C. 629 9 C. J. 432 7 Bar T. 290

317. Procedure when the two Judges differ.—In 15 B. 452, *Jacobine and Candy J. J.* differed in opinion in a case referred by a Sessions Judge under S. 307 Cr. P. C. The case was directed to be laid before a third Judge.

318. Power of the High Court.—Under S. 307, the High Court has power to form its own opinion as to the evidence recorded by the lower Court and act upon it, but in so doing due weight will be given to the opinion of the Sessions Judge and the jury who had the opportunity of observing the demeanour of witnesses examined before them (1 B. 10 10 B. 197 9 C. 51 1 C. L. 275 14 B. L. (ap) 2 13 B. L. (up) 19 21 W. R. 4 20 W. R. 70. 10 B. L. (ap) 20 15 C. 269 Nat. 140)

319. The wide discretion of the High Court.—In *instance*, and the decision in each case submitted must depend upon its peculiar circumstances. But the High Court will not set aside the verdict of a jury unless it be perverse and patently wrong, first on the constitutional ground of taking the decision of the case as little out of the hands of to which it has been primarily assigned by the Legislature and secondly because any undue interference may tend to diminish the sense of responsibility.—1 C. L. 275 See 20 W. R. 70; 11 C. N. 715

320. Provisions of S. 307 not controlled by Ss. 418 and 423 Cr. P. C.—The provisions of S. 307 Cr. P. C. are not in any way cut down by Ss. 418 and 423 and the High Court has power under S. 307 Cr. P. C. to interfere with the verdict of the jury, when it is perverse or obtuse and the ends of justice require that such perverse finding should be set right. The power of the High Court is not limited to interference on questions of law—i.e. misdirection by the Judge or misapprehension by the jury of the Judge's directions on points of law.—4 A. 420

321. High Court will not interfere with a verdict unless it is shown to be clearly and manifestly wrong. It should not take upon itself the responsibility of deciding differently from those to whom the decision was primarily entrusted by the law.

10 B. 497 20 B. 215 15 B. 452 (per *Sargent C. J.*) (F. B.). 13 B. L. (ap) 20. 13 B. L. (ap) 19 14 B. L. (ap) 19 14 B. L. (ap) 1; 14 B. L. (ap) 2a 19 W. R. 45; 25 W. R. 25; 2 C. L. 518. 13 C. C. 295; O. S. 234; 3 C. 189 5 C. 871; 9 C. 53; 11 C. 85 2 C. L. R. 518. 1 S. 8

[Note.—High Court has to consider whether from the evidence it was so convinced that the jury ought to have convicted.—[Rat 626] It is a well recognised principle that the Courts of England will not set aside the verdict of a jury unless it be perverse and patently wrong or may have been induced by an error of the Judge. The High Court is bound to follow this principle and the verdict of the jury will not be set aside unless a proper case is made out.—1 B. 10. 15 B. 452. See 10 B. 739]

322. Power of High Court not restricted to perverse verdict.—It cannot be said that as a general principle the High Court will not in a reference under S. 307 Cr. P. C. disturb the verdict of a jury if such verdict is it not perverse or clearly or manifestly wrong. 9 C. J. 432 29 C. 128. But see 9 C. 53; 20 B. 215; 10 B. 497.

323. High Court to accept opinion of the jury.—[17 C. N. 1077]

41 C. 662] The High Court is to give due weight not to the opinion of the jury alone but to that of the Sessions Judge as well.—[17 C. N. 1077]

324. The High Court, on a reference being made, exercises all the powers of an Appellate Court.—13 B. L. (ap) 20 9 A. 420; 1 C. L. 275; 15 C. 269 See 2 C. L. 1; 20 W. R. 16; 15 W. R. 46; 11 B. L. 14.

325. Procedure before the High Court.—The High Court should ordinarily give due weight to the opinion of the Judge and the jury.—[15 C. 269 11 C. N. 715] But when the verdict is erroneous it may set aside the verdict and exercise the function of both Judge and jury.—15 B. 452 See 20 W. R. 16 29 M. 91 1 B. 10.

326. High Court will not interfere merely because it is of a different opinion.—The mere fact that upon consideration of all the evidence before the Court, a Judge would have arrived at a conclusion different from that arrived at by the jury would not justify the High Court in interfering with their unanimous verdict.—2 A. J. 475 9 C. 53.

327. The amendment to S. 307.—in reference to the procedure laid down under S. 310 Cr. P. C. follows the ruling in.—30 M. 134. See 23 B. 40

328. Accused's right to be heard.—The High Court in

19 W. R. 38

329. High Court cannot act under S. 307.—when the Judge has approved of a verdict on certain charges and finally acquitted and discharged the accused. The High Court sitting under

- S. 307 cannot convict the accused on the same charges. That section contemplates a reference by the Session Judge of the whole case without recording any order of acquittal or conviction—29 W. R. 73.
330. **Duty of the High Court defined.**—In a reference under S. 307 Cr. P. C. it is the duty of the High Court to consider whether the verdict of the jury is erroneous or perverse, on the case presented to them at the trial—27 C. 295.
331. **Nature of the proceedings before the High Court.**—In a reference under S. 307 Cr. P. C. the proceedings before the Division Bench cannot be considered a trial *de novo* by the High Court.—29 C. 246.
332. **Conviction by jury contrary to the charge of the Judge.**—was not set aside by the High Court although it concurred with the Judge in thinking that the verdict of the jury was not correct—18 W. R. 45 18 W. R. 46.
333. **S. 537 does not empower High Court with similar powers to S. 307.**—S. 537 Cr. P. C. does not authorise the High Court, in cases in which it finds that the Judge has misdirected the jury to go into the evidence and to decide upon the fact whether or not the accused has been rightly convicted. The only course it can adopt is to order a retrial—21 C. 165 27 C. 230 (233).
334. **No appeal lies to the High Court from its own judgment passed under S. 307 Cr. P. C.**—Hlat. 691.

XVII. REVIEW UNDER THE LETTERS PATENT.

335. **Nature of the Jurisdiction.**—“and we do further ordain that on such point or points of law being so reserved as aforesaid (See cl 23), or on its being certified by the said Advocate General that, in his Judgment, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court shall be further considered, the said High Court shall have full power and authority to review the case or such part of it as may be necessary and finally determine such point or points of law, and then upon to alter the sentence passed by the Court of original jurisdiction, and to pass such Judgment and sentence as to the said High Court shall seem right”—See cl 26 of the Letters Patent.
336. **Scope of the Review.**—At a hearing of a review under cl 26, Letters Patent, it is not open to the accused to argue any question of law not raised in the certificate of the Advocate General, cl 26 of the Letters Patent does not open up the whole case as though on appeal—33 M. 397 (F. B.), *Ed. in 8 Bur. T. 217* (F. B.) [under S. 12 of the Lower Courts Act]. The words “review the case” in cl 26 of the Letters Patent must be read with the words that follow—112, “or such part of it as may be necessary and finally determine such point or points of law.” Under cl 26, the Court is at liberty to review the case or parts of the case for the purpose of determining the point or points of law that are either reserved for the High Court’s opinion or are certified in the Advocate General to be wrongly decided—*Per Dutt J.* in 9 B. R. 789 (F. B.).
337. **High Court may proceed in case of misdirection on points of law.** In case of a misdirection to the jury on a point of law (e. g., failure to warn the jury that the evidence of an accomplice should not be accepted without corroboration on material points) and the improper reception of evidence resulting therefrom, the High Court ought to exercise its powers of review under clause 26 of the Letters Patent—17 C. 612.
338. **Object of clauses 25 and 26.** It is obvious that the intention (of clauses 25 and 26) is that the case should be finally decided on review, and not remitted for retrial. It has also been ruled that when the Court on review holds on the point of law in favour of the accused, it is competent to the Court to consider the whole case on the evidence and to pass such sentence as shall seem right. * * The Court may decide the questions of law in favour of the accused. Yet upon a review of the whole case and an examination of the merits affirm the conviction—*Per Macgregor J.* in 21 C. N. 11 (F. B.) *See 2 H. R. 32 B. 111, 9 H. R. 358.*
339. **Effect of the Certificate granted by the Advocate General.**—A certificate granted by an Advocate General under clause 26 of the Letters Patent should reflect his judgment and not in essence it should be granted in the interests of justice after a careful consideration of all available materials it should be in conformity, and not in conflict, with the statement of the Judge who presided at the trial and it should formulate and give effect to the grounds and principles. The certificate of an Advocate General is entitled to respect and whether he grants it after a careful consideration of all available materials or without doing so, since it is granted, the Court has to deal with the case—*Per Jackson J.* in 10 C. N. 651 (F. B.).
340. **The statement of the trial Judge is conclusive.**—It is well settled that when the Court is asked upon a review a case under cl 26 of the Letters Patent it will accept as unquestionable the statement of the trial Judge as to what took place before him—10 C. N. 651 (F. B.) 10 H. R. 761 *Per Court* (1881) 6 H. and Ad. 1041 *Per Lord, Lush* (1881) 1 H. and Ad. 681 *Per Lord Hale* (1882) 1 H. and W. 231 *Per Lord* (1878) 7 Cr. C. C. 151.
341. **Duty of counsel for prosecution to take down notes of the summing up.** “If we cannot take our judgment, I shall refer again to the fact that there were no notes of the learned Judge’s summing up taken by the learned Junior Counsel for the prosecution. In my judgment it is well desirable that in these cases, especially in an important case like this, the learned Counsel for the prosecution should take a note of the summing up of the learned Judge.”—*See Lord C. J.* in 21 C. N. 429 (F. B.).

- (3) *How to take the assessor's opinion.*
9. Assessors should be invited to state grounds of opinion.—Assessors should be invited and encouraged to state briefly the ground of their opinion as well as the conclusions [2 B. R. 322; 2 B. R. 323]. Assessors might to give the grounds of their opinion, particularly when they differ in opinion from the Judge. [3 W. R. 21 See 14 W. R. 8.]
10. Why the grounds should be recorded.—When a Judge differs from assessors, the grounds of each assessor's opinion *should be distinctly noted*. The assessor's opinion is not a verdict and is not binding on the Judge; hence its weight depends solely on the reason and sense by which it is supported.—3 W. R. 21 14 P. R. 1905
11. Where there are more than one head of charge.—The assessors, in a case in which the accused is tried on two charges, should give a definite opinion whether the prisoner is guilty of either or both of the charges preferred against him.—24 W. R. 34 15 W. R. 3 See 10 A. 114 10 B. 414.
12. Form of record.—"The record of the opinion of each assessor should appear at the commencement of the judgment of the Sessions Judge. It is not sufficient that this record should contain a mere verdict of guilty, or not guilty, as proven or not proven, what is required is not only the result arrived at by each assessor sitting on a sessions trial, but, if possible, the reason by which assessor arrived at that result, i.e. the grounds of his opinion. While avoiding prolixity, a sessions Judge should be careful to be intelligible, and precise in recording such opinions.—Wilkins 116 See *Muirns Cr. Rules of Practice*, ss. 243-245 Punjab Cr. Ch. XLIV, p. 239 Oudh Cr. Dig. p. 13
13. Opinion should be taken on the whole of the case.—No legal conviction can take place unless the opinion of the assessors is taken on the whole of the evidence. In a case.—15 W. R. 3, 2 Shono 38.
14. When and how a Judge may question the assessors.—The cross examination of the assessors is entirely contrary to law. S. 309 of the Code of Cr. P. gives the Judge no power to question the assessors until they have delivered their opinions orally and he has recorded such opinions orally and he has recorded such opinions. If there is anything obscure in their opinion there is no objection to the Judge asking questions to clear up such obscurity; but he is bound to allow the assessors to express their own opinions independently in their own words on the whole case, before interfering with them in any way or asking them any question whatever except "what is your opinion?"—40 G. 163
15. Individual opinions should be recorded.—The opinion of assessors should be taken individually and not through one of them [11 C. 875 93 P. R. 1887]. The opinion of each assessor shall be given orally and shall be recorded in writing by the Court. [Oudh Cr. Dig. p. 13] It is irrelevant to take a joint opinion [11 P. R. 1887]
10. One Assessor concurring with another.—Where one of the two assessors says that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on the war, and that the prisoner is guilty of all the acts charged and the other assessors concur with him, it cannot be said that they have given no reason for their opinion.—7 B. L. 63.
- [Note.—But where one of the assessors merely found the accused not guilty of the offence charged and the other concurred with him, held, that such opinion could not be of any assistance to the Sessions Judge at the trial or to the High Court on appeal.—2 B. R. 323]
17. Imperfect record of opinion.—Where it appeared from the record in a sessions case, that there were the following defects, (1) that the record showed that the opinion of the assessors was that the accused were guilty while their manifest intention was to acquit them (2) that the minutes of the evidence was not made as the examination of those witnesses proceeded, held, that—the provisions of ss. 309, 356 Cr. P. C. had not been complied with and there should be a retrial.—(91) A. N. 145
18. *Mode of recording*
- stated orally and not in writing or in the form of a judgment under S. 307 of the Code [30 O. 119] but allowing the assessors to give their opinions in the form of a joint statement instead of separately as required by S. 300 Cr. P. O. is an irregularity covered by S. 537 in no way prejudicing the accused or vitiating the proceedings [41 P. R. 1887]
19. Procedure in trials on charges partly triable by assessors and partly by Jury. In such a trial the opinion of all the jurors as assessors should be taken and not merely of two of them with respect to the charges triable only by assessors
- [26 W. 394 See 1 B. R. 114 Cr. R. 19 of 1892. 21 B. 606]
- (4) *When the assessor's opinion need not be recorded.*
20. tutor.—
of the
94 from
Court,
the opinion of the assessors need not be recorded as the acquittal is a matter of right to the accused whatever the opinions of the assessors might be.
[at 307]
- [Note.—When the prisoner has pleaded not guilty and the Public Prosecutor does not offer evidence the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty.—4 N. 11 (p. 31)]
21. When there is no evidence within the meaning of S. 289, Clauses (2) and (3).—When a judgment of acquittal is recorded under S. 372 Cr. P. C. (S. 289), it is not necessary to

take or record the opinion of assessors.—[Rat 35 = 7 B H (C. C.) 82 2 Weir 391] But when there is evidence, the Judge cannot record a finding of not guilty without taking the opinion of the assessors merely because such evidence is not satisfactory, trustworthy or conclusive.—10 A 414 16 B 414. 9 C P. 24. See 1 A. 610; 24 M. 523.

(5) Failure to record opinion vitiates the trial.

22. Admission of guilt after close of prosecution evidence.—The accused at a trial pleaded not guilty and the trial proceeded on that footing. At the close of the prosecution evidence the accused, when asked, admitted the offence. The Judge thereupon withdrew the trial from the jury.

of the Judge to proceed with the trial as provided in S 309 and hear the defence and take the opinion of the assessors on the case

7 B. R. 731. 2 Weir 334

23. Where the plea of guilty is qualified.—Where the prisoner admitted before the Court of Sessions that he had killed his wife but pleaded that he was not in his right mind at the time, held the Sessions Judge was altogether wrong in accepting such plea and convicting the accused without trying the case with the aid of assessors [3 N P 110 See Rat 688].

24. Effect of the failure to record opinion.—If a Judge should decide a case, without inviting the opinion of the assessors, he virtually holds the trial without the aid of assessors and his finding or sentence cannot be regarded as one passed by a Court of competent jurisdiction.—24 M. 523 (535) See 10 A. 414 22 W. R. 34 9 C. 875. 2 Weir 301; 28 M. 598 21 M. J. 520 Con f A 610

25. Where the accused is convicted of offence other than charged.—Where in a Sessions trial the evidence shows that the accused did not commit the offence or offences with which he has been charged, but some other offence, he cannot properly be convicted of the latter offence with which he has not been charged and on which the assessor's opinion has not been taken.—2 Weir 301 334

26. Judge cannot override the provisions of S. 309 because one of the charges is triable by Jury.—“The circumstances that in this case the accused is charged in the same trial with another offence triable by Jury [See 2(e) Clause (4) of the Code of Criminal Procedure] that the Judge disagrees with the verdict of the jury on that charge and desires to make a reference under S. 307 Cr. P. C. do not, in our opinion, place the Sessions Judge from complying with the requirements of S. 309, as regards the offence tried by him with assessors.—36 M. J. 172.

(6) Opinion of assessors not binding on the Judge.

27. In a Sessions Case, the Assessors are not judges of questions of fact.—The Code of Criminal Procedure does not invest them with the power of appreciating the evidence so as to bind the Judge. Regular must be paid to their opinion, but after all it is the Judge who is to decide the case on the facts as well as law.

14 B R 710. See 24 M. 523 [Per Bhushan Ayyangar J].

28. Opinion of assessor derived from personal knowledge.—The opinion of an assessor derived from personal knowledge, and unsupported by evidence on record, should not be imported by the Judge into his judgment.—24 W. R. 38.

(7) Practice and Procedure.

29. Opinion of the Committing Magistrate not to be referred to in judgment.—The Sessions Judge in a case tried with the aid of assessors, is bound to form his own opinion on it aided by assessors, but quite independent of any expression of opinion on the part of the Committing Magistrate.—22 C. 805

30. Successor cannot convict on opinion recorded by predecessor.—After the assessors had given their opinion, the Judge, without recording his finding or judgment left the district. His successor, after considering the evidence recorded, convicted the accused, held, that the conviction was bad.—21 W. R. 47. 8 C J 59

31. Duty of the Judge after recording opinion.

- (1) To record a judgment.—The omission to record a judgment in a case tried with the aid of assessors is an irregularity, but it is covered by S 537 Cr. P. C.—2 Weir 392 Cp. 9 W. R. 61. 10 W. R. 7

N. C. J. 111

charge to the jury is not a sufficient compliance with the requirements of the Section.—Rat 420. But See 6 B H. (C C) 55

- (2) As to previous conviction.—The record should invariably show that the reference to the previous conviction was not made until the subsequent offence was found proved against the accused.—12 C. L. 555

32. A Sessions Judge cannot take further evidence after discharge of the assessors.—In a Sessions trial with the aid of assessors, a Sessions Judge has no power to take evidence after the assessors have been discharged and if he does so, the trial is vitiated [22 Cr 127 (4)]. Where in a trial for murder held with assessors, the Court relied on a statement made by the deceased and the evidence necessary to prove such statement was not recorded until after the close of the trial and the discharge of the

to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then hear evidence concerning such previous conviction and in such (where the trial is by jury) it shall not be necessary to swear the jurors again,

Proposed amendments to the section—For section 310 of the said Code, the following section shall be substituted, namely —

"310 In the case of a trial by a jury or with the aid of assessors, when the accused is charged with an offence and further charged that he is by reason of a previous conviction liable to enhanced punishment, or to punishment of a different kind, for such subsequent offence, the procedure prescribed by the foregoing provisions of this Chapter shall be modified as follows, namely —

(a) Such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution, or any evidence adduced thereon, unless and until,

(i) he has been convicted of the subsequent offence, or

(ii) the jury have delivered their verdict, or the opinions of the assessors have been recorded, on the charge of the subsequent offence.

(b) In the case of a trial held with the aid of assessors, the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction."

Notes.

(1) General Remarks.

1. The difficulty in cases referred to High Court under S. 307.—S. 310 requires to be amended, so as to allow the Sessions Judge, in a case under S. 307 after the Jury has given its verdict, to record the plea of the accused in regard to prior convictions charged against him, and if necessary, to take evidence in regard thereto, before reporting the case for the orders of the High Court.—[30 M. 134] But where the accused was tried by a Court of Sessions on the charge of theft and acquitted by the Jury, and the Sessions Judge disagreed with this verdict but owing to this verdict of jury, could not ask the accused whether he was previously convicted; the High Court on reference, remanded the case with a direction to the Sessions Judge to proceed to finish the trial by applying the procedure of S. 310 Cr. P. C.—[23 B. 40]

[Note.—In the Bill to amend the Code of Criminal Procedure 1899 (No. 20 of 1917) it has been proposed to add the following words after "considers to have been committed (in S. 307)": "and in such case, if the accused is further charged under the provision of section 310, shall proceed to try him on such charge, as if such verdict had been one of conviction"]

2. All reference to previous conviction must be rigorously excluded before conviction.—In a sessions trial a witness was allowed to state that "he had heard that the accused was an old convict and that he did no work in the village." It appeared from the mode in which the plea of the accused was taken both in reference to the substantive charge under S. 307 and in reference to the previous conviction under S. 73 I. P. C. that the jury were aware of the previous conviction before they gave their verdict. It was not attempted to use the previous conviction as part of the substantive proof on the charge under S. 307. Held

that the irregular statement of the witness that the accused was an old convict and the knowledge possessed by the jury before they gave the verdict might have improperly influenced the jury and the safest course would be to set aside the verdict.

3. Reference to previous conviction in the course of the trial is illegal.—It is most important for the Judges to bear in mind that they are not to allow a previous conviction to influence the mind of themselves or the assessors in determining the guilt of a person on his trial unless it has been proved and is relevant and S. 54 of the Evidence Act and that such previous conviction is not to be put to the accused and his plea taken to it until after he has been convicted. [3 A. 14] Where a Judge informed the jury before he took their verdict on the substantive offence, that the accused was charged as an offender, held that he acted in direct violation of S. 310 Cr. P. C. [2 Weir 393]. Previous convictions are to be used only after conviction in determining the measure of punishment. [3 W. R. 38; See (56) A. N. 47] Reading charge relating to previous conviction during the trial, will amount to a positive misdirection. [3 C. 768, 10 W. R. 39]
4. Does S. 310 override the provisions of the Evidence Act?—S. 310 seems to require an amendment with reference to the question whether a previous conviction can be proved by relevant evidence of the subsequent offence. If the amendments proposed will prevent a previous conviction being proved in order to mere prejudice an accused person, it will be safe to provide that nothing in S. 310 Cr. P. C. is intended to exclude the evidence of a previous conviction when such evidence is relevant under the Indian Evidence Act 1872. The result will be that,

an accused person is charged with an offence committed after a previous conviction, the previous conviction will be relevant to prove guilty knowledge or intention and also to rebut evidence of good character produced by the accused."—*See Statement of Objects and Reasons, Act III of 1931*—*See S. 311 post* Field on Evidence 5th Ed. p. 354.

[Note.—*See* 14 C 721 (F. B.) (1930) 1 B 33 28 II 129-27 C. 139-1 C N 146: 5 B II 1034]

(2) Procedure.

5. **What the record must show.**—In a trial by jury or with the aid of assessors, the record should invariably show that reference to a previous conviction has not been made until the subsequent offence has been found proved against the accused.—12 C L 557
6. **Question by Judge before conviction.**—Where a Sessions Judge had at one and the same examination of the prisoner, after the evidence for the prosecution had been taken, enquired from him what he had to say on the charge of theft and also on the charge of having been previously convicted, held that the irregularity could not affect the conviction of the accused, if it had not occasioned a failure of justice.—13 C L 110
7. **Previous conviction must be formally charged.**—The fact of the previous conviction must be stated in the charge.—*See* (s3) A N 110 9 M 24 18 W R 41. 21 W R 10 Cr R 1.8.71 Cr R 21473 Rat 52]
8. **Form of the charge.**—"Care should always be taken to clearly and accurately state the

section—of the Penal Code, and sentenced to rigorous imprisonment or transportation for years"—[*Per* Straight J in (81) A N 144 *See* Cal G. R. and Cr. O p 29] But a charge alleging previous conviction need not show the extent of the former punishment. [4 M. H. (appx) 12] It is not however sufficient to state in the charge that the accused is an old offender. [2 Weir 266]

9. **Previous conviction is a question of fact.**—The question is one of fact and ought to go to the jury and must be determined by a jury.—21 W R 40
10. **Judge charging the jury that previous conviction was proved amounts to misdirection.**—Where in a Sessions case, the Judge told the Jury that certain alleged prior convictions against the accused were proved instead of leaving it to them to decide whether they were proved or not. *Held* (1) that it amounted to a misdirection (2) that the misdirection did not affect the conviction of the accused, as the question of prior conviction can be gone into only after the Jury returns their verdict, and (3) that, though it affected the question of sentence, the Court was not prepared to interfere,

saying that the sentences passed were not too severe. [10 Cr 11 (1)]

11. Proof of previous conviction.

- (1) **Proof of identity.**—If the accused denies the charge, his identity must be proved by the evidence of the ruler or some person.—[Rat 52 (60) A N 51] The identity must be proved in the regular way, a mere *lyfent* is no evidence whatever [15 W R 52 6 B L. (19) 15]
- (2) **Extracts from Jail Register etc.**—The extract from a calendar, recording a previous conviction is not evidence of the conviction without proof of identity and in no case will it amount to proof of alleged earlier convictions [2 Weir 391] A mere *katbat* from the record office is not sufficient to prove a former conviction against a prisoner. There should be sworn testimony to the fact and also to the identification of the prisoner with the person previously convicted.—[6 B L. (19) 15 *See* (81) A N 144]
- (3) **Copies of Judgments etc.**—Previous conviction of an accused should have regard to S. 91 of the Evidence Act and S. 511 Cr P. O. be proved by copies of judgments or extracts from judgments or by any other documentary evidence of the fact of such previous convictions, and an examination of an accused person in respect of these convictions having regard to S 342 Cr. P. C. is without legal warrant or justification.—5 C. N. 670 28 C 649
- (4) **Admission by the accused.**—If during the trial, an accused person admits previous conviction and such admission duly appears on the record, a Judge is justified in proceeding to pass sentence upon the accused under S 310. Though such procedure is irregular, the sentence will not be set aside if the procedure has not prejudicial the accused.—5 C N 670 28 C 649
12. **Accused must be asked to plead.**—The filing of a certificate of the kind required by S 511(h) is not by itself proof of a previous conviction. The accused should be asked to plead to the previous conviction, and if necessary evidence should be taken under the last clause of S. 511.—2 L. R 53
13. **What the record must show.**—When an enhanced sentence is passed in consequence of previous conviction the Sessions Judge or Magistrate shall state in his judgment, the date of and the sentence for the previous conviction and the particular offence charged.—Cal G. R. and Cr. O. Rule 39 (a) p 29
14. **Previous conviction out of British India cannot be taken into consideration.**—7 C F 24 (Cr.)
15. **Previous conviction under local and special Laws.**—are not to be proved under this section.—*See* 1 Cr 1041
16. **Sessions Judge cannot refuse to proceed under S. 310.** Where a Sessions Judge refused to admit evidence of previous convictions under S 310 on the ground that the accused had already suffered a long term of imprisonment, *held* that he had acted illegally.—Cr. R. 17 of 25 6-95.

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872

Note.—See Note No 4 Under S. 310.

J.—List of Jurors for High Court, and summoning Jurors for that Court.

312. The names of not more than four hundred persons shall at any one time be entered in the Number of special jurors special juror's list

Proposed amendment to the section.—For section 312 of the said Code, the following section shall be substituted, namely:—

'312 The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors' list.'

313 (1) The Clerk of the Crown shall, before the first day of April in each year, and subject Lists of common and special jurors to such rules as the High Court from time to time prescribes, prepare—

(a) a list of all persons liable to serve as common jurors; and

(b) a list of persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special juror's list for a previous year.

(4) The Governor General in Council in the case of the High Court at Fort William in Bengal, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

(5) The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion Discretion of officer preparing lists. to prepare the said list as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Notes.

- 1. Discretion of the Clerk of the Crown.**—The drawing up of the list of special jurors is entirely in the discretion of the Clerk of the Crown and the Court will not interfere.—See *Sham Chand Jitter I I J* (N. S.) 106.
- 2. Rules framed under S. 313.**—By the High Court of Allahabad (See *L' P. and Oudh Gaz.* 1892

Pt II, p. 539). By the Madras High Court (See *Fort St. G. Gaz* 1891 Sup dated 7th April).

- 3. Exemption by Government.**—See Notification exempting certain officers of Government from service as jurors or assessors.—*Burma Gaz.* 1902 Pt. I p. 637; *Fort St. G. Gaz* 1890 Pt. II 507.

314. (1) Preliminary lists of persons liable to serve as common jurors and as special jurors, Publication of lists, preliminary and revised respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

(2) Revised list of persons liable to serve as common jurors and special jurors, respectively signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the court-house.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each session in each presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of supplementary summons, persons liable to serve as aforesaid shall be summoned for such sessions.

Proposed amendment to the section—In sub-section (1) of section 315 of the said Code for the word "in each presidency-town" the words "in the town which is the usual place of sitting of each High Court" shall be substituted, and for the words "at least twenty-seven of those who are liable to serve on special juries, fifty-four of those who are liable to serve on common juries," the word "as many of those who are liable to serve on special or common juries respectively as the Clerk of the Crown considers necessary" shall be substituted.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Proposed amendment to the section—In section 316 of the said Code for the words "presidency-towns" the words "town which is the usual place of sitting of each High Court" shall be substituted.

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

318. Any person summoned under section 315, section 316 or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

K.—List of Jurors and Assessors for Court of Session and summoning Jurors and Assessors for that Court

319. All male persons between the ages of twenty-one and sixty shall, except as next herein-after mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or, if the local

Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

Notes.

1. **Qualifications of a juror.**—In forming a jury, a Sessions Judge should endeavour to seek for persons of an independent condition in life, men of judgment and of experience—23 W R 35.
2. **Area fixed by local Government.**—In Madras the following persons are exempt:—(1) All persons residing outside the radius of 20 miles when there is no railway communication or 50 miles when there is railway communication and (2) In Kistna, Godavery and Malabar all persons residing outside 40 miles when canal communications exist—[See G O No 1734 dated 10th December 1909 superseding G O No 2963 Judl dated 17th Nov 1881] In Burma (British) all persons living at a distance of more than 10 miles from Sessions-stations—See *Bur. Gaz* p. 206

3. Remuneration:—

Bengal.—If the usual residence of the juror or assessor is more than five miles from the Court-house a duty allowance for attendance at Court only not less than one rupee and not more than five rupees—*Cal Gaz*, Apr. 1904.

Madras.—No fees except when the juror or the assessor visits at the request of the Sessions Judge the scene of the offence and have to proceed more than 5 miles. In such cases only actual out of pocket expenses are to be paid—*Sec Mad. G O*, No 1602 dated 26th Oct 1904 and *G O* No 234 dated 10th Feby 1910.

Punjab.—Under the same conditions as Bengal—bonafide travelling expenses and a subsistence allowance not exceeding 5 rupees if detained for more than a day—*Punjab Book Cir* p. 244

320. The following persons are exempt from liability to serve as jurors or assessors
Exemptions, namely:—

- (a) officers in civil employ superior in rank to a District Magistrate;
- (b) salaried Judges;
- (c) Commissioners and Collectors of Revenue or Customs;
- (d) Police-officers and persons engaged in the Preventive Service in the Customs Department;
- (e) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;
- (f) persons actually officiating as priests or ministers of their respective religions;
- (g) persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;
- (h) surgeons and others who openly and constantly practise the medical profession;
- (i) legal practitioners (as defined by the Legal Practitioners' Act 1879), in actual practice;
- (j) persons employed in the Post-Office and Telegraph Departments;
- (k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641;
- (l) other persons exempted by the Local Government from liability to serve as jurors or assessors

Notes.

1. See.—Notes under S. 264 - Notes no 639.

2. As to exemptions under cl. (1) in Madras.

See *Mad. G. O.* No. 1734 Judl, dated 10th Decr. 1909.

321. (1) The Sessions Judge, and the Collector of the district or such other officers as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (h) both inclusive.

(2) The list shall contain the name, place of abode and quality or business of every such person; and, if the person is an European or an American, the list shall mention the race to which he belongs.

Notes.

1. **As to Jurors.**—See Note No. I. Under S 319 As to assessors. See Notes nos. 6-9 under S. 264 *Supra*.

2. **Sessions Judge cannot arbitrarily grant exemptions.**—It is not open to the Sessions Judge or Deputy Commissioner to arbitrarily exclude from the list any person who is liable and qualified to serve as a juror or assessor and who is not likely to be successfully objected to under S 276 cl (b) to (h) both inclusive. Special exemption from liability to serve can be granted only by the Local Government under cl (i) of S. 320.—C. P. Cr. Cir Pt II No 33.

3. **Assessors can be chosen only from the list.**—The Sessions Judge of Kanara asked the High Court for special permission to hold his

court at Sirsi, instead of at Karwar for the session of Sept 1886. *Held* that assessors could be chosen only from the list prepared under S 321 which can be revised only once a year under S 323 Cr. P. C. The Court therefore declined to grant the permission asked for, there being no assessors available for sessions at Sirsi. Rat 304.

4. **List to be carefully revised.**—All Collectors should exercise great care in the revision of the juror's list so as to include all qualified persons of intelligence who are liable to serve and to exclude unfit persons [See Mad. G. O No 474 dated 16th March 1889]. The list should show again each person the language or languages understood by him. [See C. P. Cr. Cir Pt. II. No 33]

322. Copies of such list shall be stuck up in the office of the Collector or other officer as Publication of list aforesaid, and in the court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

323. To every such copy or extract shall be sub-joined a notice stating that objections to the Objections to list. list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the sessions court-house, and at a time to be mentioned in the notice

324. (1) For the hearing of such objections the Sessions Judge shall sit with the Collector or Revision of list. other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror, or as an assessor, or who may establish his right to any exemption from service given by section 320 and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Session Judge and Collector or other officer as aforesaid and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

(6) The list so prepared and revised shall be again revised once in every year.

(7) The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared

325 In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

326. (1) The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list or the said special list as seem to the Sessions Judge to be needed for trials by jury and trial with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial

(2) The names of the persons to be summoned shall be drawn by lot in open Court excluding those who have served within six months unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Notes.

- 1. Scope of S. 326.**—Ss. 326 and 327 of P. C. contemplate as the ordinary or normal procedure that all assessors should be summoned on the first day on which a criminal Sessions commences, however many trials it may be proposed to hold in the course of that sessions—17 Cr. 17 (A).
- 2. Effect of trial with the aid of a non-summoned assessor.**—See Notes Nos 3 to 5 A under S. 284 *Supra*.
- 3. Trial by Jurors not summoned.**—Where owing to the fact that only three jurors attended the Court, the Judge summoned jurors from among the residents of the town on the day fixed for the trial held that the jury as constituted was not a proper jury and the fact that the Judge instead of selecting jurors from among those who were summoned in accordance with the provisions of S. 326, chose persons specially selected (a thing which the Legislature has taken special pains to render impossible) was a serious irregularity which could not be cured by S. 537 Cr. P. C.—7 C. N. 185.
- 4. The duty cannot be performed by a subordinate Judge "in charge".**—The duty

of issuing a precept which is imposed on a Court of sessions by S. 326 cannot be performed by a subordinate Judge in temporary charge of the current duties of the Court of Sessions—Rat 148.

- 5. Procedure.**—The letter to the District Magistrate is to be in Form No 82 Sch. V, and is technically known as a "precept". On receiving a precept a Magistrate "has simply to issue summons to each person specified in the precept of the Sessions Judge, requiring him to attend at the time and place specified in the summons"—*Smyth* p 133

- 6. Summons how to be served.**—A summons for attendance as a juror could not outside a Presidency town be properly served by leaving it with a servant of the person whose attendance was required as juror [(99) A. N. 13]. Where the summons was served by fixing the duplicate on the door of the juror's house in his absence and he had no knowledge of such service of the summons, held that he could not be fined for non-attendance [6 C. N. 857]. The issue of a summons by registered letter is illegal [See 1 C. N. 611]

327. The Court of Session may direct jurors or assessors to be summoned at other period than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive or whenever for other reasons such direction is found to be necessary.

328 Every summons to a juror or assessor shall be in writing, and shall require his attendance. Form and contents of summons as a juror or assessor, as the case may be, at a time and place to be therein specified.

Note—For forms—See Sch. V Nos XXVII and XXVIII

329 When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court, to serve in which he is so summoned, may excuse his attendance if it appears on the representation of the head of the office in which he is employed that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Court may excuse attendance of juror or assessor

Court may relieve special jurors from liability to serve again as jurors for twelve months.

330 (1) The Court of Session may, for reasonable cause excuse any juror or assessor from attendance at any particular session

(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as

jurors for a period of twelve months.

331. (1) At each session the said Court shall cause to be made a list of names of those who have attended as jurors and assessors at such session.

(2) Such list shall be kept with the list of the jurors and assessors as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section

332 (1) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any movable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown, the Court may remit or reduce any fine so imposed

(4) In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

Notes.

1. No fine can be imposed if the summons has not been legally served.—See (99) A. N. 13 G.O. N. 857: 1 C.N. xvi

2. Order under the section is not appealable.—The order of a Sessions Judge under S. 354 Cr.P.C. = (S. 332) fixing an assessor is not appealable.—S.W.R. 63

3. Order made in absence.—The Sessions Judge fixed an assessor at 30, as he had not attended at the proper hour. The order was made in his absence. Held that the order was bad, and the assessor should have been given an opportunity of explaining his absence.—Cr. R. 4 of 20 2 381

4. Imprisonment cannot be ordered before

actual default.—An order for imprisonment can be made only in default of recovery of fine by attachment and sale. [Held also that imprisonment in default cannot be less than 15 days]—*Ibid.*

5. Native sentiments to be respected.—A Sessions Judge summoned a gentleman of considerable rank and status to serve as an assessor. He

until it is known that he is willing to act as such, as native sentiment upon this point is highly or wrongly excited such nomination—(97) A. N. 167

L.—Special Provisions for High Courts.

333. At any stage of any trial before a High Court under this Code, before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Notes.

1. Where a *nolle prosequi* would be entered.—In *Nunai Kanta Ray's* case (41 C 1072) the Advocate General entered *nolle prosequi* under S 333 Cr P. C. In this case the Jury in the first trial returned a unanimous verdict of not guilty on the main charge of murder. (S. 302) and were divided in the proportion of 5 to 4 on other counts. In the second trial on the remaining counts (ordered under S 308 Cr P. C.) the Jury returned a verdict of not guilty by a majority of seven to two. The Judge disagreed with the verdict. The accused was brought up again before the learned Judge "to be dealt with according to law. The Advocate General thereupon appeared and entered *nolle prosequi*. *Nolle prosequi* has also been entered to avoid technical difficulties standing in the way of a discharge or acquittal where it was clear that the indictment was not sustainable against the prisoner [See 2 C. N. 481, 7 C. N. xxxi; 8 C. N. xliii].

2. The English practice.—In England a *nolle prosequi* is usually entered, where in a case of misdemeanour a civil action is depending for the same cause; [*R. v. Fielding* 2 Bur 719] or where any improper or vexatious attempt has been made

is not sustainable against the prisoner. [See Archbold pp 143-146 Halsbury Vol V, pp 250-251] or to enable one defendant to give evidence for the Crown against his co-defendants [*ibid.*].

3. Stage at which it is to be entered.—A *nolle prosequi* may be entered by the leave of the Attorney-General at the instance of either the prosecutor or the defendant at any time after the bill of indictment is found and before judgment—*R. v. Dunn* 1 C. and K. 730.
4. The power of the Advocate General not subject to control by the Court.—On the analogy of the English practice, according to which the power is not subject to any control by the Courts [See *R. v. Comptroller of Patents* (1889) 1 Q B 908-914] the words "if he thinks fit" in the section indicate that the power is invested solely in the Advocate General.

5. Discharge under S 333 does not amount

charges before a Deputy Magistrate, held that the Magistrate was bound to adjudicate on the charges properly laid before him against the accused [40 C 71, 29 C. 726 R.]. In England also a *nolle prosequi* is distinct from and has not the same effect as offering no evidence and submitting to acquittal [*Elworthy v. Bird*—2 Bing 258]. A *nolle prosequi* merely puts an end to the prosecution but does not operate as a bar to a second trial [See *Goddard v. Smith* 6 Mod 261; *R. v. Allen* 1 Baul S. 850 *R. v. Mitchell* 3 Cox 93].

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

335. (1) The High Court shall hold its sitting at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

(2) But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints,

(3) Such officer as the Chief Justice directs shall give notice before-hand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

5 The High Court may direct that all European British subjects and persons liable to be of trial of European British tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they be tried at a particular place named.

6.—In Burma, See Lower Burma Courts Act XI of 1889 S 37 (4), for similar powers of the Chief Court.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

7. (1) In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of pardon to accomplice. of the first class inquiring into the offence or, with the sanction

District Magistrate, any other Magistrate, may, with the view of obtaining the evidence person supposed to have been directly or indirectly concerned in, or privy to, the offence inquiry, tender a pardon to such person on condition of his making a full and true disclosure whole of the circumstances within his knowledge relative to such offence, and to every other concerned, whether as principal or abettor, in the commission thereof

(2) Every person accepting a tender under this section shall be examined as a witness in

(3) Such person, if not on bail, shall be detained in custody until the termination of the y the Court of Session or High Court, as the case may be

(4) Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under ction, shall record his reasons for so doing; and when any Magistrate has made such tender xamined the person to whom it has been made, he shall not try the case himself, although enue which the accused appears to have committed may be triable by such Magistrate

proposed amendment to the section—In section 337 of the said Code —

In sub-section (1) —

after the words "triable exclusively by the Court of Session or High Court" the words "or punishable with imprisonment for a term which may extend to seven years" shall be inserted,

for the words "any Magistrate of the first class inquiring into the offence or with the sanction of the District or any other Magistrate," the words "a Sub-divisional Magistrate or, with the sanction of the District Magistrate, gistrate of the first class" shall be substituted.

After the words "commission thereof" the following shall be added, namely —

Every Magistrate other than a Presidency Magistrate who tenders a pardon under this sub-section shall record his for so doing.

In sub-section (2) for the word "case," the words "Court of the Magistrate inquiring into the offence" shall be

(2) After sub section (2) the following sub section shall be inserted namely —

"(2a) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Sessions or High Court, as the case may be

'Provided that, if any Magistrate in the district has been invested with powers under section 30 and has not himself tendered the pardon, the case may be transferred to such Magistrate for trial if otherwise triable by him, instead of being committed to the Court of Session."

(4) In sub section (3), for the words "if not on bail" the words "unless he is already on bail" shall be substituted.

(5) Sub-section (4) shall be omitted.

338. At any time after commitment, but before judgment is passed, the Court to which the Power to direct tender of pardon. commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

339. (1) Where a pardon has been tendered under section 337 or section 338, and any person Commitment of person to whom pardon has been tendered. who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been forfeited under this section.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court

Proposed amendments to the section—(i) In sub-section (1) of section 339 of the said Code, after the figures and words "section 338 and" the words "it is alleged by the prosecution that" shall be inserted, and at the end of the said sub-section, the following proviso shall be added, namely —

"Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with."

(ii) In sub-section (2) of the same section, for the words "when the pardon has been forfeited under this section" the words "at such trial" shall be substituted.

ARRANGEMENT OF NOTES.

S. 337=S. 347 (1872)=S. 209 (1861): S. 338=S. 348 (1872): S. 339=S. 349 (1872).

I. Object and application of Ss. 337-9.

- (1) Scope of S. 337
- (2) Scope and application of S. 338.
- (3) Scope and application of S. 339
- (4) General Rules of application

II. Who can tender pardon.

III. Procedure in relation to grant of sanction.

- (1) Effect of the pardon
- (2) When pardon can be tendered
- (3) Procedure in relation to grant of pardon.

IV. Forfeiture of Pardon.

- (1) Who can direct forfeiture of pardon.

- (2) Effect of forfeiture.

- (3) Meaning and Scope of the term "forfeited".
- (4) Circumstances justifying forfeiture.

V. Procedure on forfeiture of pardon.

- (1) Consequences of forfeiture.
- (2) Procedure.
- (3) Trial of approver on the original charge.

VI. Power of the Sessions Judge.

VII. Sanction by the High Court.

VIII. Admissibility of evidence of a pardoned accomplice.

IX. Miscellaneous.

26. **Mamlatsdar.**—Under the Criminal Procedure Code, judicial pardon can be tendered only in certain cases and by officers of rank higher than the Mamlatsdar.—14 B. 331.
27. **The Police.**—The mere fact that an accused person although arrested by the Police has not been sent up will not take him out of the category of an accused person and S 337 would not apply to such a case.—21 Cr 590 (P) 12 P R 1902 4 Cr 252 (P); Com. 21 P. R. 1901. 21 Cr 769 (N).

37A. **District Magistrate.**—If a District Magistrate can sanction the grant of the pardon although he is not making the inquiry himself, *a fortiori*, he can himself grant a pardon in a case where the inquiry is made by himself. 58 171.

38. **Executive pardon.**—The circumstances under which an executive pardon, granted by the Local Government outside the provisions of S. 337 C. P., can be properly cancelled must be taken to be the same as those under S 330 C. P.

327 P. R. 1902.

III. PROCEDURE IN RELATION TO GRANT OF SANCTION.

(1) Effect of the pardon.

29. **Effect of pardon.**—When an accused person is tendered and accepts a pardon under S 337 or

See 33 C 1353

[**Note.**—He must be discharged by a written order before he can cease to be an accused person.—33 C 1353 21 Cr 590 (P)]

30. **Accused (pardoned) must be discharged.**—At the termination of the trial in which the pardon is given, the accomplice must be discharged by the Court.—30 B 611

31. **Re-arrest of the pardoned accomplice.**—A pardoned accomplice may be arrested at the instance of the Crown and proceeded against for the offence in respect of which he was given a conditional pardon. When put on his trial he may plead to a competent Court his pardon in bar. [*Ibid.*].

32. **Approver not realising that pardon had been withdrawn.**—Any statement made by a person in consequence of the promise of pardon, is inadmissible in evidence against him, so long as it did not appear that he had realised that the tender of pardon had been finally withdrawn.

30 P. R. 1895.

33. **Pardon unless withdrawn was a bar to the trial of the approver.**—A person charged before a Magistrate at Benares with offences punishable under Ss 471 472 and 471 Cr P O was sent in custody to Calcutta and charged before a Magistrate with offences under Ss 467 473 and 475 along with other accused. The facts of the two cases were closely connected and mixed up. He was granted a pardon and examined as a witness at Calcutta. But the case fell through as his evidence was not sufficiently corroborated. There was nothing to show that the Magistrate was dissatisfied with the prisoner's statement or considered that he had not complied with the conditions on which the pardon was tendered. Held.—that by the terms of the conditional pardon granted to the accused by the Calcutta Magistrate, which were satisfied, as was shown by the fact that it had not been withdrawn, the accused was protected from trial at Benares. 11 A 71

34. **Informal pardon.**—A person in whom the Police Inspector, investigating the case, makes a promise of pardon under the orders of the District Superintendent of Police and who is therefore not sent up, is not a person who may be examined as an approver under S 337 Cr. P. C. [See 21 Cr 590 (P) 21 Cr 769 (N)] But he may be examined as a witness on the general principle that a person separately tried is a competent witness against his accomplice. 84 312 and 313 are no bar in such procedure. [21 Cr 769 (N); See 15 C 723 31 C 1353 (1357) 10 B 601, 38 P R 1887, 1 Cr Pleading J.] 21 Cr 590 (P); 12 P R, 1902; 1 Cr 252 (P)]

(2) When pardon can be tendered.

35. **Offence must be triable by the Court of Session.**—A Magistrate has no power to tender a pardon in a case which he tries himself but only under S 209 Cr P C (S 337) in the case of an offence triable by the Court of Session.—2 H. H. 59 3 M H (up) 1; 101 P L 1902 3 M H (up) 2; 7 P H 1854

36. **Pardon tendered to an accused who had pleaded guilty.** An accused person who had pleaded guilty was granted pardon, returned from the dock and examined as a witness for the crown, held that he was a competent witness and an oath could be administered to him.

25 M H (F. H.) [Dunn J dissenting]

37. **In cases not contemplated by S. 337.**—A Magistrate is not competent to tender a pardon to the accused or to examine him as a witness.—2 A 290 10 B 190, 31 Cr H 184 79

38. **Before trial.** A pardon may be granted at the instance of the Sessions Judge after commitment sent but before judgment. It is therefore competent to him to direct a Magistrate to tender pardon under the section even before trial. The ruling on 7 W H 78 (11) is not superseded. 8; 81 A 147 4 W R (Pr L) 5.

(3) Procedure in relation to grant of pardon.

39. **Pardon at the close of the trial.**—Two persons were charged jointly in a trial before the Sessions Judge. After the first of the persons had been examined the trial of the second had been fixed as the next day. The accused told the Sessions Judge that he would like to be tried with the first person. The Sessions Judge then directed that the case against the second person should be tried

pardon to the other and examined him as a witness. Held that the procedure was irregular, if not positively illegal, but as the accused, had not been prejudiced thereby, there being ample evidence besides, the sentence was not disturbed—(84) A. N. 147.

40. Approver keeping back material evidence—within his knowledge need not necessarily be examined as a witness in the Sessions trial—24 M 319 7 M T. 121

41. When an accused person can be made a witness.—It is illegal for a Magistrate to convert an accused person into a witness, except when a pardon has been lawfully granted under S 347 (=S 337).

1 B 610 2 A. 260 Rat 224 461. But See 25 M 61 (F. B.) 21 P. R. 1904. 16 B 661.

42. Magistrate should warn the accused.—The Court, should when it tenders a pardon to a person, explain to him the conditions which accompany the tender. If he refuses, the trial will proceed as if no such tender had been made. If he accepts, it is the duty of the Court to examine him as a witness in the case and then, if the Court be of opinion that he had not complied with the conditions, the Court may commit him or direct him to be committed for trial upon the charge in

respect of which the pardon was tendered—4 B. L. (appx) 60.

43. The sanction.—Where the Magistrate concerned took oral sanction of the District Magistrate before tendering pardon—held that the tender of pardon though irregular was legal—(68) A. N. 259

44. Examination of the approver compulsory.—An accused accepting a pardon must under S 337 (2) be examined as a witness and then dealt with under S. 339 if necessary.—31 M. 272

45. Recording of reasons.—S. 337 requires a Magistrate who tenders a pardon to record his reasons for so doing. Where however, the facts which led up to the tender appear on the record, the omission to state the reasons is not only not an illegality but not even an irregularity which vitiates the proceedings

5 C. J. 224; 36 C. 629; 13 Cr. 558 (A).

46. Magistrate with special powers granting pardon must not try the case himself.—Where a Deputy Commissioner with special powers tries a case exclusively triable by the Court of Sessions, and if he tenders conditional pardon to one of the accused, he is precluded by S 337 (4) from trying the case himself.

10 C. N. 847; 2 A. 260.

IV. FORFEITURE OF PARDON.

(1) Who can direct forfeiture of pardon.

48. Sessions Judge—has no power to pass an order directing the forfeiture of pardon granted to the accused by the Committing Magistrate.

30 B 611.

- 47 General Principle.—The Criminal Procedure Code does not specify by whom a pardon may be withdrawn. Ordinarily the authority, which makes an offer, has the power of withdrawal. The proper authority therefore to withdraw a pardon is the authority which granted it even after the trial has been held in the Sessions Court.

24 M. 321. 19 P. R. 1901.

49. Pardon granted by Magistrate 1st class withdrawn by the District Magistrate.—A Magistrate of the First Class enquiring into a charge of murder, granted a conditional pardon to one B said to be an accomplice in the murder and sent him as a witness to the Sessions Court. In the Sessions Court his evidence was considered to be false. After the trial the District Magistrate revoked the pardon granted to B and committed him to the Sessions for trial.—Held that the commitment was bad, in as much as the District Magistrate had no power after the trial was concluded, to revoke the pardon.—(35) A. N. 163; but see 66 F. L. 1901.

(2) Effect of forfeiture.

50. It is doubtful whether the deposition of an approver—taken before the committing Magistrate may be used as evidence against his accomplices on their trial before the Sessions

Court, the conditional pardon of the approver having been withdrawn.—7 C. L. 66; 13 C. L. 326.

51. Pardon withdrawn before the close of examination.—Where pardon tendered to one of the two accused persons by a Magistrate was withdrawn before the close of his examination—held that the evidence thus given was inadmissible in the Sessions Court.—(91) A. N. 184 575 F. L. 1902

52. Opinion of the Court withdrawing pardon not compulsory.—The opinion of the app the —2

53. Prosecution for giving false evidence as opposed to original charge.—The High Court declined to interfere in a case, where the Deputy Magistrate who had granted the pardon to the accused and who had retracted his statements at the sessions, committed him for trial on a charge of giving false evidence instead of the original charge.—23 W. R. 12

54. Statement made by approver may be used against him.—The statement by an approver, who has forfeited the pardon is admissible against him, although he has not been examined as a witness under S. 337 (2) S. 339 (2) contains merely the words "who has accepted the tender of pardon" and the words "accused who has been examined as a witness in the case should not be imported into it—41 P. R. 1905 (F.B.) Per Chittagye, Johnston and Clarke J. J. Reid and Kensington J. J. dissenting]. See 5 A. J. 691; Con 10 B. 190.

55. **Note.**—The Statement made before the committing Magistrate which is subsequently withdrawn at the trial, is admissible against the approver under S. 289 *Supra* [21 A. 175. 14 P. R. 1594. 24 P. R. 1902. 15 M. 352; *But See* 22 A. 445] But it is very doubtful whether such a statement is evidence against the accomplices of the approver after the conditional pardon has been withdrawn. [7 C. L. 66. 22 G. 50 *See* 5 N. P. 217].

56. **Statement of person illegally pardoned.** A Magistrate is not empowered to convert an accused person into a witness except when a pardon has been lawfully granted under S. 337. Evidence given by a person who has been illegally granted pardon in respect of an offence not exclusively triable by a Court of Sessions is irrelevant.—*See* 1 B. 610. 10 B. 190. 3 B. If (O C) 59; *But* 224. 461. 10 C. 936. 10 C. L. 553; 6 W. R. 91; 3 P. R. 1897. 12 P. R. 1902. 21 P. R. 1904. 9 P. R. 1906.

(3) *Meaning and Scope of the term "forfeited."*

57. The word "forfeited" was substituted in the Code of 1893 in the place of the word "withdrawn" of the Code of 1852. As the law now stands, the question is whether the accused has forfeited his pardon by some act of his own and not whether the Magistrate has validly withdrawn it. The question is one of fact on which it is clear that the Magistrate may hold one opinion and the Sessions Judge another. The Sessions Court has to determine for itself on the evidence before it, whether the pardon has been forfeited, for if not the accused who has accepted such pardon cannot be tried.—25 B. 675

58. The use of the word forfeited in S. 339 Cr. P. C. shows that the approver's failure to make a full and true disclosure is a condition for subsequent determining or forfeiting the pardon. It is for the prosecution to prove that the pardon has been forfeited.—32 M. 173

59. **Distinction between "forfeiture" and "withdrawal" of pardon.**—The word "withdrawn" in the former Code has been replaced by the word "forfeited" and so the accused cannot be tried even if the pardon has been withdrawn if he has not forfeited it (that is to say that the accused had not by concealing evidence forfeited it).—25 B. 675. 60 C. 236. 30 B. 611. 7 N. 65

60. **Withdrawal under S. 339 Cr. P. C.**—There is no necessity of withdrawing the pardon and the withdrawal has no effect.—32 M. 173. G O C 236

61. **Authority which might take action under S. 339.**—Under the Code of 1852 the conditional pardon could be withdrawn only by the authority which granted it and not by the High Court or the Sessions Judge [*See* 24 C. 492. 24 M. 321. 19 P. R. 1901. 30 O. 181] It was however held in 149 P. L. 1901 that a District Magistrate trying a case is competent to withdraw pardon, granted to the accused by an additional Magistrate during the course of the enquiry.

(4) *Circumstances justifying forfeiture.*

62. **Approver refusing to make any statement.**—An accused person, after accepting pardon refused to make any statement saying that he knew nothing. The Magistrate revoked the pardon and committed him to the Court of Sessions.—*Held* that the commitment was perfectly legal (O C) A N. 254

63. **Circumstances justifying forfeiture.**—The mere failure of the evidence of an accomplice to procure conviction of his alleged associates in crime is plainly insufficient in itself to justify a summary order for the withdrawal of the pardon and the trial of the deponent. Some definite evidence to show wilful concealment or the giving of false evidence should be required before his commitment for trial is considered justifiable.—30 P. R. 1895.

63A. *Conditions precedent to forfeiture.*

A man (A) obtains a true disclosure of all he knows about the crime. And his pardon may be forfeited by his failure to comply with these two conditions in two corresponding ways. (1) first by concealing some material fact, that is to say by not making a full disclosure or (2) by giving false evidence, that by not making a true disclosure. The words "false evidence" must be read subject to limitations of their context, as defining one of the modes of non-compliance with the conditions of the pardon and not in their literal sense.—*Per Benjamin J* in 30 B. 611

64. **Wilful concealment of a material fact.**—An accused person who accepts a pardon, forfeits his pardon by wilfully concealing a material fact or by giving false evidence.—(O) T. H. 7.

65. **Approver unwilling to give evidence.**—Where an approver after accepting grant of pardon, shows an intention of not giving evidence which he has led the prosecution to expect, he

66.

A man (A) obtains a true disclosure of all he knows about the crime. And his pardon may be forfeited by his failure to comply with these two conditions in two corresponding ways. (1) first by concealing some material fact, that is to say by not making a full disclosure or (2) by giving false evidence, that by not making a true disclosure. The words "false evidence" must be read subject to limitations of their context, as defining one of the modes of non-compliance with the conditions of the pardon and not in their literal sense.—*Per Benjamin J* in 30 B. 611

VII. SANCTION BY THE HIGH COURT.

95. **High Court's powers under S. 339 (3) Cr. P. C.**—Action can be taken by the High Court under S. 339 (3) against an approver in respect of a statement made by him which is *prima facie* false, even though the approver has not been examined as a witness in the case in connection with which he made his statement. The High Court can sanction the prosecution of an approver for an offence under S. 193 or S. 194 P. C. in respect of such statement.

15 P. W. 1913 41 P. R. 1905 (F. B.).

96. **Necessity of motion before High Court.**

If the sanction

S. 339 (3) Cr.

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open Court, not by a letter of reference [21

C. 192 10 P. R. 1904. 175 P. L. 1912 (97) A. N. 12]

97. **What must be proved before the High Court.**—The person moving the High Court must be in a position to place before it, the tenets of pardon and the evidence given in consequence of such tender and to satisfy the High Court that there is *prima facie* reason to suppose that the persons who accepted the tender of pardon had wilfully concealed an essential thing or given false evidence.—12 P. R. 1884.

98. **When a Sanction must be obtained.**—The sanction under Subs. (3) to prosecute for false evidence, must be obtained *before* and *not* after the commencement of the prosecution. [10 B. 199 11 B. 11. (C. C.) 34].

99. **Locus Penitentiae.**—A witness who is in any way induced to make a false statement in connection with a capital charge should be allowed every possible *locus penitentiae*. The Sanction to prosecute him should not be given merely on the ground that he contradicted himself before the committing Magistrate.—11 A. J. 964

100. **Want of sanction required by Subs. (3) is not a mere irregularity curable by S. 537 Cr. P. C.**—27 C. 137 42 P. R. 1884.

101. **When the High Court will quash**

when a pardon was tendered him, the commitment of all the accused must be quashed and fresh enquiry held at which the approver should be examined as required by S. 337 (2) Cr. P. C.—31 M. 272.

VIII. ADMISSIBILITY OF EVIDENCE OF A PARDONED ACCOMPLICE.

102. **Definition of "accomplice."**—An accomplice is one who confesses himself a criminal. No man ought to be treated as an accomplice on mere suspicion unless he confesses that he had a conscious hand in the crime or he makes admission of such facts which show that he had such hand [11 B. R. 1153]. The term "accomplice" signifies a guilty associate in crime or when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice.—[Per *Sudhaharna Ayyar J* in 27 M. 271.] A person who gives bribes is an accomplice of the person who receives them. [26 B. 183 (197) 14 B. 331 26 M. 1]

103. **"Accomplice" and "spy" distinguished**

—Spies and informers, who with a view to lay down a trap for a suspected person, suggest to him the commission of crime and supply him with means of committing it are themselves accomplices [19 B. 361] But a spy who supplies a marked coin to a suspect and lies in wait till the offence has been committed is not an accomplice. [19 B. 263] A person, who as a spy or detective associates with criminals solely for the purpose of discovering and making known their crimes, and who acts throughout with this purpose and with. out any criminal intent is not an accomplice, and it is immaterial that he encouraged or aided the commission of the crime. [11 Cr. 560 (C)]

104. **The distinction explained.**—"Where a witness has made himself an agent for the prosecution before associating with the wrongdoers or before the actual perpetration of the offence,

he is not an accomplice, but he may be, if he extends no aid to the prosecution until after the offence is committed. A mere detective or spy is not therefore an accomplice, nor an original confederate who betrays before the crime was committed. Yet an accessory after the fact would be an accomplice, if he had, before betrayal, rendered himself liable as such.—Per *Mookerjee J.* in 16 C. N. 1105 (S. B.). See *R. v. Mullins* 3 Cox 526; *R. v. Buckley* 73 J. P. 239.

105. **A spy's evidence need not be corroborated like an accomplice's.**—The law and practice as to the corroboration of accomplices do not extend to the case of a police spy or agent provocateur. See *R. v. Mullins* 3 Cox 526; *R. v. Buckley* 73 J. P. 239; See 11 Cr. 560 (C); 19 B. 363

106. **The Law as to corroboration.**—The presumption allowed by ill (b) of S. 114 that an accomplice is unworthy of credit, unless he is corroborated in material particulars has become a rule of practice of almost universal application. Judge now in their charge usually tell a jury that, under ordinary circumstances, it is unsafe to convict on such evidence without the substantial corroboration of independent evidence. A Judge who combines the function of a Judge and jury is equally bound to scrutinize accomplice evidence with great care and to consider whether there is any corroborating evidence when the main evidence is of an accomplice character.—Per *Bootham J.* in 27 M. 271:

NOTE.—See the following rulings.—9 W. R. 29; 3 B. 11. (C. C.) 67; 6 B. 11. (C. C.) 67; 10 B. 319;

(2) Any person against whom proceedings are instituted in any such Court under Chapters X, XI, XII or under section 532 may, if he so desires be examined as a witness in such proceedings."

S 310—S 186 paras 1 and 2 (1872)—S. 432 (1861)

Notes.

1. **Pleader.**—For definition See s 4 (f) *Supra* and the notes under that clause.
2. **The term "accused".**—The term "accused" in S 340 Cr. P. C. applies to a person liable under S 121 Cr. P. C. to imprisonment in default of giving security for good behaviour [See 27 C 650 4 C N 797] Although a person, who is called upon to furnish security for good behaviour is not accused of an offence, yet he is mentioned as the word "accused" means a person over whom the Magistrate or other Court is exercising jurisdiction [23 C 113 15 P R 1900 21 A 376 (377) See 21 A 107-43 P R 1905 2 L R 80 100 27 C 662 9 C N 983] It has been held that a person called upon to show cause against an order under S 107 Cr. P. C. is an accused person [See 4 C L 453 20 C 163.] It is doubtful if the term "accused" includes a person against whom proceedings have been taken under S 488 Cr. P. C. [16 C 781 18 B 165 17 C P 127 (124)]. As to a person against whom proceedings under S 133 Cr. P. C. are taken—See 9 C N 983.
3. **Person against whom complaint has been filed but no process issued.**—A person complained against does not become an accused person until it has been decreed to issue process against him under Ch. XVI Cr. P. C. S 310 does not therefore entitle a person complained against, to be represented by a pleader during the preliminary enquiry held under S 202 (1) Cr. P. C. 1 N 84 See 10 C L 553. 16 B 661 (668) 8 B H 202; But See 1 S 124.
4. **The person against whom enquiry is held under S. 476 Cr. P. C. by a Civil Court.**—A Civil Court holding an enquiry under S 476 Cr. P. C. is a Civil and not a Criminal Court S 310 therefore does not cover such a case. But as a rule of general practice it is usual to hear pleaders on behalf of persons proceeded against under S 476—S A J. 237.
5. **Limits of the right of representation.**—There is no general rule of law that entitles every person to be represented by a pleader before public officers. The claim must, in each and every case, be referred to some express provision of law. The right of a person, ordered to furnish security under S 114 Cr. P. C. to be represented in the subsequent proceedings relating to the fitness of such person for proceedings, is entirely within the discretion of the Court—1 S 19.
6. **Magistrate cannot act arbitrarily.**—A Magistrate has no power under S 112 Cr. P. C. (S 310) to forbid a duly qualified pleader to appear for the accused [1 C 23].
7. **The privilege under the Section is a matter of right and not indulgence.**—It is not a mere principle of law that an order should be made to a witness, especially

in a criminal case, without hearing him very object of the Legislature in allowing to be represented at trials by a counsel is counsel must be heard.

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8. **Magistrate must not interpose between the accused and his pleader.**—A Magistrate is bound to afford the accused and his every opportunity of making his defence, should not personally interpose in any way there. It is highly improper for an interested Magistrate to refuse to allow the pleaders by the accused's wife to defend the accused to have interview with him or to appear in Court.—1 B. R. 656.
9. **All facilities to be given to engaged prisoners.**—The fullest opportunity should be given to prisoners to execute vakalatnamas to whom they please, and without reference to the law, or the circumstances by which they influenced to do so (1 B H 16).
10. **Access to prisoners in jail.**—Prisoners in the custody of the Police before being produced before a Magistrate are at liberty, at any time of the day, to see a pleader, due precautions taken against escape. The access to prisoners in jails by pleaders is a matter for the law of the jail to decide.—Mail Pol p 95 Note.
11. **Discretion of Magistrates.**—Every Magistrate has a discretion to permit a person, in a pleader, not otherwise authorised to appear in his Court, to appear for a person before the Court. The discretion, should be exercised judicially and persons should be sparingly given and in such a case the Magistrate or presiding officer considers it is for the interest of the accused that it be given.—(16) C. B. H. 121.
12. **Mukhtars and agents.**—Under the Act of 1861, S 432, the Court was bound to hear a person authorised by the prisoner to act as an agent in any Criminal Court. [See Rat 1. 6 B H 1 M. 301] But under the present practice, a Mukhtar can only plead with permission of the presiding officer in Criminal Court [1 S 115. 7 M. H. (S. 310) 2 Weir 314]. In the leading case *Jahan Chaudhri Bhat* (18 C 458) it has been held that "the terms of S. 310 do not warrant any general rule for the exclusion of mukhtars in all cases, but only allows exercise by Magistrates of a discretion in cases as it arises. The Magistrates are not to deprive parties of legal aid when they

frequently obtain at moderate cost, by indiscriminate exclusion of persons who are invested by law with a distinct professional status in criminal trials." [See also 2 Weir 400 401 1 W. R. 31]

13. **Magistrates must not arbitrarily interfere with the conduct of the case by the pleader.** A Criminal Court has no right to tell the pleader to sit down in the middle of his cross-examination because he is asking irrelevant questions. It can only rule a particular question irrelevant and refuse to allow it to be put and order the pleader to proceed with another question. It has no right to refuse to allow the pleader to cross-examine some witnesses because he has not purged himself of the contempt shown towards it, or to allow him to cross-examine witnesses there after called, only if he apologised for his previous contumacious behaviour. The Court has no power to tell the accused that he is not fit to be defended by a pleader, as the accused did not know

14. **Court must not threaten a pleader.**—A pleader is bound to call witnesses whose evidence he wishes to submit to the Court, even though he suspects their evidence. It is for the Court to determine the value of such testimony. Any threatening on the part of the Court to report to the High Court the conduct of the pleader in calling such witnesses is improper.—3 B. R. 562
15. **Adjournment for opportunity to engage pleader.**—A Magistrate acts arbitrarily in refusing to allow an accused person an adjournment of his case for securing the services of a pleader whom he wants to engage for the purpose of cross-examining the prosecution witnesses.

14 P. W. 1916.

16. **Admissions by pleader.**—Admissions made by a prisoner's solicitor in formal matters of law which can be better trusted to him are evidence against the prisoner [Cr. R. 60 of '94; 34 of '95]. But as a general rule an admission on a matter of fact cannot be so used [17 W. R. 49]. The position of a pleader appointed by the Court to defend a prisoner accused of murder is not the same as that of a pleader authorised by the accused to act for him. The admissions made by the former are not binding on the prisoner [2 B. R. 751]. If a counsel says "admitting for the sake of argument that there was a dacoity the prisoner

is not proved to have been present," held that was no admission at all [Rat 606].

17. **Defence counsel not to be allowed to make a statement to the Court.**

made to him in the course and for the purpose of his employment as a pleader. The mere fact that

18. **Defence counsel not to be allowed to make a statement to the Court.**

that the order of the District Magistrate went beyond the terms of the High Court Circular, The High Court Circular did not preclude a Magistrate except in exceptional cases, from exercising his discretion by allowing private vakils of good character to appear in a case.—12 M. J. 354; See 2 Weir 400. 7 M. H. (appx.) xxxvii.

19. **Defence counsel not to be allowed to make a statement to the Court.**

quired to file a memorandum of appearance containing a declaration that he had been duly instructed to appear by or on behalf of the party whom he represents; but it is not necessary to ask for such memorandum if the party is present in person along with his Vakil [5 M. T. 290]; See Court Fees Act (VII of 1870) Sch II, Art 10.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Notes.

(1) Application of the section.

1. **Scope of the section.**—In a case coming within the terms of S. 341, the Magistrate should,

on conviction merely report the case to the High Court for orders. He cannot pass an order under S. 362 Cr. P. C.—11 M. T. 401.

2. **Application of the Section.**—Before a Magistrate can act under S 341 Cr P C he ought to hold an enquiry into the question whether the accused is a lunatic at the time of the trial or at the time of the commission of the alleged offence. If he holds that the accused is not a lunatic on either of the occasions, he will then as required by S 341 Cr P C, try the accused or commit him to the Sessions Court for trial. If he convicts him, he will then make a report to the High Court under S 343 Cr P C.—[11 M T 24 See Rat 536] If the accused is found to be of unsound mind, the procedure provided in Chap XXXIV, *infra* must be followed [Rat 832 151 5 B 262 ('00) A N. 47] The section is intended to provide for cases in which the accused person is deaf and dumb, or from ignorance of the language of the country and the want of an interpreter, is unable to understand or make himself understood.—[5 B. 262]

3. **The Section does not apply where the**

Where the accused showed by his demeanour that he understood what he was charged with, the Magistrate's finding must be accepted as final, and the provisions of the section would not apply [19 W R 37]

4. **Criminal responsibility of deaf mutes.**—The law in England appears to be that though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand his criminal acts, he is liable to punishment [Russell on Crimes Vol I p 62; Archbold's Criminal Practice p 11 and *Re: Steel* (1787) 1 Leach C C 451] The rulings in 22 W. R 85 22 W R 72 Rat 696 are authorities to

communication by signs or otherwise. In modern practice, want of capacity either in the understanding or memory, is but only a difficulty in the means of communicating knowledge. The Law in India certainly does not expressly provide for a sane deaf-mute, who has never been instructed being exempted from punishment. If his mind is sound, his inability to hear and speak will not excuse him [(10) W R 4 Q 57. See 93 P. R. 1885-139 P. R. 1886]

5. **Favourable presumption must be made in favour of the deaf-mute.**—The only evidence against a deaf-mute accused was that a week after the theft he was caught by the guard walking past his quarters and wearing a suit of pyjamas which formed part of the stolen property. *Held* that the presumption authorised by S 111(a) of the Indian Act in the case of an ordinary individual should not be applied. It was impossible to draw such an inference because the accused's infirmity prevented him from putting forward any explanation.—[11 M. S. 821.]

(2) Practice and Procedure.

6. **Magistrate or Judge cannot himself pass orders in doubtful case.**—When the Magistrate is uncertain whether the accused understood the proceedings, he should not convict and sentence the accused but proceed under this section 2 Weir 403 (1910) U. B. I. 57 See 11 M. T. 401
7. **Serious cases.**—In serious cases reported under S 341 Cr. P. C. it is usually the practice to refer the matter to the Local Government.—21 Cr. 621 (P). 13 P. R. 1911: 37 P. R. 1889
8. **Attempt should be made to communicate with the prisoner.**—Where a dumb person is placed on his trial, some means of communicating with him should be adopted. The

[(10) U. B. I. 57: 8 B. R. 849]

9. **Reference should not be made in the midst of the trial.**—See 341 Cr. P. C. requires that the Court shall proceed to the end of the trial and then report the result to the High Court if a conviction follows. It does not empower a Magistrate to make the report in the midst of the trial.—1 B. R. 825. Rat 836: 879. 180: 2 Weir 403. 27 C 368

10. **What the Section contemplates.**—In a case referred under S 341, the Legislature seems to have contemplated that there should be a

11. **Points to be ascertained before reference.**—In submitting a case to the High Court, under S 341 Cr. P. C. the Magistrate must state his view of the conduct of the accused and must take some evidence regarding the previous history and habits of the accused. [Rat 696 (C97): 8 B. R. 849] He should decide on the evidence whether the accused is capable of understanding the proceedings or not, and even if he is found incapable, the Magistrate is to proceed with the inquiry and report to the High Court, if he convicts or commits the accused. A mere expression of an opinion by the Court that the accused is guilty does not amount to a conviction [Rat 879 27 C. 364]

12. **Petty offences.**—Where the offence is very petty, the deaf-mute accused will ordinarily be discharged.—See 21 Cr. 621 (P): 22 W. R. 35: 34 P. R. 1885.

13. **Summary trial.**—Where the accused is a deaf and dumb man, it is inconvenient to try him summarily, even if the offence is summarily triable.—8 B. R. 849.

(3) The High Court.

14. **The wide discretion of High Court.**—Where a Magistrate commits a deaf-mute to the

Sessions on a charge of murder, and then forwards the proceedings under S. 341 to the High Court, it does not necessarily follow that the Sessions trial shall take place. It is discretionary with the High Court in such cases of commitment, to order whether the trial should proceed or not, and it should consider whether any benefit will likely to result especially to the accused by such trial.—[27 C. 365.] Under this Section the discretion vested in the High Court is very wide though according to the principles of English Common Law proceedings conducted when the accused is unable to understand, do not constitute them a fair and proper trial, still the High Court can, under special circumstances, if it thinks fit, treat the proceedings of the lower Court as a sufficient trial and pass sentence on the prisoner, according to the facts which seemed to be established in the course of and as the result of those proceedings.—[22 W. R. 35. See (10) C. 41 57.]

15. When the High Court will discharge the accused.—Where a person accused of theft being dumb cannot be made to understand the proceedings against him, and it becomes impossible to say whether he knew the nature of the net committed or that he acted with dishonest intention therein, he must be acquitted and discharged. (1 B. R. 296.) Where the offence is of a petty nature, and the deaf and dumb accused cannot be made to understand the proceedings, the Court may order that he be committed to prison.

When the accused was a boy of 10 or 10 years, the High Court directed him to be made over to his father to be looked after.—[7 N. P. 131.]

10. Remand.—The High Court, though it may believe in the guilt of the prisoner, may give him a further opportunity of being heard in the matter of the charge.—22 W. R. 35. See 22 W. P. 72.

342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

ARRANGEMENT OF NOTES.

S. 342=ss. 193, 250 (1872)=S. 202 (1861-9)

I. General Remarks on examination of accused persons.

II. Changes in the Law.

- (1) Legislative history of the Section
- (2) Difference between the older Codes and the Present Code
- (3) The scope of the examination of accused limited for the first time in the Code of 1852
- (4) The Law as explained in rulings under the old Codes
- (5) Obsolete rulings under the old Codes.

III. Object and application of the Section.

- (1) Object of the Section.
- (2) Application of the Section.
- (3) Definition and meaning of terms.

IV. Examination of the accused.

- (1) Examination at the commencement or before recording evidence illegal
- (2) By whom may the accused be examined.

(3) Accused cannot be examined when there is no evidence against him.

(4) Accused may be examined any time.

(5)

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V. Use of statements made by accused during examination.

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VI. Written statements.

VII. Procedure.

- (1) General Rules.
- (2) Oath cannot be administered [S. 342 (4)]
- (3) Miscellaneous Rules of Practice.
- (4) English cases.

I. GENERAL REMARKS ON EXAMINATION OF ACCUSED PERSON.

1. The Sections dealing with statements made by an accused person are—164, 209, 242, 244, 245, 253, 256 (2), 257, 259, 342 and 364. Ss. 161, 242, 244, 256 (2) relate to voluntary statements. S. 257 only renders admissible in the Sessions Court the statement which has already been recorded under S. 209, Sections 209, 259, 342, 245, 253 provide for examination of the accused while under trial. S. 209 is applicable to inquiries preliminary to commitment. S. 259, to trials before the High Court and Court of Session; S. 245 to trials of summons cases and S. 253 to those of warrant cases, while S. 342 is of general application to all kinds of trial.—The scope of examination (viz. for the purpose of enabling accused to explain any circumstances appearing in the evidence against him) is not indicated in Section 259, 245 or 253—it is

possibly owing to the absence of words of limitation in these Sections that the necessity arises for reminding Judges and Magistrates that the examination of the accused should be restricted to the purpose indicated in S. 342.

2. S. 364 indicates the manner in which the examination of the accused should

and its power to record statements which the accused offers to make. The Court can question the accused only under the conditions in S. 342 which, however, does not apply to voluntary statements made by him.

II. CHANGE IN THE LAW.

(1) Legislative history of the Section.

3. "In the earlier Acts, the examination of the accused person was discretionary with the Court: vide S. 373 of Act XXV of 1861 and Act VIII of 1869. In Act X of 1872 while the discretionary nature of the examination was retained so far as inquiries and trials of cases other than Sessions cases were concerned, it was made compulsory for Sessions trials. Section 350 of that Act, occurred in the Chapter relating to Sessions trials and ran as follows: "The Court may, from time to time at any stage of the trial, examine the accused person and shall question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence." In 1882 the provisions relating to the examination of an accused person which was scattered in different Chapters in the previous Acts, were removed from those Chapters and brought under one Chapter headed "General provisions relating to inquiries and trials." S. 250 of the Act X of 1872 was, therefore, removed from the Chapter relating to Sessions trials, but its provisions were embodied in their entirety in S. 342 of the Code of 1882 as well as 1898. The object of the examination of the accused person being to enable him to explain any circumstance appearing in evidence against him, Sec. 250 of the Code of 1872 in the Chapter relating to Sessions trials conferred upon the accused person a right of being examined after the witnesses for the prosecution were examined and before he was called on for his defence. Such a vested right could not be taken away from the accused person without any express provision to that effect in the subsequent legislation of 1882 and 1898. Far from there being any indication to divest an accused person of this right, the Codes of 1882 and 1898 seem to expressly confirm it by S. 342—*Jorda v. Prout J.* in 5 Pat J. 430.

(2) Difference between the older Codes and the Present Code.

4. Though the Code of 1872 and older Codes contained no express limitations of the nature or

time of examination such as those laid down in Section 342 of the Codes of 1882, and 1898, yet the rulings under the Code of 1872 disapproved anything in the nature of cross-examination of the accused. Only two rulings seem to suggest that cross-examination is permissible. [See Footnote below].

Rulings under the old Codes.

"The discretion given by the law for questioning a prisoner has not been allowed for the purpose of driving him to make statements incriminatory of himself. This discretion can, we think, only properly be used for ascertaining from the prisoner how he may be able to meet facts in evidence appearing against him, so that those facts should not stand against him unexplained. It is declaredly within the competence of the accused to decline answering any question, while of course the Court is at liberty to weigh his answers whether they tell for him or against him."—1 M. H. 199; See 1 O. L. 436; 6 C. L. 431; 3 B. H. 51.

Foot note.—(1) 3 M. H. App. 2; 5 C. L. 239.

(3) The Scope of examination of the accused was limited for the first time in the Code of 1882.

5. The reasons for the change are thus set forth in the Select Committee's Report "we think that the present law gives too great a latitude to the Courts with regard to the examination of an accused person, the object of such an examination is to give the accused an opportunity of explaining any circumstances which may tend to incriminate him and thus to enable the Court, in cases where the accused is defended to examine the witnesses in his interest. It was never intended that the Court should examine the accused with a view to elicit from him some statement which would lead to his conviction. We have, therefore, limited the power of interrogating the accused by adding to the first paragraph of S. 342 the words "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him."

(4) *The Law as explained in rulings under the old Codes.*

6. (a) The real object of S 240 (corresponding to S 312 of the Code of 1894) is to enable a Judge to ascertain from time to time from the prisoner, particularly if he is unrepresented, what explanation he may desire to offer regarding any facts stated by the witnesses, or after the close of the case, how he can meet what the Judge may consider obligatory evidence against him"—6 C 96 (102) 16 W 11 21
7. (b) "A Magistrate should not examine an accused if the evidence adduced by the prosecution discloses no proper subject of a criminal charge against him 1 B L (App) XVI
8. (c) "It is competent to the Magistrate to put questions to the accused. The answers given to those questions, if any are given, will generally have a great effect upon the question as to the witnesses necessary to be examined on the part

of the prosecution and if, after the complainant has been examined, questions put to the accused elicit answers which leave no doubt as to the commission of the offence, there seems to be no reason why the Magistrate should not then frame the charge and call upon the accused to plead"—3 M. 11 App. 2

9. (d) In the case reported at 5 C L 238, it appears that the first step taken by the committing Magistrate when the accused came before him was to examine the accused.

(5) *Obsolete ruling under the old Codes*

10. A confession recorded by a Magistrate having jurisdiction is to be treated as an examination under S. 193 Code of 1872 (=S 312 of the present Code), notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the Police investigation, —3 C. 95 (F. B.)

III. OBJECT AND APPLICATION OF THE SECTION.

(1) *Object of the Section.*

11. (a) The object of S 342 Cr P C is not to fill up a gap in the evidence for the prosecution but to enable the prisoner to explain any circumstances appearing in the evidence against him—20 C 49 13 A 345. 14 A. 212 27 M. 238. 1 L B 292 4 N 103.

The Legislature did not intend that under colour of an examination under S 342 an accused person should make statements such as he might make if he were being examined as an approver.—6 C 204

12. (b) This section is expressly designed to secure that the Court, in the interests of strict justice should, by the form of its questions, perform a double duty, i.e., that it should (1) communicate to the accused what is alleged against him in the evidence for the prosecution and (2) ascertain from him what explanation or defence in law or fact he wishes to put forward in respect thereof, and so far as legal defences are concerned the most liberal construction should be put on the language of an ignorant accused.—17 C P 113 (118) See (1872-'92) 1 B. 320 20 Cr 12 (N).

[Note.—It is not sufficient compliance with the provisions of S 312 to put a general question such as: "Have you anything more to say in this case?" or "You have heard the prosecution witnesses against you, what have you to say?"—20 Cr. 12 (N).

13. (c) The real object of the power granted by the section is to ascertain from time to time from the prisoner, particularly if he is unrepresented, what explanation he may offer regarding any fact stated by a witness; or after the close of the case, how he can meet what the Judge may consider to be obligatory evidence against him.

6 C 96

14. Intention of the Legislature.—It is not that under the colour of an examination under S. 312 Cr P. C. the accused person should be made to make

statements such as might be made by him had he been examined as an approver—6 C 204.

(3) *Application of the section.*

15. Statements offered by accused and not made in answer to Magistrates' questions.—S 312 does not seem to apply to statements offered by the accused. It applies only to answers to questions put by the Magistrate. A Magistrate may record a statement of the former kind made at the commencement of the enquiry but he should be very careful in doing so, since it is usually one of confession and the accused comes fresh from the hands of the Police.—(81) A. N. 81.

16. "The accused is not to be examined as to his feelings" is one

1 O J. 107

[Note.—See 312 applies to cases under the *Barran Gambling Act*—11 Cr. 716 (L. B.)]

17. *Bombay Gambling Act* overrides S. 342.—S. 10 *Bombay Prevention of Gambling Act* (1887) implies that the Magistrate has power to examine as witnesses persons arrested and brought before him under S. 6. The whole procedure of the *Gambling Act* is a special procedure and overrides the general law of procedure as enacted in S. 342 Cr. P. C. wherever there is any inconsistency between the two. It is simply an instance of "*generalia specialibus non derogant*."—8 S. 309
18. *Summary trials*.—S 263 does not give the Magistrate discretion whether he will examine the accused or not. This is governed by S. 312. It gives the accused the right to refuse to say anything if he chooses. But there must be examination in all warrant cases—11 C 743.
19. *Application of the Section*.—The examination of the accused person for which the section provides is an examination touching the matter on which he is being tried. It does not apply

an examination in another case in which the person who is being examined is not himself an accused person. Where A is the principal offender and B his abettor, A is competent witness if B is being tried separately, and S. 312 is no bar to such a procedure.—20 A. 426; *See* 23 B. 213.

(3) Definition and meaning of terms.

"Accused."

20. (a) The term "accused" in S. 312 means a person over whom the Magistrate or other Court is jurisdiction.—16 H. 661. 23 C. 493. 15 C. P. 112. 12 P. R. 1905. 21 P. R. 1901; *Contra* 9 C. N. 983.
21. (b) The word "accused" does not mean and include any person over whom a Magistrate or other Court is exercising jurisdiction—A party to a proceeding under S. 133 Cr. P. C. is not an accused person within the meaning of S. 312 of the Code Subsection (1) S. 312 applies only to persons liable to punishment. 9 C. N. 983.
22. (c) The word "accused" in Cl. (4) S. 312 means the accused then under trial and under examination by the Court. It cannot include an accused over whom the Court is exercising jurisdiction in another trial, 23 B. 213. *See* 3 B. R. 317; 31 C. 1353. 4 L. B. 302.
23. (d) Accused may appear by pleader who may answer questions put to the accused under this section. 6 S. 206.
24. (e) A Serang charged with incompetency or misconduct and tried under Act VI of 1884 (Indian Steam Vessels) is an accused within the meaning of S. 312.
Tinker's case 1 East P. O. 351.
25. (f) Even when a person is arrested, so long as he is not brought before a Magistrate or Court, he is not an accused within the meaning of this Section.—10 B. 661.
26. (i) A person who has been arrested by the Police as concerned in a crime but who, owing to certain disclosures made concerning his accomplices, has

been discharged by the Police without being brought before a Magistrate, is not an accused person, through the discharge by the Police was illegal.—16 H.

27. (h) An informer is not an accused person.
38 P. R. 1887.

28. (i) A person, who was implicated in a case under S. 161 I. P. C. but the prosecution against whom was withdrawn, could not be regarded as a accused with the meaning of this section. 18 B. R. 206.

29. (j) The accused numbering nine persons, were put up for trial on a charge of dacoity. Two of them pleaded guilty and were at once convicted but their sentences were postponed till the end of the trial. The remaining seven were then tried and convicted. The seven who were first convicted could be examined as witnesses. *Held by Fullon*. that they were still accused under trial and an oath could be administered to them under this section.—3 B. R. 437.

30. (k) A grant of pardon does not alter the position of an accomplice as an accused person. It continues to be an accused and no oath can be administered to him. 9 P. R. 1906; *But see* 2 P. R. 1901.

"Taken into consideration."

31. (a) In a case when two persons were jointly tried on a charge of murder, the Judge examined each of the accused in the absence of the other, in order that neither of them might hear what the other said, *held* that the statement made by each prisoner could not be taken into consideration against any other.—6 B. 124.
31. (b) It is not easy to define what is meant by the words "taking into consideration."—At all events it must mean that they are not to have the force of sworn evidence and a conviction solely based upon it would be bad in law.—(63) A. N. 169.

IV. EXAMINATION OF THE ACCUSED.

(1) Examination at the commencement or before recording evidence illegal.

32. (a) It is improper if not actually illegal to examine an accused person at the commencement of the enquiry or trial, often with a view to extract damaging admissions from him.—(51) A. N. 106.
33. (b) The Court should not begin the proceedings of a case with the examination of the accused. It is illegal and opposed to the provisions of this section to question the accused, when there is no evidence on record which he can be asked to explain.—(52) A. N. 106. *See* 5 C. N. 464.
34. (c) It is illegal to take the statement of an accused person three weeks prior to the commencement of the Magisterial enquiry proper and before a word of evidence has been heard.—(53) A. N. 234.
35. (d) The only purpose that can be served by examining the accused before any evidence is recorded is to force the accused to confess his

guilt or assist the prosecution by admitting facts which may go to incriminate him.—2 C. N. 702.

36. (e) Before recording any evidence in the case Magistrate not justified in putting any question at all to him, since it is only for the purpose of

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any on the case, before the examination

prosecution witnesses is completed, is contrary to law and unfair to the accused.

1 O. J. 238; 1 P. W. 1010; See 11 Cr 746 (L. B.).

39. **Voluntarily statement admissible.**—Though the accused should not be examined when there is no evidence to convict him of the offence with which he is charged, still a statement made freely or voluntarily by him cannot be rejected as inadmissible on account of this irregularity of procedure.—*Rat.* 670.

(2) *By whom may the accused be examined.*

40. (a) The Section allows the Court—but never the complainant—to put questions to the accused.

10 M. 121 (123)

41. (b) **Special Bench constituted under Act XIV of 1908.**—In a trial before the Special Bench an accused may be given an opportunity of explaining the circumstances appearing against him and a truthful explanation coming from the accused cannot injure him, innocent as he is presumed to be.—19 O. N. 123

(3) *Accused cannot be examined when there is no evidence against him.*

42. (a) Where there is no evidence on the record

9 M. 224; 10 M. 205. See 10 M. 121; 27 M. 238; Reg. 1, *Berriman* 6 Cox C. C. 338; 10 W. R. 25; (15) M. N. 413

43. (b) "The case was not a warrant case and not a

a person against whom he has issued process, for the purpose of afterwards treating them as evidence in the case and Chapter XXI of the Code gives no countenance to any such procedure.

13 A. 315.

(4) *Accused may be examined any time.*

44. A Magistrate is empowered at any time and without any previous warning to put questions to the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him.—10 O. J. 184

But see *Notari* N. N. 24 39 of 01

(5) *Scope of the examination.*

45. **Object to allow accused to explain and not to incriminate himself.**

(a) The object of examination is not to obtain incriminating statements from the accused but is only to enable him to explain circumstances appearing against him 2 C. N. 702; 7 O. N. 345; 5 A. J. 605; See 21 C. 612; 1 Bur. R. 320; 16 W. R. 21; 1 C. L. 436; 6 C. 196; 6 C. 279; 10 C. 140; 1 M. 119

46. (b) A Judge examining a prisoner under S. 312 ought not to cross-examine him. The only permissible question are such as will enable the examiner to explain any circumstances appearing in the evidence against him.—10 C. 140

47. (c) "We think it well to point out in reference to S. 312 and 361 of the new Code that it is not intended to empower Magistrates to cross-examine persons charged before them—5 A. 253; 17 C. N. 354; 1 P. W. 1910.

48. (d) "It is not for the purpose of ascertaining what witnesses the accused intends to call or what evidence they will give or what his evidence is, that the Court is justified or authorised in examining an accused under that section (312)"—*R.* Evidence as used in S. 312 means the evidence already given at the trial.—14 A. 242 (253); 1 P. W. 1010.

49. (e) The examination of the accused should not be of an inquisitorial nature conducted in the

- 49A. **Section not intended merely for accused's benefit.**—This section is part of a system for leading the Court to discover the truth, and it constantly happens that the accused's explanation or his failure to explain, is the most incriminating circumstance against him. The

what is *prima facie* proved against him but on every circumstance appearing in evidence against him.—1 N. 107.

50. **Section intended for accused's protection.**

"I have no doubt that the Legislature intended to protect an accused person from the ordeal of examination as a witness and to render him capable, therefore, of being punished for the making of false statements or oath or otherwise, so long as his case is adjudged."—10 A. 200; 12 M. 451.

51. **Examination for the purpose of supplementing evidence is not permissible.**—It is not competent for the Court to examine the accused for the purpose of filling up gaps in, or supplying the evidence for, the prosecution. Thus, in a case of defamation, when the prosecution is unable to prove that the accused made and published the defamatory matter, it is illegal to examine him to supply this defect and prove the publication. It is so even in an irregularity and without a question.—27 M. 218; 20 C. 49.

52. Irregular examination may be cured.—

When a person charged with having given false evidence admitted both in his examination and in his defence that he made the statement which was false, held that the conviction was not necessarily illegal by reason of the fact that no evidence as to the identity of the accused with the person who made the false statement was adduced. *Irwin J.* remarked that even if the question of the Magistrate asking the accused whether he had made the alleged false statement, is not warranted by the terms of S 342, it is only an irregularity cured by S 537 *infra* 3 L. R. 204. *But See* 26 C. 49

53. The following remarks of Prinsep J.

elucidate the principles underlying the examination of the accused under S. 342—"We regret to have to notice the manner in which the examination of the accused has been conducted.—In permitting a Sessions Judge to examine an accused person from time to time during a trial, the law does not contemplate that he should commence a trial with a strict examination of a prisoner after the manner of the cross-examination of an adverse witness by counsel. The Court has already pointed out on more than one occasion that by exercising the power, allowed by S. 250 (corresponding to S. 342) the Sessions Court is not to establish a Court of Inquisition and to force a prisoner to convict himself by making some exonerating admissions, after a series of searching questions, the exact effect of which he may not readily comprehend. The real object is to enable a Judge to ascertain from time to time from a prisoner, particularly if he is undefended, what explanation he may desire to offer regarding any fact stated by a witness, or after the close of the case, how he can meet what the Judge may consider to be damaging evidence against him. In one of these cases now before us, we observe that the Judge was engaged during the whole of the first day in examining the accused. In like manner in the second case he examined the accused at considerable length before the case for the prosecution was opened. Such proceedings appear to us to be an abuse of the power given under the law"—6 C. 96 at p. 102

54. Magistrate not precluded from eliciting information from accused by independent enquiry.—

Except where an accused person is being examined under S 342, a Magistrate is not precluded from eliciting information by independent inquiry, so long as the information is voluntarily given.—37 C. 467.

55. When accused cannot be examined about previous statements.

(a) A Magistrate is not justified in examining accused as to certain previous statements made by him when such statements had not been made legal evidence in the case or brought on the record.—9 M. 224

(b) The examination should not be directed towards obtaining from accused explanation in regard to matters which he had previously mentioned in his confession subsequently retracted nor should an attempt be made to elicit further information in regard to a statement made by a witness.

7 C. N. 345,

56. Magistrate should examine accused about retracted confession.

(a) Where a confession is retracted and there is no evidence against the accused, except the retracted confession, it is a grave omission if the Judge does not ask him to explain why he made the confession. M. H. C. Pro. 29 1-86.

(b) Where the only circumstance appearing in evidence against the accused was his retracted confession and as to this, he was not questioned at all in the Sessions Court, held that the procedure was contrary to that prescribed in S 312.

2 Weir 607.

56A. Accused cannot be examined about inadmissible confession.—

The accused can not be examined about a confession which is inadmissible and if he is examined about such a confession, the questions and the answers to them are not admissible in evidence against him.—1 L. R. 211.

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put to an accused person which elicited a statement of a confessional nature—held that such examination was wholly inadmissible.

15 O. J. 321

58. Irrelevant questions inadmissible.—

The Court is not authorised to put questions irrelevant to the matters in issue.—10 C. 150.

58A. An accused may not be asked who wore with him in the commission of the offence.—

30 A. 340

58. When can accused be questioned about previous conviction.

(a) This section does not justify the Court in questioning the accused about previous convictions. The Magistrate should place on the record a copy of the previous judgment or other documentary evidence of the fact of such previous conviction as required by S 91 of the Evidence Act or S 511 Cr P. C.

28 C. 680 : 28 B. 129,

(b)

5 B. R. 805. *Contra* 2 L. R. 53.

(c) The accused should not be asked in his examination concerning a previous conviction of which there is no evidence

1 L. B. 8.

(d) In a case of previous conviction, it is not necessary that the identity of the accused with the person previously convicted should be conclusively established before the accused is questioned. The moment there is some evidence of identity, accused may be asked to explain it.

4 N. 163.

If the accused on being asked to plead to previous conviction, admits it, further proof is not necessary.—2 L. B. 53

(6) Questions in the nature of Cross-Examination.

59. A Judge cannot put questions in the nature of cross examination to the accused. No attempt should be made to induce the accused to incriminate himself. 17 C N 345. 5 M T 216. 18 Cr 941 (L. B.). 7 C N 345. 6 C 279. 6 C L 431. 1 P. W. 1910.
60. Questions ought not to be directed, towards obtaining from the accused any explanation of any statement made by him in a previous confession retracted by him at the trial.

7 C N 345.

61. Cross-examination of an accused is very improper.—5 C N 861. 10 C 119. 5 C P. 19.

62. S. 342 does not permit a Magistrate to submit the accused to an embarrassing and cruel series of questions intended rather to puzzle the accused, than to elucidate the case or to enable the accused to furnish an explanation as to the circumstances appearing in evidence against him. 6 B. R. 91. 1 Bar 320. But see 4 N. 103.

63. Questions of an inquisitorial nature.—A Magistrate is not justified in putting to the accused questions of an inquisitorial nature.

1 O J. 103.

(7) Examination how far compulsory.

64. Examination when compulsory.—

(a) The term "shall" makes it incumbent on the Court to question the accused after the prosecution witnesses have been examined and before he is called on for his defence. The provisions of this section are mandatory. Even in cases tried summarily, a Magistrate is bound to record a summary of the accused's examination.—9 B. R. 356. 10 B. R. 201. 2 Weir 105. See 17 B. R. 892. Rat 025. 710. 720. 9 M. 224 (244). 19 C N. 1043 (1917) 3 U. B. 18. 1 O J. 103. 21 Cr. 705 (Pat). Or R 5 of 1886; 9 W. II 62. See Note No. 86 below.

65. (b) Trial at the sessions.—The proposition laid down in 9 B. R. 356 proceeds on the assumption that S. 312 applies to the case of an accused tried before the Sessions Judge, even when he has been questioned generally by the Committing Magistrate. "That is a proposition which seems to be open to serious doubt but it has been asserted in the ruling referred to and before that, it has been asserted on several occasions by the Benches of this Court.—9 B. R. 730. 9 C. J. 55. Con.—(93) A. N. I. 9 B. R. 356. 17 B. R. 892. 2 Weir 405. 9 M. 224 (244). 19 C N. 1043. (1917) U. B. 18. 21 Cr. 705 (Pat).

[Note Per Contra.—The examination of an accused person is obligatory in sessions trial.—See Notes no. 72 post.]

66. (c) Warrant Cases.—In all warrant cases there must be an examination of the accused as laid down in S. 312.—1 C 741.

67. Discrepancy between S. 250 and 342 reconciled.—It is true that S. 250 *supra* refers to the examination (if any) of the accused, as if it were optional with the Court to examine the accused or not. This is in conflict with S. 342

but the apparent discrepancy may be explained by the fact that S. 250 contemplates cases in which there are no circumstances for the accused to explain.—2 L. B. 115.

68. When examination is optional.—Where it appears from the record that the accused left the case entirely in the hands of his legal advisers, the Judge need not, after the conclusion of the case for the prosecution, ask the accused to explain any circumstances appearing in evidence against him.—2 Weir 105.

69. When the pleader may be examined instead of the accused.—When the accused has been exempted from personal appearance (S. 205), the provisions of this Section are complied with if his pleader is examined on his behalf. Appearance by pleader involves the performance of all acts which devolve upon the accused in the course of the trial such as answering the examination of the Court under S. 342 or pleading or refusing to plead to the charge.—6 S. 206.

(8) Effect of Omission to examine the accused.

70. Where the record did not show—that the accused had been examined or called on to enter on his defence—held—that the omissions were not cured by S. 537 Cr. P. C.—2 L. B. 115. See (1917) 3 U. B. 18.

71. Omission which is fatal.—

(a) Omission to examine the accused is fatal to the validity of the trial. The provisions of S. 342 are imperative and failure to comply with them is not a mere irregularity curable under S. 537 Cr. P. C.—(17) 3 U. B. 18.

(b) A failure to give the accused an opportunity of explaining points against him is an illegality vitiating the whole trial.—17 B. R. 892.

(c) "—"

(d) Non-compliance with the express provisions of law, would not be cured by waiver or consent of the prisoner.—25 W. II 57.

72. Omission by Sessions Court to examine the accused.—The examination of an accused person is obligatory in Sessions trial, [21 Cr. 705 (Pat). (93) A. N. I. 9 B. R. 356. 9 B. R. 730. 17 B. R. 892. 2 Weir 405. 9 M. 224 (244). 19 C N. 1043. (1917) 3 U. B. 18. 1 O J. 103. 21 Cr. 705 (Pat). Con.—9 C J. 55]. The omission to do so is a fatal defect and is not curable by the provisions of S. 537 Cr. P. C. [(17) 3 U. B. 18. 17 B. R. 892. See 25 N. 61 (P.C.)].

73. Cases of omission in which High Court will interfere.—The language of S. 342 is mandatory and the omission to comply with its provisions is not a mere error of form. There may of course be circumstances in which the omission could not reasonably be held to have prejudiced the accused and in which, therefore the interference of the High Court may be discretionary. But where there are grounds for thinking that the omission on the part of the Court to question the

accused operated to produce a non-disclosure of the case for the defence and the withholding of evidence material for it, the High Court would interfere.—2 Weir 405

74. **When the High Court will not interfere.**—Though a trial in which the accused is not examined is bad still it is not incumbent on the High Court to set aside the order when the aggrieved person does not move the Court to do so.—1 L. B. 143.

(9) *Refusal to answer questions.*

75. **Effect of refusal.**—The practice of refusing

to answer questions in the Sessions Court and of putting in a written statement is a very pernicious practice. The refusal to answer may be attended with great risk to the accused, for the Court is bound to question him and a refusal to answer may involve an adverse inference against him.—19 C. N. 1043.

76. **Presumption arising from refusal.**—The Court may presume that if a man refuses to answer a question which the law does not compel him to answer, the answer, if given, would be unfavourable to him.—111 (b) to S. 114 Indian Evidence Act

V. USE OF STATEMENT MADE BY ACCUSED DURING EXAMINATION.

(1) *Filling up a gap in the evidence.*

77. A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under S 312. An omission to prove the making and publishing of an alleged libel cannot be made up by statements made by the accused in answer to questions put to him under S 342—26 C. 19; 27 M. 234; See 10 M 295 5 C P. 11.

(2) *Inadmissibility of document proved by accused's statement irregularly obtained.*

78. When the statement of accused is recorded in violation of the terms of the Section, it is illegal to ask the Jury to consider as evidence against the accused a document purporting to be proved by such statement.—26 C. 49

(3) *Admissibility of answers given by accused.*

79. The answers which the accused gives to questions by the Magistrate may be used in evidence against him. The admissibility of the accused's statements.

80. **Inadmissibility of answers irregularly obtained.**—

(a) If a Magistrate questions the accused even

when there is no evidence against him, any statement elicited from the accused during such irregular examination is inadmissible in evidence against him (15) M. N. 413; See 26 C. 19

(b) When the accused answers a question about inadmissible confession his answer is inadmissible in evidence against him.—1 L. B. 244

Note.—But if some of the questions are of an inquisitorial nature, that does not make the whole statement inadmissible.—9 C. J. 55.

(4) *Privilege attaching to statements.*

81. **Accused's statements privileged.**—Statements of a defamatory character made by accused during the course of his examination are absolutely privileged, so as to secure immunity for punishment under S. 409 I.P.C.—36 M. 210 (F.B.)

82. **Accused's statement protected**—

(a) "The accused's statement is protected—"

put to him.—13 M. 207

- (b) The protection afforded to accused is limited to statements made by accused in answer to questions which are for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.—12 C. C. 308; See 10 C 433.

VI. WRITTEN STATEMENT FILED BY ACCUSED.

83. **Written statement not authorised by the Code.**—I know of no authority in the Code of Criminal Procedure authorising a written defence to be put in at the trial of cases before the Court of Session.—Such written statement most certainly cannot be allowed to take the place of examination of the accused which S 342 imperatively orders to be made"—(33) A. N. 1 But See 16 W. R. 53.

84. **The practice of filing written statements condemned.**—"The practice of refusing to answer questions in the Sessions Court and of putting in a written statement which, it may be said, has now become almost universal in the Province, but which is largely a growth of recent

years, is a very pernicious practice and in my opinion, the sooner it is put an end to, the better. There is no provision in the Code for the making of a written statement by an accused and the obvious object of the practice in many cases is to defeat the provisions of S 342, Criminal Procedure Code, probably based on some idea of the legal advisers of the accused that he may give himself away. That section, if intelligently used by Judicial Officers, is of great use to accused persons for whose benefit the section was enacted. A written statement drafted by an accused's legal adviser, can never have the same value as answers coming directly from the accused's mouth, and it cannot anticipate the

points on which the presiding officer considers explanation desirable. It frequently happens that verbal explanation is refused and the promised written statement never filed. The refusal to answer questions may be attended with great risk to the accused, for the Court is bound to question him and a refusal to answer may involve a *verdict* inference against him.—*Per Beachcroft J* in 19 C. N. 1043

85. Mookerjee J. on written statements.—

"A question has been raised as to the propriety of the procedure adopted by the Sessions Judge when he accepted written statements from the accused and our attention has been drawn to *Emperor v. Bhusay* [(1913) A. N. 1]. It is sufficient to state that no objection was taken by the Crown in the Court below when the statements were tendered and received. The procedure followed in this case is in accordance with what we believe is the universal practice in the Courts of this province, and we do not feel pressed by the doubt suggested in the case mentioned. But it is desirable to state that such a written statement does not take the place of evidence nor of such examination of the accused as is contemplated by the Code."—*Per Mookerjee J.* in 42 C. 957

(1) General Rules.

86. Examination of the accused imperative.

—S. 312 is imperative and not merely permissive as it is a means of enabling the accused to explain

what appears against him—[Cr. R. 50 of '42]. The term "shall" in S. 312 of the Code of Criminal Procedure makes the duty imposed on

must be presumed to seriously prejudice the accused—1 P. R. 1016; 9 B. R. 350; 17 B. R. 892; Rat 625 710; 720 Cr. R. 5 of '80; 2 Weir 405; 9 M. 224 20 Cr. 12 (N); 5 Pat J. 430; 21 Cr. 793 (Pat) 19 C. N. 1041; 10 J. 163; (1917) 3 U. B. 18; See 10 C. 1. 54

87. Sessions trials.—It is doubtful whether S. 312 Cr. P. C. applies to the case of an accused person tried in the sessions Court even when he has been questioned on the case generally by the committing Magistrate.

9 B. R. 730; 9 C. J. 55; But See notes no 63 and 72 *supra*.

89. Difference of procedure between Ss. 164 and 342.—Under S. 164 a Magistrate is entitled to record any voluntary statement made by the accused, but he is not entitled to examine the accused in respect of the evidence recorded against him.

5 C. N. 861

VII. PROCEDURE.

89. Plea of guilty.—The Magistrate should take down the plea of guilty in the form of question and answer and in the exact words used by the accused in answer to the charge.—5 B. R. 939

90. Examination how to be recorded.—The statements made by the accused during his examination should be recorded in the manners indicated in S. 364—[4 B. R. 461. See (83) A. N. 243; 2 C. N. 702 (713)]

The examination of an accused person should be taken down in the language in which it is delivered, and as far as possible in the words used by him. 24 W. R. 54; 20 W. R. 50; Cr. R. 1 of '41. Rat 633; 9 Bar. R. 86.

(2) Oath cannot be administered.

91. —

[N. B.—The certificate need not be in the magistrate's handwriting. It is sufficient if it is signed by him.—8 W. R. 55]

92. No oath can be administered to the accused.—No oath or affirmation can be administered to accused who cannot therefore be examined as a witness till he is convicted or discharged.—1 B. 610.

93. When oath can be given to a person accused of an offence.—An accused person actually under trial cannot be sworn as a witness, and if two or more persons are being jointly tried none of them is a competent witness for or against the others. But this exception to the general rule goes no further and has no application

time
"shall"
"so-
"at the
may

45 C. 729. See 42 C. 957; 6 R. H. 1; 23 B. 213; 41 B. 362; 31 C. 1353 (1357); 34 P. R. 1887; See *Stephen's Digest of the Law of Evidence* Art. 104; *Archbold's Criminal Pleading* etc. (27th Ed) p. 591 (note).

94. The Law Stated.—"Section 312 in its widest interpretation only authorizes an objection that the person offered as a witness answers to the description of the accused person in the enquiry or the trial, as the case may be, in which he is presented as a witness."—*Per Flunden J.* in 34 P. R. 1887.

95. Accused illegally discharged.—A person arrested and illegally discharged by the police is not an accused person within the meaning of S. 312 (4) and may be examined as a witness against the other accused.—10 B. 601; 15 C. P. 112.

96. **Accused examined as witness after conviction.**—The accused numbering nine persons, were put up for trial on a charge of dacoity. Two of them pleaded guilty and were at once convicted, but their sentences were postponed till the end of the trial. *Hillyer Canty J.* [Patten J. *contin.*] that they were competent witnesses as they were no longer accused persons within the meaning of S. 312 (1) but convicts—3 B R 437.

97. **Illegal conditional pardon.**—"One possible effect of S. 313 may be noticed. If a conditional pardon is tendered under S. 337 in violation of the terms of S. 313, the pardon would be an illegal pardon and the question would then arise whether the person so pardoned is a competent witness. If he was being jointly tried, he would not cease to be an accused person within the meaning of S. 312 (4)."—*Per Matha A. J. C.* in 21 Cr 760 (N).

(3) Miscellaneous Rules of Practice.

98. **The "evidence" referred to in S. 342 Cr P. C.** is the evidence already given at the trial at the time when the Court puts questions to the accused. 13 A. 315; 14 A. 212; 1 N. 163; 2 C N 702.

99. **Effect of irregular procedure.**—Although it is improper to examine an accused person otherwise than as permitted by S. 312 the statements actually made, cannot if apparently, freely and voluntarily given be rejected as inadmissible merely on account of the irregularity of procedure. Rat 879.

100. **When the evidence does not disclose any proper subject of criminal charge**—against the prisoner, the magistrate if he thinks so, need not examine the accused. 10 W. R. 25.

101. **Before an accused person is put on his defence** he must be examined by the Court under S. 312 Cr P. C. Cr R. 5 of '66; Cr. R. 50 of '92. 9 W. R. 62.

102. **Questions put to the accused by the Court.**—Must be strictly limited to the purpose

of enabling him to explain any circumstances appearing in evidence against him. 14 A. 212; 5 C. P. D. 1; 11 Cr 220; 19 C 140.

103. **Question at any stage after prosecution evidence has been recorded.**—While it is not intended to empower Courts to cross-examine an accused person they are nevertheless authorised to put any questions which may appear necessary at any stage of the inquiry and particularly when all the witnesses for the prosecution have been examined for the purpose of enabling the accused to explain any circumstances in evidence against him—5 A. 253.

104. **Refusal to examine.**—It is not competent to a Court to refuse to allow the accused to make a statement or refuse his offer to be examined—10 C. L. 54.

105. **Committal without examination**—of the accused to the sessions is not illegal.

2 W. R. 50.

106. **Supplementing the case against the accused.**—This section does not enable the Magistrate to supplement the case for the prosecution against the accused.

10 M. 295; See 5 C. P. 11.

(4) English Cases.

107. **Where a Magistrate before any evidence was given, questioned an accused who was brought before him under arrest and then remanded him, the questions and answers were held inadmissible.**—

Pettit v. R.—4 Cox. O. C. 161.

108. **Where a woman was indicted for concealing the birth of her child and stated to the Magistrate that she had nothing to say, and the Magistrate before committing her, asked her where she had put the body of the child.**—*Held by Frie J.* "The question ought never to have been put and it would be very unfair towards the prisoner to receive an evidence an answer so irregularly elicited."

Berriman v. R.—6 Cox. C. C. 388.

343 Except as provided in sections 337 and 338, no influence, by means of any promise or

No influence to be used to induce threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Notes.

1. **Scope of the Section.**—The accused G. a subordinate Judge was charged with an offence under S. 161 P. C. in respect of a bribe offered to and accepted by him from one N. The case was split up into two charges and prosecution was started against G. and N. jointly in respect of one of the charges. N. subsequently received an assurance from the District Magistrate that if he gave truthful evidence, the charge in the second case against him will also be dropped. N. was discharged under S. 194 Cr P. C. and was examined as a witness against G. An objection was taken under S. 313 Cr. P. C.—*Held* [Per *Butcher*

J.] "That section provides that except as enacted in certain sections dealing with the tender of pardon to accomplices, 'no influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.' The Section does not declare what would be the consequences if an accused person did make a statement under inducement. * * * [Per *Shah J.*] "It is not necessary however for the purposes of this case to express any definite opinion on the applicability of S. 313 to the circumstances under which N. came to be examined in this case."

* There are no words in the section to show that the prohibition contemplated by the section refers to the Court and not to any other person, and that an accused person within the meaning of the Section is the accused under examination and trial.—18 B. II 266 [27 II 422 E.]

2. **Inducement by a Police Officer.**—Where one of the members of a criminal conspiracy was induced by promise of pardon by the investigating Police Inspector to agree to depose against the other accused [and was therefore never arrested and brought up for trial] *Held* that he was a competent witness, although he might have been sent up as a co-accused and tried jointly under S. 239 Cr P C and he was not an accused person within the meaning of S. 343 Cr P C.—21 Cr 769 (N.) See 15 G P 112 16 II 661 (72-92) L. B. 246, 248, 252

8. **Whom the accused is pardoned illegally.**

—A person in the position of an accused, cannot be converted into a witness unless (1) he is acquitted, discharged or convicted or (2) he is pardoned under S. 347 *Supra*. Where the pardon is illegally tendered, it would be unlawful for the Magistrate to examine the accused as a witness. [See 1 B. 610 2 A 260 10 B 190 10 C 836, 12 P R 1902. 52 P L 1902 100 P L 1902. *But* See 10 M J 147 (F. B.)]

4. **Improper Inducement.**—See Notes under S. 163 *supra*. It is improper for a Magistrate to hold out promises to prisoners as an inducement to confess [1 W R 24 See Ss 24 28 29 of the Evidence Act (1 of 1872)]. But a statement is not inadmissible, because the Magistrate failed to caution the prisoner against the consequences [See 3 M II (ppx) vi]

344. (1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary power to postpone or adjourn proceedings or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand

ARRANGEMENT OF NOTES.

S 344—S. 191 (1872) S 221 (1861-9).

I. Scope and Object.

- (1) Object of the Section.
- (2) Scope of the Section.

II. Adjournment.

- (1) The inherent power of the Court.
- (2) What are reasonable grounds of adjournment.
- (3) What are not reasonable grounds of adjournment.
- (4) Refusal to adjourn when improper.
- (5) Pendency of Civil proceedings as a ground for adjournment.

III. Conditions of adjournments—Payment of Costs.

- (1) Rules governing award of costs.
- (2) When costs cannot be awarded.

IV. Remand to Custody.

- (1) Change in the Law
- (2) Distinction between detention and remand.
- (3) Precedents.

V. Revision of order by Superior Courts.

VI. Miscellaneous.

1. SCOPE AND OBJECT.

(1) Object of the Section.

1. The intention of the Code is that a trial before a Court of Session should proceed and be dealt with continuously from its inception to its finish. Occasional adjournments are necessary, but such adjournments should be granted only on the strongest possible grounds and for the shortest possible period. 10 A J. 171

(2) Scope of the Section.

2. Powers under the Section must not be exercised arbitrarily.—Magistrates should understand that the power conferred by this section is a power which is only to be exercised in cases which come really within the terms of that section. It is not a power to be exercised arbitrarily and not according to rule. 9 B L 351

3. **Application of the Section.**—This Section relates to proceedings in enquiries and trials and has nothing to do with Police investigation and it contemplates a remand to jail and not to Police custody. 23 B. 32 (31)
4. **Magistrate should make free use of the provisions in the cause of justice.**—A. Chh. XXI of the Code contains no provisions

corresponding to S 270 *Saf u*, which applies to Sessions trials, a Magistrate will have to make a freer use of the provisions of the present section and S 271 *infu* than would be proper in a Court of Session. It is the Magistrate's business to find out the truth and to correct the mistakes in the case either of the prosecution or defence by adjourning the proceedings and summoning material witnesses. S 1 B 129.

II. ADJOURNMENT.

(1) *The inherent power of the Court.*

1. **Power to adjourn.**—A Court of Justice has inherent jurisdiction to stay proceedings in a case before it and S 344 empowers it to adjourn an inquiry or trial for any reasonable cause.

4 P W 1916.

(2) *What are reasonable grounds of adjournment.*

2. Absence of defence witnesses.—When the trial was going on at the sessions, two defence witnesses were absent and the accused prayed for an adjournment but the Judge refused the prayer.

 $H_{\ell}'' = \frac{1}{2} \left(\frac{1}{\ell} + \frac{1}{\ell+1} \right)$

19 M 375.

- 3. For preparation of accused's defence.**—A Sessions Judge should allow adjournment to allow the accused to prepare his defence though he delayed to take copies of the evidence of the witnesses before the Magistrate—12 C. N. 481

4. For producing witnesses.—Trial may be adjourned for the purpose of allowing the accused to secure the attendance of his witnesses. 16 W. R. 21 See 5 M. II (App) xxvii.

5. When witnesses were examined by the committing Magistrate in the absence of the accused.—If in the course of the trial the Sessions Judge is of opinion that the prosecution has not laid a basis for the reception of the deposition taken before the committing Magistrate in the absence of the accused, it would be a reasonable ground for adjournment.—12 C. L. 120.

6. Time should be allowed to accused to cross-examine new witness.—If a witness not examined before the Committing Magistrate is tendered as a witness for prosecution and the accused objects that the examination of that witness will be a surprise to him, this is a reasonable ground for adjournment.—1 P. R. 1889

- 6. A. Reasonable Cause defined.**—Reasonable cause is some cause which will enable the Court to have before it all the materials relevant for the enquiry or trial—(35) A. N. 254.

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subsequent case,—S. M. T. 80.

8. Absence of accused's counsel owing to engagement at another place—The fact that the accused's advocate has to fulfil a long-standing engagement at another place is *prima facie* a reasonable cause for adjournment—4 Bar T. 213.

9. Adjoinder cannot be granted when case not within the terms of the section. Where there was not the absence of a witness or other reasonable cause rendering it necessary or advisable to adjourn the enquiry the case can not be adjourned. The power conferred by S 21 Cr P. C. (=S 311) can only be exercised in cases which come really within the terms of the section.—17 W. R. 65 See 21 W. R. 21; 23 W. R. 8

Note.—(1) The Judge remarked,—"There was not any evidence taken which could be made the foundation of a charge; and the Magistrate

10. Reasons must be clearly recorded.—When a Magistrate defers the examination of witnesses and adjourns the enquiry and remands the prisoner under S. 191 Cr P C he is bound to express clearly on the record the reasonable cause owing to which he thinks it becomes necessary or advisable to do so.—C M. 63.

(3) What are not reasonable grounds.

11. Absence of the accused.—Where the accused was absent at the date of hearing and he was not represented by pleader or counsel, the adjournment of the case is altogether unnecessary, since the Court could not proceed with the trial or record evidence in the absence of the accused.

6 P. R. 1906

12. Absence of some of the accused—Where a number of persons are accused of having committed an offence, the absence of some of them is not a reasonable ground for adjourning the trial.

13. against
evidence might be procured against the accused
Where the proceedings have been completed
against an accused person, the decision of the case
or his commitment to the Court of Session
should not be deferred merely because the pri-
ncipal offenders have not been arrested.

3 W. R. (Cf. Let.) 21.

14. **Magistrate being busy elsewhere.**—A Magistrate being busy in the interior in his executive capacity is not a reasonable cause for repeated postponements.—17 W. R. 35.
15. **For engagement of counsel by accused and preparation of defence.**—The fact that the accused wants time to engage an Advocate and prepare his defence is not a sufficient cause for adjournment in ordinary cases, though in complicated and difficult cases, an adjournment may be granted on that ground.—1 L. R. 270.

(4) *Refusal to adjourn when improper.*

16. **Defence witnesses not certified to be present.**—Where a Magistrate refused to adjourn a case at the end of the day, to enable the accused to examine the witnesses who were in attendance but whose attendance was not certified in the Attendance Register of the Nazir, held that the Magistrate's order was wrong and retrial was ordered.—7 C. N. 714.
17. **Inconvenient change of date.**—Where the date of hearing originally fixed is changed and the accused prays for an adjournment to some other date more convenient to him, Magistrate's refusal to accede to accused's prayer is improper.

14 P. R. 1898.

18. **Engagement of accused's advocate elsewhere.**—A Magistrate is not justified in refusing adjournment and taking the extreme step of deciding the case without hearing the defence, if the accused's advocate is absent owing to engagement at another place.—4 Bur. P. 213.

19. **Applying High Court for transfer.**—A party not transfer

gation on the part of the lower Court to grant an adjournment in all cases. The postponement is no part of the essence of the obligation. The essence of the obligation is that the party should have reasonable time to move the High Court and obtain its orders. As in this case there was sufficient time between the date of the application for postponement and the date fixed for the conduct of the trial to have moved the High Court for transfer, the Magistrate's refusal to grant an adjournment was not illegal.—10 M. 375.

20. **Single day available for a big Honsfords Case.**—Ordinarily a Sessions trial once begun should be continued to the end until it is finished. But where a single day was fixed for a Sessions trial and it was obvious that owing to the large number of witnesses to be examined the trial could not be completed on that day. Held that the case should have been postponed to some subsequent date when it could be continued to its conclusion and the refusal of the Sessions Judge to postpone the trial was a ground for withdrawing the case to some other Court.—17 A. J. 47.

(5) *Pendency of Civil proceedings.*

21. **The General Principle.**—A civil suit is not a bar to a criminal proceeding, unless it is shown that the civil suit is a necessary condition for the trial of the criminal case.

civil as a matter of course if such proceedings shall be stayed pending the result of Civil Proceedings. In each case observation must be exercised and the particular circumstances of the case duly considered.—S. P. W. 1916.

- 21A. **Pendency of Civil Proceedings—whether reasonable cause of adjournment.**—Where the accused was on the 8th October charged with criminal misappropriation in respect of a necklace and on the 14th November a Civil Suit for a declaration that the necklace belonged to him, making all other claimants defendants and on the 7th applied for postponement of the criminal proceedings, held that as the Civil Suit had been instituted without any unnecessary delay and as all the claimants to the property had been made defendants in the suit, the petitioner was entitled to the relief claimed and the criminal proceedings should be stayed.—S. P. W. 1916.

22. **Stolen Property being subject matter of Civil Suit.**—Where accused has been charged with theft and the charges have reference to property which forms the subject matter of a Civil Suit already pending, it is desirable in the interests of justice that Criminal proceedings should be stayed until the disposal of the Civil Suit.—1 Bur. W. 714.

23. **When adjournment is unreasonable.**—The fact that the matter for determination in a criminal case is the subject of pending Civil appeal, with the possible result of conflicting decisions, is not a sufficient ground for adjournment.—17 A. N. 231.

24. **No hard and fast rule.**—There is no hard and fast rule that a criminal case should be stayed pending the disposal of a Civil Suit. If the subject

matter is such as to require the trial of the Civil Suit, or to require the accused to be a party to the trial of the Civil Suit on terms to be partially dictated by the complainant, the Magistrate should as a general rule postpone the hearing of the trial till the disposal of the Civil Suit.—2 W. R. 415.

25. **Parties should not be encouraged to resort to Criminal Courts.**—S. P. W. 1916. A Criminal Court is a forum in respect of which for any reasonable cause. Parties should not be encouraged to resort to the Criminal Courts in cases in which the points at issue between them can be appropriately decided by a Civil Court. Although a Civil Court may be competent to try a case which is a Criminal Court, yet, if it is to be used for the purpose, it is better to be used for the purpose than to be used for the purpose of a Criminal Court. S. P. W. 1916.

III. CONDITION OF ADJOURNMENT—PAYMENT OF COSTS.

(1) Rules governing award of costs.

26. **Scope of the words "on such terms as it thinks fit."**—The words "on such terms as it thinks fit" in the section are wide enough to cover an order making the payment of costs by one party to another a condition of granting an adjournment. The power to grant conditional adjournment can be exercised in a case initiated by a Police report.—40 M. 1130

27. **The Rule as laid down by the Coloutto High Court.**—Where "the accused was not entitled to the adjournment asked for and it was only made conditionally on his paying the costs of the other side, we think it was in the discretion of the Magistrate to make the order in question and that his action was justified by the terms of S 314 and was under the circumstances not unreasonable.—9 C. N 18 (21) But see N W. P. H. C. Rev. Misc. No. 217 of 1890.

[N B.—There is no real conflict between the two cases last quoted. In 9 C. N. 18 the postponement was discretionary under Sec. 314, while in the N W. P. case, the application was made under S 526 (5) and postponement was imperative.]

28. **Costs to be ordered only in exceptional cases.**—The Criminal Procedure Code does not make a special provision for costs in the course of a criminal trial, and one thing seems to me to be perfectly clear, and it is this, that if Section 314 is to be regarded as justifying an order as to costs, it can only be where the circumstances are exceptional and where for some reason or another the ordinary method of conducting criminal cases must be departed from. I say this because I feel sure that if our criminal law intended orders as to costs to be a normal part of our criminal proceedings, it would be clearly provided for.—*Per Houston J.* in 42 B. 251.

29. **Judicious grant of costs will prevent useless adjournments.**—S. 314 expressly empowers a Magistrate to adjourn an enquiry upon such terms as he thinks fit. It entitles the Court to award costs to a party who has been put to unnecessary expense by the conduct of the other side. A judicious exercise of the power would have the effect of preventing many useless adjournments. 28 A. 207 9 C. N. 18 followed. See 28 A. 209.

30. **Order for costs against the informant in a Government case.**—The order for costs can be made against the person who is the informant to the Police, although the prosecution may be conducted by Government.—41 M. 1131.

31. **Costs to accused and witness.**—A complainant may be directed to pay the costs of an adjournment to the accused and a witness. 9 A. J. 170.

31A. **Cost postponed owing to illness of complainant.**—Cost may be given to an accused whose case is postponed owing to the illness of the complainant.—20 P. R. 1901.

32. **Grant of costs no indication of bias.**—The Criminal Procedure Code does not authorise Magistrates to give compensation whenever they think proper by way of costs for adjournments, and the passing of such an order against a party does not disclose any prejudice on the part of the Magistrate and is not a valid ground for the transfer of the case to another Magistrate.—2 Pat W. 215.

(2) When costs cannot be awarded.

33. **When costs cannot be ordered.**

(1) Costs cannot be ordered on an application being made under S. 526 Cr. P. C.

8 P. W. 1911.

(2) Costs cannot be awarded on the adjournment of an appeal.—21 Cr. 201 (1); (2) A. N. 39

34. **Costs against Government.**—A Court of criminal appeal cannot, on granting a motion for an adjournment made by the Public Prosecutor, order that the successful applicant (Government) should pay the costs of the adjournment. (2) A. N. 59.

35. **Costs cannot be awarded against absent accused.**—Costs of adjournment must not be awarded against an absent accused, as it is entirely opposed to the spirit of conducting criminal trials to impose such terms on the accused, even while granting adjournments for his benefit.—As the adjournment was absolutely necessary, the question of imposing terms for adjournment does not arise.—6 P. R. 1906.

36. **Costs against informant in a Government case.**

apparently as a condition for the adjournment—it was held that the adjournment, having been properly asked for, should have been granted without any penal condition (the payment of Rs 50)—*Blair J.* remarked, "I know of no power to grant costs against a person who is the informant to the Police, although the prosecution may be conducted by Government.—41 M. 1131.

IV. REMAND TO CUSTODY

(1) Change in the Law.

37. **Change in the Law.**—The law under the Criminal Procedure Code is in accordance with the provisions of the Criminal Procedure Code, 1900, and the provisions of the Criminal Procedure Code, 1900, are in accordance with the provisions of the Criminal Procedure Code, 1900.

1900 Edition.—29 P. R. 8 (obsolete) See 4 B. L. (App) 1, (obsolete).

Note.—Other obsolete rulings under the old law.

(a) The Magistrate has no authority to detain accused in custody, without some reason made manifest to him either in the shape of sworn testimony given before him or some other form which can be put upon the record.

20 W. R. 23; 11 B. L. (App) 8 (18).

- (b) When there are witnesses ready for examination but the Magistrate is of opinion that it is advisable to wait for further evidence before commencing the enquiry, the examination of witnesses present may be deferred.—6 M. 63
- (c) Before remanding an accused to Jail, the Magistrate is bound to see that upon the evidence some case is made out against the prisoner.—4 B L (App) 1 (4).
- (d) A Magistrate is not justified in remanding the accused when there is no evidence at all which could be the foundation of a charge.—9 B L 351 (163)
38. (b) **Current Law.**—Under the present Code there is no necessity for such evidence but no remand without a hearing can last for a longer period than 15 days.—5 B H. 31

(2) *Distinction between detention under S. 167 and remand to custody under S. 344.*

39. Under S. 167 supra, a Magistrate on a mere perusal of the entries in the police diaries relating to the case, may from time to time authorise the detention of the accused in custody for a term not exceeding 15 days on the whole. Thereafter he can under S. 344 by a warrant remand an accused for any term not exceeding 15 days, at a time if sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by such remand.—36 C 106

(3) *Procedure*

40. **The general rule.**—Remands to custody should not ordinarily be ordered under S. 344 C. P. C. without first recording some evidence, where such is already available to show that good ground exists for believing the accused person to have committed a non-bailable offence. The ordinary course is to examine a Police Officer to ascertain that the Police possess information which they believe to be trustworthy, that an offence has been committed and that the accused person was concerned in its commission. When after one remand the accused is again brought up, some direct evidence of the guilt of the accused should be required to justify the refusal of bail and with each remand the necessity for producing such evidence increases.—1 N 162 [6 M. 69 Fd.]
41. **Remand can not be granted in the absence of the accused.**—To remand is to recommit to custody and since the first commitment requires the presence of the accused, recommitment also requires his presence.—2 Weir 109
- 41A. **Prisoner must be produced before the Court.**—The prisoner must be brought before the Court before it can remand him to custody on Police application.—(65) P B 34
42. **Remand must be to jail.**—S. 344 relates to proceedings in enquiries and trials and has

nothing to do with Police investigation. It contemplates a remand to jail and not to Police custody.—23 B. 32

43. **Remand should not be allowed for the purpose of obtaining further information.**—This section "does not empower the Magistrate to remand an accused person in the custody of the Magistrate to Police custody for the purpose of obtaining information with regard to the offences which the accused is alleged to have committed"—4 B R 878.
44. **Confessing accused cannot be remanded.**—There the accused had already made a confession, he cannot be remanded "in order to get from him a confessional statement"—2 Weir 414
45. **Detention of accused under trial**—is not intended to be penal but its object is to secure attendance. The gravity of the offence and some evidence of its perpetration by the accused will however justify detention.—36 C 174.
46. **Condition precedent to remand.**—A Magistrate must have reason to suppose that further evidence is likely to be obtained before remanding a prisoner.—17 P B 1872.
47.

without examining any witnesses".—When a Magistrate defers the examination of witnesses, adjourns the enquiry and remands the prisoner, he is bound to express clearly on the record the reasonable cause from which such action became necessary or admissible.—6 M. 63.

Note.—This is a ruling under the Code of 1861 and is now obsolete in so far as it requires the examination of witnesses as a condition precedent to remand.

48. **What is sufficient cause for remand.**—When a Police officer of superior rank has been examined and swears that he has evidence which
- "... causes the police to believe that there is in the possession of the Police incriminating correspondence connecting them with a secret society in Calcutta, a remand will not be unreasonable.—36 C 106
49. **Power of remand**—is expressly limited to 15 days. The order of a Magistrate sanctioning the detention by the Police of an accused person for an indefinite period is illegal.—5 B H 31.
50. **Magistrate liable in damages for unreasonable detention.**—A Magistrate who without reasonable cause, delays proceeding with the trial of persons, whom he keeps in jail is liable, notwithstanding Act XVIII of 1850 to an action in damages, if the prisoners are eventually acquitted.—11 W B 19

V. REVISION OF ORDER BY SUPERIOR COURTS.

51. **Power of revision should be freely used by the High Court.**—The High Court has power to revise an order made under S. 344 and

to use the power freely for the very reason that the words are so wide.—49 M 1131.

52. (t) High Court will not as a general rule interfere.—If a Magistrate on a consideration of all the circumstances exercises his discretion and either stays a criminal case pending the disposal of a civil suit relating to the same matter or declines to do so, the High Court as a Court of Revision will not as a general rule interfere with the exercise of such discretion.—2 Weir 415.

53. (2) When a Magistrate in the exercise of his discretion refused to proceed with a criminal charge pending a civil action in respect of the same matter, a *writamus* will not be granted to compel the hearing of the charge.—1 M. H. 66.

54. (3) When the witnesses of the accused not being in attendance, he applies for adjournment and summons, and the Magistrate refuses to comply with it the High Court will not interfere unless the accused is prejudiced.—11 W. R. 15.

55. When the High Court will countermand a remand order.—When a Magistrate had adjourned an enquiry for a cause not contemplated by this section (i.e. his being busy with executive work), the High Court set aside the order of remand.—3 B. L. 351.

56. Unreasonable orders will be interfered with.—When the Magistrate directs an accused who has applied under sec 526 for a transfer to pay the costs of an adjournment, the High Court will set aside the order in revision.—8 P. W. 1911.

Orders for costs.

57. Order made by consent of parties will not be set aside.—When the complainant got

a benefit which he was not entitled to and there upon consented to pay a sum by way of compensation to the opposite side for the expenses they had been put to, the order made by the consent of parties should not be set aside in revision.—(11) A. N. 257.

58. High Court will not interfere with a reasonable order for costs.—When the accused asks for an adjournment to which he is not entitled and the Court makes an order of adjournment conditionally on his paying the costs of the other side, the High Court will not disturb the order if it is not unreasonable.—O. C. N. 18 (24)

59. Postponement *sine die* in S. 145 proceedings.—Where a Magistrate attached the disputed land under S. 145 (1) Cr. P. C. but postponed the proceedings *sine die*,

Held—that the postponement *sine die* did not operate as a withdrawal of the order of attachment, which continued to be in force till the disposal of the case.—13 C. N. 601

60. Verbal order of adjournment.—is good (But the Section itself requires that the order should be in writing).—See 5 M. H. App. xv.

61. Judge cannot discharge jury on adjournment.—When a Sessions trial is adjourned owing to the absence of a witness, the Judge is not competent to discharge the jury and direct fresh trial.—4 B. R. 937

62. Court's discretion in granting adjournment.—It is discretionary with the Court to adjourn the enquiry or trial under this section.—7 B. L. 344.

345. (1) The offences punishable under the section of the Indian Penal Code described in the Compounding offences first two columns of the table next following may be compounded by the persons mentioned in the third column of that table :—

Offence,	Section of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used
Unlawful compulsory labour	374	The person compelled to labour
Mischief, when the only loss or damage caused is loss or damage to a private person	426, 427	The person to whom, the loss or damage is caused
Criminal trespass	447	The person in possession of the property trespassed upon.
House trespass	449	The person with whom the offender has contracted.
Criminal breach of contract of service	480, 491, 492	
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	

Offence.	Section of Indian Penal Code applicable	Persons by whom offence may be compounded.
Defamation	500	The person defamed
Printing or engraving matter, knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	
Insult intended to provoke a breach of the peace	504	The person insulted
Criminal intimidation, except when the offence is punishable with imprisonment for seven years	506	The person intimidated

(2) The offences of causing hurt and grievous hurt, punishable under section 324, section 325, section 335, section 337 or section 338 of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

(3) When any offence is compoundable under this section, the attempt to commit such offence (when such attempt is itself an offence) may be compounded.

(4) When the person who would otherwise be competent to compound such offence is a minor, an idiot or a lunatic, any person competent to compound such offence may compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused.

(7) No offence shall be compounded except as provided by this section.

Proposed amendments to the section—In section 345 of the said Code,—

(i) In sub-section (1), for the word "described" the word "specified" shall be substituted

(ii) For sub-section (2) the following sub-section shall be substituted, namely:—

"(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:—

(iii) After sub-section (3), the following sub-sections shall be inserted, namely:—

(7a) Where the person who would be otherwise competent to compound an offence under sub-sections (1) and (2) is a person to whom the proviso to section 198 would apply, the offence may be compounded by any other person who would be competent to file a complaint on his or her behalf.

(4) Any person making a complaint of an offence other than an offence specified in sub-section (1) or sub-section (2) may, with the permission of the Court before which any prosecution for such offence is pending, compound such offence if it is not punishable with death or transportation or imprisonment for a period exceeding six months."

(ii) Sub-section (1) shall be omitted.

(v) In sub-section (6), after the word "accused" the words "with whom the offence has been compounded" shall be added.

Offence	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused
Voluntarily causing grievous hurt.	325	Ditto
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing on set so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.

Offence.	Section of the Indian Penal Code applicable.	Persons by whom offence may be compounded
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	315	The person to whom hurt is caused.
Wrongfully confining any person for three days or more	343	The person confined
	316	Ditto
	357	The person assaulted or to whom the force was used
Wrongfully depriving water when the only loss or damage caused is loss or damage to a private person	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman	509	The woman whom it is intended to insult or whose privacy is intruded upon

ARRANGEMENT OF NOTES.

S. 315=S. 168 (1872)=S. 271 (1861)

I. Object and Scope of the Section.

- (1) The principles underlying the provisions of the Section.
- (2) Can a case be compromised before the complaint is filed?
- (3) Rules for application of the Section.

II. Procedure in relation to compounding of offences.

- (1) Practice and Procedure
- (2) Power of the Magistrate to enquire into the authenticity.

- (3) Who may compound the offence
- (4) Powers and Duties of the Magistrate
- (5) Stage at which a case may be compromised.

III. Distinction between withdrawal and composition.

IV. Effect of composition of offence.

- (1) Scope of the Composition.
- (3) Nature of the order.

V. Offences not compoundable.

VI. Miscellaneous.

I. OBJECT AND SCOPE OF THE SECTION.

(1) The principles underlying the provisions of the section.

1. "...." down that all offences are triable by a Magistrate. It is often the only manner in which he can obtain redress

the complainant might have recovered damages in a civil action, the composition is lawful. *Keir v. Leaman* 6 Q. B. 308 and *Widdall Local Board v. Pitt* (1890) 45 Ch. D. 351. This principle is adopted in India, but here the test for deciding whether the offence affects the individual rather

than the state is S. 315 Cr. P. C.—*Dalsukhram* 28 B. 326. *Per Pratt J. C.* in G. S. 284; *See* 41 M. 685; 11 P. R. 1907; 1 B. 147; compare B. 683 of the N. Y. Cr. Procedure Code.

(2) Can a case be compounded before a complaint is filed?

2. "It is argued that the use of the words 'offence' and 'accused' shows that the composition which is contemplated is one arrived at after a complaint has been laid and there is an accused person before the Court. I cannot accept this

when the question of the effect of the composition is under consideration. As regards certain classes of offences which may be compounded, the Legislature provides that they may be compounded only with the permission of the Court

In those cases, the operation of the composition is necessarily suspended until the Court sanctions it. But in other cases, no such permission is needed and no reason is apparent to me or has been suggested why the Legislature, having permitted certain classes of offences to be compounded by the parties themselves without any reference to the Court should insist that the composition should be arrived at after the person alleged to have committed the offence has been brought before the Court."—*Per. Abdur Rahim J. in H M 655.*

(3) Rules for application of the section.

3. **Non-compoundable warrant case cannot be compromised.**—In a warrant case in respect of a non-compoundable offence, it is not competent to the Magistrate on a private complainant's offering to withdraw from the prosecution, to enter an order of acquittal. The only sections of the Code which contemplate the termination of criminal prosecution by private arrangement are Ss. 218 and 315 S. 245 occurs in chapter XX of the Code, and that chapter deals only with the trial of summons cases by Magistrates S. 345 refers only to the compounding of offences which by law are allowed to be compounded. As a prosecution under S. 400, is not covered by either section, the Magistrate could not make an order of acquittal under S. 258 Cr. P. C.—37 H 369 4 B R 718 See 1 R 64 Rat 330, 7 S 200 3 A 293, Cr. R 79 of 8 12 '03
4. **Magistrate acts ultra vires in permitting non-compoundable case to be compounded.**—A Magistrate has no jurisdiction to allow a non-compoundable offence to be compounded on the ground that it would probably be better for the complainant to do so, that the accused also wished for the compromise and that it was probable that in the end the case might turn out to be a compoundable offence. Such an order is *ultra vires*.
11 P. R. 1907 See 29 P. R. 1914.
5. **The principle to be followed.**—The general principle of the law of England that felonies and serious misdemeanours shall not be compounded is embodied in S. 345 Cr. P. C. which says that no offence shall be compounded except as provided by that section. "The accused was charged with furious driving and knocking down a woman who died a few days after the injuries were received. It was held that the offence might be culpable homicide or the one defined in S. 301-A, none of which are compoundable in law. In the absence of any evidence, the Magistrate could not treat the offence as one under S. 319 I P. C. and it

was his duty to decide on the evidence that a compoundable offence had been committed before allowing a compounding.—Rat 699 See 1 L. R. 319 7 S 200

6. **Magistrate cannot go on with the case after a compoundable case has been compromised.**—Where the parties have compromised an offence compoundable under S. 315, and have filed a *volition of compromise*—

7. *Volition of compromise*

inse. permitting a complainant to withdraw or compromise is a judicial power the exercise of which is vested in the Magistrate by Ss. 210 and 185 (S. 315) Cr. P. C.—Rat 61.

8. **Distinction between private and public property.**—The Distinction is made (as far

890

9. **The fact that the case has been sent up by the police**—cannot prevent the offence which is legally compoundable from being compromised 10 C. 531, (41) A. N. 256.

10. **Where accused is charged with two offences**,—one of which is compoundable and the other not and the complainant puts in a petition before the Magistrate for compounding the former the Magistrate has no option but to allow it to be compounded.—(81) A. N. 256.

11. **Subs (7) lays down that no offence shall be compounded except as provided by S. 345.**—Before the passing of C. P.

the offences mentioned in S. 345 Cr. P. C. were compounded.—17 P. R. 1901.

12. **Duty of the appellate Court.**—Where a person convicted of a non-compoundable offence is on appeal acquitted but convicted of a compoundable offence, *held*, that he should be convicted of the latter offence without giving the accused an opportunity of electing, if possible, a composition of the offence.—30 C. 314

II. PROCEDURE IN RELATION TO COMPOUNDING OF OFFENCES.

(1) Practice and Procedure.

13. **Compoundable case can be compromised out of Court.**—There is no necessity for the composition to be effected in Court. In the Criminal trial any more than in a Civil Suit. The Section of the Criminal Procedure Code does not

imply any such necessity at any rate in cases which can be compounded without the sanction of the Magistrate.—21 C. 103 1 R 8 244 7 S N 846 See 22 P. L. 1910

14. **Onus.**—When an accused person alleges that an offence which he is charged with, has been

compounded, so as to take away the jurisdiction of the Criminal Courts to try it, the law is on him to show that there was a composition valid in law.—21 C 103

(2) *Power of Magistrate to enquire into the authenticity.*

15. **Power to enquire.**—It is competent to the Court in which the charge is pending to take evidence as to whether there was in fact a composition outside the Court, when one of the parties to it refuses to abide by it when the case comes on afterwards for hearing. [21 C 103 Fd]—18 M T 602.

16. **When Magistrate is justified in refusing to give effect.**—A Magistrate is entitled to question the complainant in order that he may be satisfied that the application filed, is in fact, one for composition and not for withdrawal. Where on questioning the complainant, the Magistrate is satisfied that the petition alleged to be one of compromise is in fact one of withdrawal and the application is filed in a warrant case he is justified if he thinks proper, in not giving effect to the petition. The trial does not come to an end on the presentation of such a petition. 1 Pat W. 21.

17. **What proof may be asked for.**—"Unless it appears that the parties were free from influence of every kind and were aware fully of their respective rights, it would be impossible to give effect to a so-called arrangement or composition"—*Triclayan J.* in 21 C 103.

18. **Consideration for compromise.**—The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to set as an inducement for his desisting to abstain from the prosecution. [Per *Prinsep J.*] Compounding an offence is more than a mere promise to withdraw a prosecution. It supposes an arrangement by which the parties have settled their differences and in the more usual acceptance of the term implies that the prosecutor has received some consideration or gratification for dropping the prosecution [Per *Triclayan J.*]—[21 C 103, See 9 P R 1896 28 16]. The composition spoken of in S 345 is in the nature of a contract but it does not require monetary consideration [Per *Abdu Rahim J.* in 18 M. T 602].

19. **Once the Magistrate is satisfied he is bound to accept.**—Where on the filing of a petition of compromise, in respect of a compoundable offence, the Magistrate examines the complainant and satisfies himself as to her understanding the same, it is his duty to accept the compromise and to dismiss the case and acquit the accused. He is wrong in ordering the petition to be put up with the record. 3 C N, 322 3 C N, 548.

20. **Can the complainant have the matter reopened after effecting compromise?**—Where the complaint was under Rs 448, 325 and 143 I. P. C but the Magistrate issued summons under Rs 325 only and the complainant put in

a petition of compromise, in the course of the hearing, compounding the whole matter, held that in as much as the Magistrate sanctioned the compromise of the offence of voluntarily causing hurt (S 327) which was the only offence being tried by him, (the parties being entitled to compound the offence under S 414 without such sanction), the complainant was not entitled to reopen the matter on the ground that the terms of the compromise had not been carried out.—17 C. N. 948 See 22 P. L. 1910

21. **Bona fide petition cannot be resiled from.**—Where a bona fide petition of compromise withdrawing a case has been filed, the complainant cannot subsequently withdraw the compromise and insist upon the case being tried.—3 C N 322; 3 C N. 548; 29 P. R. 1911 (F. B.)

22. **When a petition of compromise is filed after drawn without having been read has been pleaded to, that Court should, upon the presentation to it of a petition of composition by a person mentioned in the last column in the table in S 345 at once accept the petition and acquit the accused, and has no power to alter the charge already drawn up and proceed to try the case.**—29 P. R. 1911 (F. B.)

23. **Limits of the power of scrutiny.**—Where the trial relates to an offence which can be compounded without the permission of the Court and the parties have put in a writing signed by them, in which the complainant says that she does not wish to proceed and that the case has been compounded, the Court cannot call upon the parties to prove that the case was compounded.—16 B R. 939

24. **Bombay Government circular explained.**—Para 6 of the Resolution of Government dated 7/10/1904

ssion to do so should only be accorded when a composition is actually offered by the accused and accepted by the complainant," refers to cases where the permission of the Court is needed in order that the case may be compounded.—16 B R. 939

25. **When a petition of compromise is filed after drawn without having been read has been pleaded to, that Court should, upon the presentation to it of a petition of composition by a person mentioned in the last column in the table in S 345 at once accept the petition and acquit the accused, and has no power to alter the charge already drawn up and proceed to try the case.**—29 P. R. 1911 (F. B.)

intervening even though he may not have received any money or even a direct apology from the accused, and the Court is not concerned to enquire into the nature or value of the consideration
28 16

(3) *Who may compound the offence.*

26. **The aggrieved party.**—The person to whom hurt (as defined by S. 323 I. P. C) is caused is the person by whom the offence may be compounded and not the person who causes the hurt.—15 A. J. 407.

27. **The widow.**—An offence under S 323 I. P. C. is no doubt compoundable with permission of the Court but it is compoundable by the person to whom the hurt was caused. A case cannot be compounded, when the person to whom the hurt was caused is dead, by his widow—37 A. 419 2 Weir 418.

28. **Co-complainant.**—A person in whom an injury is caused is the only person who can compound a case. When there was a fight between two sets of persons and one man in one set died in consequence of the injuries received, *held* that the other members in the same set could not compromise the case on behalf of the deceased even though the hurt which resulted in his death was a simple hurt—6 A. J. 682 31 A. 696

29. **Minors.**—The effect of reading S 345 Cr P C with S. 3 of the Majority Act 1875 is that a person under the age of 18 years cannot lawfully compound the offences mentioned in the first portion of S 345.—17 P. II 1891.

30. **Wife in a defamation case.**—Where the husband lodged a complaint for defamation of his wife (by imputation of unchastity to her) it was held that the wife might lawfully compound the offence without the consent of her husband and even contrary to his wish—14 M. 379

31. **The husband.**—It has been held that a husband is a person aggrieved within the meaning of S 194 in a case in which an imputation of unchastity is made and published in respect of his wife [See 25 B. 131 (F. B.) 15 M. J. 224] It follows therefore that he may lawfully compound the case of defamation so brought by him—[See the proposed subsection (3a)]

32. **Relations.**—One S was alleged to have been killed in the course of a fight. The relations of the deceased put in a compromise, which was accepted by the trying Magistrate as a compromise of an offence under S 325, and the accused were acquitted. *Held* that the acquittal should be set aside—7 S. 200. See Cr. R. 77 of 20-11-03.

(4) Powers and Duties of the Magistrate.

33. **Power to compound.**—The Magistrate has the power to compound an offence under S 323 I. P. C. if the accused is a person to whom the offence is compoundable.

compromise entered into, the Court is not concerned to enquire into the nature or value of the consideration, and if the complainant considers that the grievance is redressed by the fact of respectable persons intervening, even though he may not have received any money payment or even a direct apology from the accused, the complainant is at full liberty to compound the prosecution.

2 S. 16. See Note No. 2116a

34. **Petition not disposed of by Magistrate.**—A petition of compromise withdrawing a case and which the Magistrate has satisfied himself was made *bonafide* and with full knowledge of the facts, puts an end to the case, and the complainant cannot subsequently change his mind and insist that the case should proceed simply because

the petition of compromise has not been disposed of by the Magistrate.

3 C. N. 322.

35. **Orders should be passed at once.**—Where a petition either for compromise of, or for withdrawal from the case is put in, the Court should at once make an order either granting or refusing the application, and should not be allowed to stand over for consideration at the close of the trial.

3 C. N. 518 3 C. N. 322

36. **Duty to enquire when accused pleads composition.**—Where the accused pleads a composition out of Court, the Magistrate must enquire into the plea, and if composition be proved, the Magistrate has no jurisdiction to go on with the trial. There is no necessity for the composition to be effected in Court.

6 S. 284. See 21 C. 203

(5) Stage at which a case may be compounded.

37. **At any time before the judgment is pronounced.**—A case may be compounded under S. 323 at any time before the judgment is pronounced.

38. **After conviction.**—The composition of an offence is permissible only up to the time of the judgment, and not after. After conviction there can be no composition without the leave of the Court, which the Court may give or refuse.

the accused—11 J. N. 111.

39. **Retrial ordered by Appellate Court.**—Where an accused person is charged with a compoundable offence and is convicted by a Magistrate but on appeal the conviction is set aside and a retrial is ordered, it is open to the complainant and the accused to compound the case without the leave of the Court. (20) A. N. 200

40. **In appeals.** The power of an Appellate Court to grant sanction to compromise a case arising under S 323 Cr P C is given to it under cl (5) of S 345 Cr P C. 11 A. J. 13

41. **Can an offence be compounded in revision proceedings?** The law on the subject is laid down thus in *Madappa J.* It is an elementary rule of the statute that when a special provision obviously exhaustive in its scope has been made for a special purpose as in S 415 the scope thereof cannot be indirectly enlarged by reference to a general provision such as that contained in S 423 (1). * * * The position then is that S 415 Cr P C empowers a Court of Revision not to exercise any of the powers of an Appellate Court, as it is sometimes loosely expressed, but only such powers as are conferred by ss 195, 423, 426, 427 and 428, that the power to sanction composition of an offence is conferred on a Court of Appeal not by S 423 (1) or any

of the other sections just mentioned but by S 345 cl (5) and that consequently S 139 which defines the powers of the Court of Revision, does not confer on it, the power to sanction the composition of offences—43 O. 1143; 18 C. N. 1212; 29 M. J. 521 35 P. R. 1918; 37 A. 127; 21 Cr. 447 (A). See 11 A. J. 13; 67 P. L. 1904. Con. 32 A. 153; 13 O. C. 161. 17 O. C. 92. 252 P. L. 1904.

[Note.—Cl. (7) was introduced for the first time in 1898 to meet the effect of the decision in *Emp. v. Thomson* 2 A. 339].

42. **After commitment.**—The composition can be effected only with the permission of the Court of Session.—See cl (5). The ruling in 2 W. R. 67 to the contrary is obsolete.

III. DISTINCTION BETWEEN WITHDRAWAL AND COMPOSITION.

43. **Explained.**—Withdrawal of complaint is the act of only one party to the proceeding,—viz—the complainant, whereas the composition of an offence, obviously requires the co-operation of both the parties, for a person is said to compound an offence when he forbears to prosecute the offender in consideration of some reward or advantage for his forbearance. It is quite intelligible, therefore why in the former case, namely, the withdrawal of a complaint, the Legislature should have imposed the necessity of obtaining the permission of the Magistrate. *Held* if such a restriction had not been imposed, a person might be misled by a perfectly venial criminal proceeding from which the complainant having put the accused to as much inconvenience and degradation as he could, might then calmly withdraw and prevent the Court from punishing him (the complainant) for abuse of process under S 250 Cr. P. C. and other provisions of the law. But the case of composition stands on totally different grounds. In the latter case the Legis-

lature has, in the case of certain offences, which concerns the individual as opposed to the public at large, allowed the cases to terminate by the act of both the parties and therefore there is no abuse of process to be guarded against as in the case of simple withdrawal. The act of composition is thus quite irrespective of any Magisterial decision.—19 P. R. 1888; See 1 Pat. W. 21; 14 M. 379 21 O. 103.

44. **Withdrawal may be allowed in non-compoundable cases.**—Although an offence under the latter portion of S 506 P. C. viz. a threat to cause death etc. cannot be legally compounded under S 345 Cr. P. C. yet a withdrawal from the prosecution may be allowed in a proper case.—Rat 330.

45. **Withdrawal of compoundable cases.**—Where a charge of a compoundable offence was withdrawn by the complainant it was held—that under S. 188 C. P. it had the effect of an acquittal.—22 W. R. 26

IV. EFFECT OF COMPOSITION OF OFFENCES.

(1) Scope of the Composition.

46. **Composition with some only of the accused.**—The composition of an offence with one of several accused persons under S 345 Cr. P. C. does not have the effect of an acquittal of all the accused persons—41 M. 323 [7 C. N. 176 D]. 21 Cr. 437 (P) Con 20 Cr. 824 (Pat)—1 Pat T 32

47. **The effect of compounding is an withdrawal of the whole case.**—If in the case of a compoundable offence, the complainant intimates to the Court that he has compounded it and desires to withdraw the complaint, the order by the Magistrate allowing the withdrawal is in respect to the offence, and not solely in regard to the person actually under trial at the time. In so providing, the law contemplates that all the accused persons should be under trial at the same time, except in special circumstances, such as sickness, absconding etc.—7 C. N. 176 [Edin 1 Pat T 32] Con 41 M. 323 21 Cr. 437 (P)

48. **Effect of composition of one of the interdependant charges.**—Where the actual complaint before the Magistrate was one of causing hurt (S 323 1 P. C.) coupled with the forcible rescue of cattle punishable under S 24 of Act 1 of 1871, the latter being a non-compoundable charge, and the parties effect a compromise in respect of the former offence, the Magistrate is entitled to deal with the compro-

mise as a withdrawal of the complaint in respect of the alleged offence under the Cattle Trespass Act—21 Cr. 303 (A).

49. **Compensation cannot be allowed.**—Compensation cannot be awarded under S 560 (=S. 250) when an offence is compounded. Rat 957; Rat 700 7 C. P. 2 24 P. R. 1883. 10 P. R. 1885 10 B. R. 1056.

50. **Composition of non-compoundable offences.**—A variant case, not compoundable was dismissed on the parties coming to an amicable settlement—*Held*—that the dismissal was equivalent to a discharge under S 215 C. P. and the composition did not affect the revival of the prosecution.

1 B. 64 See Rat 330; Rat 391

(2) Nature of the order.

51. **Composition has the effect of acquittal.** A case under S 323 P. C. was compounded some 5 months after the District Magistrate ordered it to be tried.

compoundable *Held*—no revision, inasmuch as the order was illegal, as the composition of an offence under S 345 Cr. P. C. had the effect of an acquittal

(51) A. N. 13 1 S. 95 Rat 520.

52. **Scope of S. 345 (6).**—The provisions of S. 345 (6) indicate that the composition has the same effect in a criminal trial as it would have in a civil suit. It operates as a complete end to the prosecution as if the accused had been acquitted.—S. S. 251

53. **Nature of the order.**—It is doubtful whether the final order of acquittal on a petition of compromise is a judgment within the meaning of S. 367 (1)—29 P. R. 1914 (F. B.). See 29 C. 726 (F. B.).

V. OFFENCES NOT COMPOUNDABLE.

54. (a) The offence of using criminal force to deter a public servant from discharge of his duty (S. 353 P. C.).

Rat 331.

55. (b) The offence of voluntarily causing grievous hurt, cannot accordingly be compounded.

1 B. 147 See 1 L. B. 349

56. (c) The offences of enticing away a married woman with a criminal intent and of criminal breach of trust are not offences which may be lawfully compounded

1 M. 191.

57. (d) Where the offence disclosed is one under S. 148 P. C.

4 B. R. 718.

58. (dd) Offence under S. 147 I. P. C.—11 P. R. 1907.

59. (e) Offences punishable under laws other than the Penal Code are not compoundable.

O. S. 78.

60. (f) The fact that the offence has been compounded is not a conclusive answer to a charge under S. 211 P. C.

11 C. 79

61. (g) The offence of Criminal breach of trust

30 P. R. 1879

62. (h) Offence under S. 350 I. P. C.

20 Cr. 552 (Pat)

63. (i) An offence under S. 452 I. P. C. (even with the permission of the Court)—6 Bar T. 137

VI. MISCELLANEOUS.

64. **Reopening a compromise once effected.**—The accused was accused of committing house trespass causing grievous hurt and being member of an unlawful assembly, but was summoned only under S. 323 P. C. and the offence under that section was compromised with the leave of the Court. The complainant subsequently filed another complaint and sought to revive the case alleging that the terms of the compromise had not been carried out.

Held—the petitioner could not again be prosecuted either for grievous hurt or house-trespass or for being member of an unlawful assembly, the common object being to commit offences which had been compromised. 17 C. N. 919 See Rat 519

65. **Civil Suit for damages.**—A composition can be pleaded as accord and satisfaction and would be a complete bar to a Civil Suit for damages—6 S. 254

66. **Compounding of original charge no conclusive answer to a case under S. 211 I. P. C.**—A Hindu charge against M for wrongful confinement. The Police reported the case to be false and upon A failing to appear

and prove his complaint, the Magistrate ordered his prosecution under S. 211 I. P. C. A pleaded that he had compounded the original charge of wrongful confinement, *held* that the compounding of the original charge was not a conclusive answer to the charge made against the complainant under S. 211 I. P. C.—11 C. 79

67. **Contract to withdraw from the prosecution is illegal and unenforceable.**—See S. 21 of the Contract Act, For English law on the subject—See *Windhill Local Board v. East* 45 Ch. D. 357. In re *Campbell* 11 Q. B. 11, D. 32. *Kasman v. Gerson* (1901) 1 K. B. 591 (C. A.). Re *Byant* 27 J. P. 277-280. Even in situations based on such contracts the suit may be dismissed, although the allegation is not pleaded—*Scott v. Brown* (1892) 2 Q. B. 724

68. **Applicability of the Section in Burma.**—See Notifications Nos. 14 and 15 dated the 30th June—*Bar* *twice*, 1898 P. R. 1 p. 332. *Bar* *Code* Ed. 1891, pp. 629 and 630. The Section does not apply in Kachin and Chin Hills where the section applying to composition of offences is embodied in *Kachin Hill Tribes Regulation* 1 of 1895 and *Chin Hills Regulation* V of 1896

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the Procedure of Provincial Magistrate presidency towns, the evidence appears to him to warrant a case which he cannot dispose of presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Notes.

(1) Preliminary.

1. Procedure embodied in Ss. 346, 347 and 349.—The powers of a Magistrate, who has taken a warrant case on his file for trial, are as follows: He may try it himself if he has jurisdiction, he may, if he thinks he cannot inflict a proper sentence, act under S. 346 or S. 349 and send it to a higher Magistrate, or he may, if he thinks fit it is a proper case for sessions, commit the accused under S. 347 or if he has no power to commit, send it to another Magistrate to commit under section 346.—*Per Napier J.*, in 42 M. 63.
2. The Section does not apply where the Magistrate himself has power to commit.—A Magistrate of the first class, who is holding an enquiry in a case of dacoity has jurisdiction either to commit the accused to the Court of Sessions or to discharge him. He has no authority to make over the case to a District Magistrate, who is a Deputy Commissioner specially empowered under S. 30 to try such cases. But the High Court did not interfere as the accused had not been prejudiced by the trial [7 C. N. 457].
3. S. 346 applies to European British subjects.—There is nothing in ch. XVIII. of the Crim. Pro. Code which excludes the application of the Code to European British subjects.—7 N. 23. *See* *Prinsep's Cr. P. C.* 14th Ed. p. 419.
4. Duty of subordinate Courts.—Magistrates should note that it is an evasion of law to treat an aggravated offence as an ordinary offence, and thus introduce a different jurisdiction or a lower scale of punishment. When the evidence discloses a circumstance of aggravation, which makes the offence one cognisable by a higher Court, it becomes the duty of the trying Magistrate to use the proper procedure for sending the case to the higher Court.

13 B. 502 19 B. 340 (348) *See* 2 Weir 421-420 21 S. W. R. 85 1 C. L. 434.

Note.—If a second class Magistrate trying a theft case finds in the course of trial, aggravating circumstances (eg. breaking of a closed receptacle) converting it into an offence which he is not competent to try or requiring severer punishment than he can inflict it is his duty to submit the case to the Magistrate to whom he is subordinate under this section or S. 349. He cannot properly clutch at jurisdiction by dealing with theft alone.—2 Weir 120.

5. Where the trial will not be set aside.—If a Court had power to try the offence of which it had convicted the accused, it is not necessary to quash the conviction, merely because the fact disclose a more serious offence, which the Court was not competent to try, unless the accused has been prejudiced or the sentence is inadequate.—25 M. J. 181 13 B. 502; 1 B. R. 267 24 M. 675. 2 M. T. 495.

6. Previous conviction.—In a charge of stealing after conviction of similar offences, to establish the full charge and to maintain a conviction, it is necessary that previous conviction be proved. The Magistrate in such cases, will be justified in taking action under S. 346 Cr. P. C.—(94) A. N. 200.
7. Magistrate, not competent to try, cannot discharge the accused.—Where a Magistrate finds that he has no jurisdiction to try a case he should not discharge the accused, but should send him before a Magistrate having jurisdiction.
2 Weir 323.

8. Submission after charge.—It is not irregular for a second or third class Magistrate to frame a charge against an accused person in a case which he has jurisdiction to try, though at the

. N. 250.

(2) Procedure on receiving the record.

9. Case should be tried *de novo*.—When a case is transferred from the file of a Magistrate who is not competent to try it under S. 346 Cr. P. C. there must be a trial *de novo* of the whole case, and the whole of the prosecution evidence must be recorded afresh. In such a case, the accused have no power to waive their right to a trial *de novo*. The evidence recorded by the Magistrate from whose file a case is transferred under this section, having been recorded by a Magistrate who was not qualified to record it, cannot be taken into consideration by the Magistrate who actually tries the case. The failure to hold the trial *de novo* in such a case is an illegality which vitiates the trial and not merely an irregularity covered by S. 537 Cr. P. C.—3 Pat. W. 40 106 P. L. 1905. 91 P. L. 1905. 25 P. R. 1905. 17 C. P. 159; *See* 25 M. 61 (P. C.). 2 N. P. 468; But *See* 12 C. N. 136 Rat 472.

Note.—No waiver on the part of the party can confer on the Magistrate authority to act in a manner not prescribed by the Legislature.—10 C. J. 452 26 B. 30 25 P. R. 1905. 17 C. P. 159. *Con* 14 W. R. 3.

10. The General Rule.—The general rule is that the decision as to the innocence or guilt of an accused person must be by the Judge who has heard all the evidence.—1 N. 187 12 N. 146. 19 Cr. 657 (N.).
11. Case cannot be returned.—A case having been submitted by a second class Magistrate to the Sub-Divisional Magistrate under S. 346 Cr. P. C., the Sub-Divisional Magistrate held that the

case was within the second class Magistrate's jurisdiction and returned the papers to the second class Magistrate. Held, that a Magistrate having jurisdiction to whom a case is submitted under s 316 Cr. P. C. is bound to dispose of the case in one of the ways prescribed by that section. Rat 351. Rat 499. See 4 M 327.

12. Commitment without fresh evidence.—Commitment made to the sessions by a Magistrate acting under the powers conferred by this section is not illegal simply because he has failed to examine *de novo* the witnesses examined by the Magistrate submitting the case—12 C. N. 136. Rat 172. But See Note No Dalme.

347. (1) If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Proposed amendments to the section.—In sub section (1) of section 347 of the said Code, the words "stop further proceedings and" shall be omitted.

Notes.

1. Object of the section.—The section applies only to those enquiries or trials which have been started by the Magistrate with the intention of concluding them himself and then at some stage he becomes satisfied that the original intention was inappropriate and that the case was one which ought to be tried by a Court of Session. The words "stop further proceedings" cannot be availed of to shorten proceedings commenced under chapter XVIII, but obviously refer to proceedings in a trial which the Magistrate has started with a view to try them himself—6 L. R. 129 (F. B.) [Robinson J per contra—s. 347 applies to all inquiries whatever.]

2. Scope of the term "ought to be tried."—The words "ought to be tried" in s. 207 and 347 Cr. P. C. It has been held, must be read with s. 251 of the Code. Thus a case which the Magistrate is competent to try should be committed also one in which in the opinion of the Magistrate he cannot inflict adequate punishment [4 B. R. 85 20 Cr. 97 (N)]. A Magistrate who is competent to commit to the Court of Session can commit to that Court both cases triable exclusively by that Court and cases which in his opinion ought to be tried by that Court. There-
s. 147 I P C

not necessary to be committed to a Court of Session is not illegal merely because the committing Magistrate is himself empowered under s. 301 Cr. P. C. to try the case [21 Cr. 97 (N)]. S. 347 Cr. P. C. does not restrict the grounds on which a Magistrate should arrive at his opinion to commit a case to want of jurisdiction in himself or to his inability in his own opinion to sentence the accused adequately. Even where he can inflict the maximum sentence for the offence, he may still commit the accused to the Court of Session or the High Court on such grounds as complicated questions of law arising in the case, being a fit case to be

tried by a Jury or with the aid of assessors—12 M. 83 [3 C. 495 1 M. 249 F. L. 24 C. 129 (O'G.) A. N. 29 6 A. J. 98 H. Diss.]

3. Note.—It has been repeatedly held that when a case is well within the power of the Magistrate to punish adequately, a commitment to the Sessions is illegal [(66) A. N. 24 6 A. J. 198, 24 C. 429 8 S. 23 11 B. R. 18 13 P. R. 1017]. But a case may be committed on the ground that the opposite party having been committed already the two cases against the two acts of rioters ought to be tried by the same Court, *in view of conduct of rioters* [13 P. R. 1017] where the complaint refers to distinct offences some of which (as against some accused) are triable exclusively by the Magistrate and others triable (as against the remaining accused) by a Court of Session, a Magistrate has a discretion to commit the whole case [21 Cr. 701 (N)] on the analogy of the cases reported in 11 C. 61 39 M. 603.]

4. S. 347 does not enable Magistrates to deprive the accused of his rights.—A Magistrate cannot treat the offence complained of as a minor offence up to the stage of reserving his judgment and then turn round and commit the case on a grave charge after having the accused of any of the rights conferred on him by Chapter XVIII, [13 Cr. 306 (N) 6 L. R. 129 (F. B.)]. A Magistrate acts *ultra vires* in trying a case *pro pre* triable by a Court of Session and in inflicting punishment on a minor charge—[10 L. 141. Rat 382 10 C. 81 10 W. R. 5.]

5. Scope of the term "at any stage".—A second Class Magistrate who took cognizance of a case under s. 370 and 311 P. C. after hearing the evidence of the prosecution witnesses, framed a charge under s. 341 P. C. took the accused's plea, allowed the prosecution witnesses to be cross-examined and heard the evidence for the defence according to the procedure prescribed

in Chapter XXI Cr. P. C. for trial of warrant cases and reserved judgment, but instead of delivering judgment on the charge under S. 354, the Magistrate framed a charge under Ss. 356 and 511 and committed the accused to the Sessions Hall, that even at the late stage, a Magistrate is empowered to alter the charge and when the charge was not cognizable by him, to commit the case under S. 347 Cr. P. C. to the Sessions.—(G. L. B. 129 (F.B.)) S. 347 empowers a Magistrate in any trial at any stage of the proceedings when he makes up his mind to commit for trial, to stop further proceedings, and commit the accused. A Magistrate fence witness stop further to the sessi must be done before giving judgment.—[5 W. R. 61; 4 W. R. 70; 17 W. R. 2; 23 W. R. 19; 11 C. 12; 1 B. H. 3; 7 B. H. 67; 7 A. 672]

6. Scope of the term "stop further proceedings."—There is a difference of opinion as to whether the power to "stop further proceedings" implies the power to prevent the accused from exercising any further rights he would be entitled to, except for the stoppage. In 16 C. J. 55 [59 12 C. N. 1014] it has been held that even after the Magistrate has made up his mind to commit, the defence is entitled to cross-examine a witness for the prosecution remaining to be examined. In 7 M. T. 83 following 34 C. 34 and dissenting from 20 A. 264 and 26 A. 177 it has been held that S. 347 belongs to Chapter XXIV, and is not governed by the provisions of S. 288 of Chapter XVIII. It follows therefore that the accused is not entitled as of right to further cross-examine prosecution witnesses or to examine defence witnesses who have been summoned already. (This view is opposed to 23 M. J. 368; 6 L. B. 129 (F. B.); 12 B. R. 201)

348 Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term

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of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment

for a term of three years or upwards, shall be committed to the Court of Session or High Court as the case may be, unless the Magistrate before whom the proceedings are pending is of opinion that he can himself pass an adequate sentence if the accused is convicted.

Provided that if the District Magistrate has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

Proposed amendments to the section.—(1) Section 348 of the said Code shall be re-numbered 348 (1) and in the said section, as re-numbered, after the word "shall" the words "if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused" shall be inserted, and the words "before whom the proceedings are pending" shall be omitted.

(iv) In the proviso to the said section, for the words "the District Magistrate," the words "any Magistrate in the district" shall be substituted.

(iii) To the same section the following sub-section shall be added, namely:—

"(2) When any person is committed to the Court of Session or High Court under sub-section (1) any other person accused jointly with him in the same inquiry or trial shall be similarly committed, provided that the Magistrate may if he thinks fit, discharge such other person under section 209."

Notes.

S. 348=8315 (1872).

1. **Application of the Section.**—If a Magistrate finding the accused guilty commits him to the Sessions under S. 348 Cr. P. C., the conviction would, under S. 403 Cr. P. C. bar the trial by the Court of Session "It is not entirely easy to deal satisfactorily with cases under S. 348. The Magistrate is bound to commit, if there has been a previous conviction, of one of the offences described unless he can adequately punish the accused."—[5 W. R. 61; 4 W. R. 70; 17 W. R. 2; 23 W. R. 19; 11 C. 12; 1 B. H. 3; 7 B. H. 67; 7 A. 672] not either before whether conviction. to con- the case,

his powers enable him to pass a sufficiently severe sentence. If he thinks they do not permit, either commit the accused for trial or try him himself; if they do not so permit, but the evidence does not warrant the discharge of the accused, he must frame a charge under S. 210 of the Code and commit him for trial under Chapter XVIII."—38 M. 552.

2. **Who is a habitual Offender within the meaning of the Section.**—To constitute an offender of this Sec- es he

3. Second class Magistrate.—Where the accused had several times been previously convicted of offences under Chapter XII or Chapter XVIII I. P. C., a second class Magistrate passed upon him sentence of six months rigorous imprisonment and fine of Rs. 200 or in default one month's rigorous imprisonment. On a reference by the District Magistrate held that although the sentence passed by the Magistrate was inadequate, he had full discretion under S. 315 (=S. 314) and no new trial should be ordered.—Rat 70: (82) A. N. 215

[Note.—This ruling must be held at a discount in view of the amendments introduced into the section by the Code of 1898. See also 2 Weir 423, 4 L. B. 282]

4. Provisions of S. 348 to be strictly followed.—Where a person is charged with an offence and the Magistrate and the District Magistrate of the adequate anything but to transfer the case to a District Magistrate specially empowered under S. 30, or if he is empowered to commit to Sessions, follow the procedure of Ch. XVIII, of the Code for enquiry into cases triable by the Court of Sessions.—[4 L. B. 282 9 Bar. T. 213. See 2 L. B. 285] Where the Presidency Magistrate convicted under S. 457 and 350 I. P. C. an accused whom he found to be an old offender, held that the Magistrate should have acted under S. 314 Cr. P. C. and committed the accused to the High Court. [Rat 704]

5. Cases against old offenders should be

6. *Infra*, the trial must be commenced *de novo* [1 C. P. 60, 2 Weir 422]

7. Low value of stolen property no ground for refusing to take action.—Where the accused with two previous convictions was committed to the sessions on a charge of the theft of property valued at Re 1, and the Sessions Judge remarking that the Magistrate himself might have adequately punished for the offence, sentenced him to one year's rigorous imprisonment the High Court, in revision, held that the fact that the property was small was no reason why so small a sentence has been passed, that the case was one which was properly committed and altered the sentence to one of five years' rigorous imprisonment.—(82) A. N. 104.

8. S. 75 I. P. C. must be oftener resorted to.—The Government of India has noticed the comparatively small extent to which the provisions of S. 75 I. P. C. are used in the case of habitual convicts. It has been remarked that the sentence of transportation for life is peculiarly appropriate in the case of persons habitually guilty of offences against property, for whom jail life in India appears to have no terrors, but who might possibly be reformed if removed from the scene of their crimes. The Judicial Commissioner therefore, suggests a more extensive use of the power conferred by S. 75 I. P. C.—Oadh Cr. Dig. p. 14.

9. Previous conviction must be stated in the charge.—See 19 W. R. 41 21 W. R. 40.

10. Superior Magistrate cannot remit the case but must dispose of himself.—A Subdivisional Magistrate to whom a case is submitted under S. 314 Cr. P. C. cannot send it back to the Magistrate for disposal. He must himself pass such judgment as he thinks fit.—Rat 473

349. (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opi-

Procedure when Magistrate cannot pass sentence sufficiently severe
accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Proposed amendment to the section.—After sub-section (1) of section 340 the following sub-section shall be inserted namely, —

"(1a) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate."

Notes.

S 349=S. 19 (1872)=S. 277 (1861)

(1) Preliminary.

1. —

Magistrate takes up a case in which it is obvious from the outset that he will be unable to pass an adequate sentence if the accused is guilty and simply with the intention of making over the case to the District Magistrate for enhanced punishment. Such cases would more properly be taken up in the first instance by a First Class Magistrate. But when circumstances of aggravation came to light in the course of a case, a subordinate Magistrate may proceed with the case (provided that it is finally his) if he should forward the case to the District Magistrate to be dealt with in the manner prescribed by the second paragraph of this section.—*Punj. C. C. No 21,3620 (1), of 1890*

1. A. Scope of the term "order".—"The Section goes on to direct that the superior Magistrate shall pass such judgment, sentence or order in the case as he deems proper, and as is according to law." By the ordinary rule of legal construction, the general word "order" following the particular and specific words "judgment and sentence" ought to be presumed to be restricted to the same terms as those words, and to comprehend only such orders as are final in their nature; and this construction seems warranted by other parts of the Code in which the word "order" is used in combination with the words "judgment and sentence" and in which it seems to be a mere expletive equivalent to one word or the other" [*Per Mr Melville J. Pinkey J. and Sargent C. J. concurring*]—4 B 240 (F.B.); 1 M. 289 (F.B.) 1 L. B 124 26 A 314

2. The term "order" includes an order of commitment to the Sessions.—A District Magistrate can pass in a case submitted under S 349, such order as he thinks fit and as is in accordance with law, and he can consequently commit the accused to the Sessions—13 C 305 4 B 210 (F.B.) 1 M. 289 (F.B.) 2 Weir 428.

3. Magistrate to whom the case is referred must dispose of it himself.—A Magistrate, to whom proceedings are submitted under S 349 is not at liberty to return the case to the submitting Magistrate but must dispose of it himself. He has the power to commit to sessions if necessary. 6 C.L. 276; 4 B 210 (F.B.), 10 B 196 9 M. 377. 2 Weir 428; 26 A. 314 Rat 479; 1 L. B 124; 141 C 10 W. R. 60. 14 C 355, 1 M. J. 232.

[Note.—He cannot return the case on the ground that the subordinate Magistrate himself has power to punish adequately (Rat 479) or that the referring Magistrate should himself commit the case to the Sessions 9 M. 377, Rat 222, 479, 998 Sec 6 C L. 276.

(2) The referring Magistrate.

4. (1) Cannot himself commit.—Under the older Codes of 1872 and 1892, it was held that the Magistrate to whom the case is referred by a subordinate Magistrate may direct the subordinate Magistrate himself to commit the case and that a commitment by the latter, under such circumstances is legal [See (76) 1 M. 289 (F.B.) (87) 14 C. 355; (85) 2 Weir 455]. In (83) Rat 222; (89) Rat 479; (97) Rat 918, it has been held that a commitment by the subordinate Magistrate under the circumstances is illegal. The law as explained in the rulings cited in notes nos 1, 2 and 3 above, favours the latter interpretation.

5. (2) Can himself charge the accused.—It is not irregular or illegal for a Magistrate of

to frame a charge against he has jurisdiction of frame of opinion to proceed. Magistrate B.), 9 B or

T 213 Rat 940). But he cannot try a case which includes a complaint of wrongful confinement and extortion, but should follow the rule laid down in this section [3 W. R. 29]

6. (3) Cannot convict the accused.—A Magistrate of the second or third class in submitting his proceedings to another Magistrate for a severer punishment than he can himself inflict, is required to record his opinion only, but cannot legally convict the accused. It is the duty of the Magistrate to whom a case is referred, to pass judgment according to law—Rat. 357.

7. (4) Reference in part.—Where there are several accused persons and the Magistrate is of opinion that only some of them deserve an enhanced punishment he is not bound to proceed against all the accused under S 349, though it is desirable that he should do so [2 Weir 428 2 Weir 429]

(3) Powers and Procedure of the superior Magistrate.

8. (1) Discretion of the Magistrate.—A Superior Magistrate, who deals with the accused under S 349 is not precluded from acting on the

evidence recorded by the subordinate Magistrate or from adopting his opinion. It is in the discretion of the superior Magistrate to re-examine witnesses already examined by the Subordinate Magistrate and to take further evidence. Although the latter cannot record a judgment against the accused who are sent up for enhanced punishment, yet he is entitled to record his opinion, and

9. (2) Bound to form his own opinion.—A Divisional Magistrate to whom the case has been referred under S. 277 (=S 319) is bound to form his own opinion and judgment.—(71) 2 Weir 421
4 M 233. 9 M 377

Note.—A Head Assistant Magistrate to whom an accused is sent up for enhancement of punishment has no power to send the case for enquiry to another Magistrate.—(81) 2 Weir 424.

10. ("T" 1, 141 - same date - 1944)

District Magistrate was competent to return the proceedings for supplying the omission [2 Weir 426]. But he cannot refer the case back so that the Magistrate may take the defence of an accused who has pleaded guilty. If there is any need to take the defence the superior Magistrate must do it himself [3 L. 11 279].

11. (4) Cannot direct the subordinate Magistrate to submit the case.—It is in the discretion of a subordinate Magistrate to send up the case under the section and the superior Magistrate cannot direct the subordinate Magistrate to send up the case to him [2 Weir 427.]

12. (5) Whole case is reopened.—Where proceedings are sent up to a Magistrate under S. 319, the whole case is opened up for him to deal with it according to law [Ht 350, 945 20 Mys 235]

19. (G) Cannot transfer the case.—S 328 has no application to proceedings submitted to a sub-divisional Magistrate under S 340—3S II 719

14. (?) Cannot send the case back for disposal by another Magistrate.—S 39(2) of the Code means that the Magistrate to whom a reference is made may pass such final orders as he thinks fit. He cannot in his turn dispose of the case by sending it back to another Magistrate.—46 M 470 4 M 273 See G M II (app) n 2 Weir 124 Cr R 124 of 142 Oe

15. Who can act under S. 349 (3). It is only the District Magistrate or the Subdivisional Magistrate who has jurisdiction to exercise the powers mentioned in para 2 of S. 349, i.e. to pass such judgement, sentence or order in the case as he thinks fit—18 B 719

10. Procedura in S. 349 is unsuitable to cases triable summarily.—The procedure presented in S. 349 is unsuitable to cases tried summarily and that section does not authorize

any Bench of Magistrates to refer a case for higher punishment—4 L B 277

17. **Procedure in submitting a case for an order under S. 106 Cr. P. C.**—If a Magistrate of the second or third class be of opinion that it is necessary for the accused in a case to be bound down under S. 106 Cr. P. C., he must refer the whole case to the proper authority for him to pass the sentences. It is not open to such Magistrate to pass any part of the sentence himself. 35 C 1043 11 Cr. 170 (G) 21 C 622 : See 35 C 434 21 P R 1903 : 6 P. R. 1907 : 7 P R 1909

18. District Magistrate cannot act under S. 349 (2) on appeal.—The accused person was sentenced by a second class Magistrate to a fine of Rs 25 on each of the two counts under Ss 147 and 323 I P O. On appeal the District Magistrate altered the conviction to one under S 147 only, reduced the fine but ordered under S 349 that each of the accused should execute a bond under S 106 Cr. P O to keep the peace for 3 years. *Held* that in the circumstances he was not competent to make the summary order allowed by S 349 (2) Cr. P O.—7 P. C.—7 P. II. 1909.

19. Duties of the Superior Magistrate.—Where a Magistrate of the second or third class submits a case to the District Magistrate with his opinion, the District Magistrate should not confine himself to considering whether the Magistrate's decision is manifestly opposed to the evidence, but should consider the whole evidence and pass a judgment stating the points for determination and the reasons for his decision. [Rat 636] He cannot quash the proceedings of the subordinate Magistrate but should report the proceedings to the High Court under S 438 Cr P C [14 P R 1900] But when a Magistrate acts irregularly under S 314, it is open to the District Magistrate to take the case on his own file or to transfer the case to that of some first class Magistrate, the proceedings in either case being taken de novo. [2 F 1221]

(4) *Miscellaneous Rules.*

20. Reference by a Magistrate not empowered to deal with the case.—A second class Magistrate convicted the accused under s. 406 I. P. C. and submitted the case to the District Magistrate under s. 414 Cr. P. C. Held that the latter was not competent to accept the trial as legal after having come to the conclusion that the offence committed was one under s. 491 I. P. C. He should have held that the second class Magistrate had no jurisdiction to try the accused for that offence and should have treated the whole proceedings as void under s. 209 Cr. P. C. [11 B. 25] Where however the accused was convicted under s. 491 and 417 I. P. C. by the Assistant Magistrate who submitted the case under s. 414 and the District Magistrate held that the offence was one properly triable under s. 491 it was held that the proceedings were not vitiated without jurisdiction as the Assistant Magistrate could commit the case to the Sessions and the District Magistrate could

if he thinks fit, himself commit the case.—13 C. 305 [1 M. 259 (F. B.) R]

21. Reference must be for one of the reasons specified by the Section.—A case was submitted by a third class Magistrate not because he could not pass a severe sentence but because one of the parties was a Mr. Ostosh and he thought it advisable that the District Magistrate should himself deal with the matter, held that the reference was illegal as neither S. 346

he is clearly competent to inflict a severer sentence than he proposed. [(81) A. N. 99; See 12 P. R. 1903]

22. The provisions subject to S. 348 Cr. P. C.—The provisions of this section are subject to the express provision of S. 348 *supra*. When the accused is an old offender, a second class Magistrate trying the offender should commit him to the sessions, unless he thinks that he can himself punish adequately. [2 Weir 423]

23. Proceedings not authorised by the section.—If a Magistrate not duly empowered passes a sentence under S. 349 on proceedings recorded by another Magistrate, his proceedings shall be void [See 630 cl. (1)] A first class Magistrate cannot make a reference under this section, though the District or sub-divisional Magistrate may call for the record under S. 435 *infra* [7 A. 114 (F. B.) See 7 A. 553] And the section would not apply when the Magistrate the act

ings of the Magistrate to whom a case referred under the section is sent for enquiry is void as S. 530 (1) *infra* [(105) U. R. 33]

24. When a District Magistrate may... such judgment, sentence or order in the case he deems proper and as is according to law has no power to order a new trial by a Court Session or any other Court, unless he considers that an offence has been committed which was not within the jurisdiction of the Magistrate whom the trial was held [Rat 130].

25. ... new before the Magistrate to whom the case referred under this section, such proceeding being, in fact, a continuation of the proceeding before the referring Magistrate [7 W. R. 88] The right exists although the superior Magistrate does not examine the parties or recall or examine a witness, who may have deposed in the case, inasmuch as he is at liberty to contend that no case has been made out against him and the superior Magistrate may, if he thinks fit, pass an order of discharge or acquittal [7 B. H. (C. C.) 31]

26. Appeals.—An accused person dealt with under S. 349 (2) in a "person convicted on a trial" held by the Magistrate within the meaning of S. 40 Cr. P. C. [See M. H. O. Pro. 20-5-87] When District Magistrate invested with special powers under S. 30 *supra*, passes a sentence of 5 years

350 (1) Whenever any Magistrate, after having heard and recorded the whole or any part

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another,

of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial

Provided as follows :—

(a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard,

(b) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346.

Proposed amendment to the section.—In sub-section (2) of section 350 of the said Code, after the figures "346" the words "or in which proceedings have been submitted to a superior Magistrate under section 349" shall be added, and after the same sub-section, the following sub-sections shall be added, namely:—

"(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of sub-section (1).

(4) The provisions of this section shall apply, so far as may be, to proceedings before any Bench of Magistrates constituted under section 15, whenever the Magistrates sitting together in any proceeding are not the same as those who were sitting together at the last hearing thereof."

Notes.

1. Object of the Section.

1. **Object.**—The right of claiming a trial *de novo* on the transfer of a Magistrate is given to an accused person in order that he may have the very great

2. **The Section should be strictly interpreted.**—The general rule is that the decision as to the innocence or guilt of an accused person must be by the Judge who has heard all the evidence—
[23 W R 50 23 C 194 1 N 187 12 N 146
(18) 3 C B 118] S 350 Cr P C introduces an exception to this general rule and the exception should not receive a more extended interpretation

[19 Cr 657
or [A liberal
on the provi-
] 39 C 781

30 A, 30 J,

2. Application of the Section.

Meaning and Scope of "ceases to exercise jurisdiction".—

3. (a) **Transfer of the case under S. 528.**—

4. (b) **Case withdrawn and referred to another Magistrate.**—

When a Magistrate withdraws a case, and appoints another Magistrate to try the case, the case is not transferred to the latter. Held that S 350 Cr. P. C. applied to proceedings before the latter—39 C. 781. Con. 1 L B 301

5. **Retransfer of the case to the original Magistrate.**—

6. **Retransfer of the Magistrate before disposal by the successor.**—When on the transfer of a Magistrate, a criminal case pending before him is taken up by another Magistrate and the trial is started *de novo*, the proceedings which had already taken place before the Magistrate who has been transferred are wiped out and Sec 350 of the Criminal Procedure Code gives no jurisdiction to such Magistrate on his retransfer to the district to proceed with the trial from the point where he had left it.

1 Pat T 32 2) Cr 618 (Pat)

7. **Power to try after making over charge.**—A Magistrate has no jurisdiction to try a case after having made over charge of his duties to his successor. 14 Cr 291 (A) See 3 A 523 (F.B.)
19 A 114 15 C P 15

or warrant case, to have the witnesses recalled and reheard. [21 Cr. 102 (M)]. S. 350 Cr. P. C. is in its terms wide enough to cover every trial or enquiry under the Code, and the proceedings under S. 145 is an enquiry, because in it the Magistrate's duty is to enquire who is in possession of the disputed area. [37 C. 812. 13 C. N. 120]

[Note.—Rulings to the same effect under the old Codes are: (79) 4 C. L. 152. 23 W. R. 62. 24 W. R. 52.]

10. The Section does not apply to Bench of Magistrates.—S. 350 does not apply to cases tried by Benches of Magistrates. There is no provision of law which provides for a change in the constitution of Benches of Magistrates, and in the absence of any such provision, it must be held that only those Magistrates who have heard the whole of the evidence can decide the case. 8 L. B. 463; 12 C. 358. 20 C. 870; 23 C. 194 (18) 3 U. B. 116; 15 M. 391. See 18 C. N. 394 13 C. L. 212

11. Note per contra.—when a case is thus referred back under this rule [Rule no. 6 framed by the Bengal Government. See Note 950—A dated 30.1.14] to the Sub divisional officer, the provisions of S. 350 Cr. P. C. apply to the case, so that the Magistrate does not act without jurisdiction if in the absence of any demand for a *de novo* trial on the part of the accused he hears arguments and passes judgments without holding a *de novo* trial.—19 Cr. 312 (C) See 41 A. 116; 17 O. C. 142

12. This section does not apply to Sessions Judges.—A Sessions Judge cannot act on evidence recorded by his predecessor in office. On

[Note.—A Sessions Judge hearing a case in one Division is not competent on transfer to another Division to pronounce judgment.—20 P. R. 1679]

13. The section has no application to further enquiry ordered under S. 437. Cr. P. C.—Where a further enquiry is ordered to be made under S. 437 Cr. P. C. by the Magistrate who has already tried the case, he is entitled to act upon the evidence already recorded by him, but when the case is taken up by the District Magistrate himself or sent to another Magistrate the evidence already recorded cannot be treated as evidence in the further enquiry such a Magistrate ought to take up the enquiry from the very beginning. If he omits to do so the irregularity cannot be cured by the consent of the accused.—7 Bur. L. 198 (C) C. 192; See G. A. 367

14. S. 350 applies even when no evidence was recorded by the predecessor.—A Magistrate who succeeds another Magistrate in his office has power under S. 350 Cr. P. C. to try a case in which his predecessor has issued

process and has granted a formal adjournment but has no recorded any evidence. In a case begun by a Magistrate continued by his successor, the latter has power under S. 191 (1) and (4) Cr. P. C. to issue process for the arrest of an accused person against whom no process was issued by the predecessor.—Rat 652

15. The scope enlarged by the Code of 1882.—Under the old Codes, (S. 325 of the Code of 1872) it was held that the section applied only when the evidence was partly (and not wholly) recorded by the predecessor. [See 24 W. R. 12. 23 W. R. 59; See also 7 P. R. 1854. The Code of 1882 added the words "the whole or any part of the evidence" to meet the effect of those rulings.

(3) Practice and Procedure.

16. Is it necessary for the Magistrate to ask the accused.—S. 350 confers the right on the accused person to demand that the witnesses be recalled and the trial be held *de novo* and does not actually prescribe that the Magistrate should ask the accused if he wished to exercise it. Where there was no refusal but only an omission to enquire from the accused whether he wished to exercise the right reserved by proviso (i) to S. 350 and the accused had not been materially prejudiced nor was a failure of justice occasioned by the omission, the error in procedure was held to be cured by S. 537 Cr. P. C.—(12) U. B. 151 - 3 P. R. 1903. 6 P. R. 1184. 13 C. N. 550. 24 W. R. 12. 40 A. 307; 18 115

17. [Note per contra.—] Is it the duty of the Magistrate as a matter of practice to warn the accused and to record in the proceedings the fact that they have been so informed ([57-01) U. B. 1. 87] Although the law does not specifically require it, yet in the case of accused persons who are *undefended* and who are probably ignorant of their strict rights, it is desirable that the Magistrate who continues a trial under S. 350 Cr. P. C. should inform the accused of their right under that section and should record the fact that he had done so and the reply of the accused [1 L. B. 214; 2 L. B. 257.]

18. De novo trial must be held on demand.—Where an accused demands that all the witnesses be reexamined and reheard the second Magistrate must adopt the second alternative course and recommence the inquiry or trial. 2 L. B. 47; 9 L. B. 92 3 P. R. 1903.]

19. Right of accused confined to trials only.—A "renewal case" or preliminary inquiry into an accusation of an offence triable exclusively by a Court of Session is not a trial before the charge is framed, but an inquiry, and therefore not provided for by proviso (i) to S. 350—32 M. 218; 14 P. R. 1903

20. Refusal to recall witness is illegal.—An accused person cannot be said to have lost his right of having the case heard *de novo* under proviso (a) because an interlocutory application for enforcing the attendance of certain witnesses has been made and granted before the trial, in as much as such interlocutory order cannot be said to have been made at the trial but before the

trial and with a view to the trial. The proper time for the accused to make such an application is as soon as the trial commences before the Magistrate. . . . S 337 Cr. P. C. cannot cure the defect in the proceedings by reason of the Magistrate's refusal to resummon and rehear the witnesses in contravention of S 330 proviso (a)—25 C 683

21. **De novo trial must be held on transfer under S. 346.**—Where a case is transferred from the file of a Magistrate who is not competent to try it under S 316 Cr. P. C. there must be a trial *de novo* of the whole case, and the whole of the evidence must be recorded afresh. In such a

case—5 Pat W. 10, 91 P. L. 1905; 25 P. R. 1905 See Cl (2).

22. **Meaning of *de novo* trial.**—A *de novo* trial means a trial in which the proceedings are commenced from the very beginning. It is therefore no compliance with the provisions of this section to merely read out to the witnesses the statements made by them to the first Magistrate and to permit them to be further cross-examined. A fresh charge must be framed and the accused must be examined over again by the succeeding Magistrate [O. L. B. 82 12 C. N. 139 See 12 Pat. T. 53 13 W. 11 40]

23. **Magistrate who elects to recommence enquiry cannot act under S. 203 Cr. P. C.**—A Magistrate examined the complainant and sent the case for enquiry to the police, who after investigation sent up the case for trial. The Magistrate then examined the prosecution witnesses and the accused, framed a charge, took the defence of the accused and made processes for the attendance of the witnesses for the defence. He was then succeeded by another Magistrate who elected to recommence the trial under S. 330 Cr. P. C. Held, that having done so, he was not at liberty to regard the case as having been brought down to the stage contemplated by S. 202 Cr. P. C. and to dismiss the complaint under S. 203 Cr. P. C. He was bound to resummon the witnesses and recommence the trial as provided by S. 330 Cr. P. C.—7 C P. 36 See 14 P. B. 1903 34 M. 585, 2 L. W. 1214

24. **Process fee.**—S. 330 gives the accused an absolute right to have the witnesses recalled and re-examined. No condition is imposed, and it is not within the competence of the Magistrate to require him to pay process fees. The rules for

accepting a complaint issued process upon it and examined certain witnesses for the prosecution his successor in office would not be entitled to *ignore what the former has done and to refer the case to the police for enquiry and report* under S. 202 Cr. P. C. [9 M. 282]

26.
of charge already framed. An order of discharge therefore after such *de novo* trial amounts to an acquittal—[38 M. 585 2 L. W. 1214] Where

It 1903]

27. **Commitment based on evidence recorded by predecessor.**—S. 330 Cr. P. C. enables a commitment to be made by a Magistrate, who succeeds to the jurisdiction of another Magistrate on evidence recorded by that Magistrate. In such a case it is not necessary that the Magistrate actually making the order of commitment should have himself recorded any evidence or the statement of the accused—[31 M. 10 see Pat 472] He may commit the accused on a charge of murder although the transferring Magistrate had been of opinion that the principal offence of any was the lesser form of culpable homicide [12 N. 146, B. 11 C. No. 29 of 1880 12 C. N. 130]

28. **Judgment written by the predecessor but not delivered.**—It has been held in 21 C. N. 755 that a "judgment purporting to have been written and signed by a Magistrate who had proceeded a leave and had ceased to exercise jurisdiction is no judgment at all." In 10 M. 109 it was ruled that "it is in the discretion of a Magistrate to adopt and deliver a judgment written and signed by his predecessor in office but not pronounced or to grant a *de novo* trial under S. 330 Cr. P. C. There is no specific provision in the Criminal Procedure Code corresponding to Order XX r. 2 of the Code of Civil Procedure, under which it might be argued that the second Judge was merely a mouthpiece of the first.

Note.—He may, if he chooses, state, sign, and pronounce the judgment as if it were his own—40 M. 108 12 15 M. J. 107

29. **When the proceedings will be set aside.**—The proceedings before the succeeding Magistrate and his judgment and order will as a rule be set aside when a failure of justice has been occasioned by the omission to proceed *de novo*. The fact that the accused consented to be re-examined in the criminal, will be no bar to setting aside the judgment—[21 L. R. 17] Where a Magistrate

p. 137 of Vol. II of the Lower Burma Courts Manual—5 Bur T. 43

25. **When no *de novo* trial is held former proceedings must not be ignored.**—When all the witnesses already examined are not recalled and reheard, then the second Magistrate takes up the case from the point at which the predecessor left it and he is bound by his predecessor's acts up to that point. [21 L. R. 17] Where a Magistrate

Note.—Should the former trial be set aside and a new trial ordered, the Magistrate will not be justified in referring to the former record as a whole, but may refer to particular depositions which are specially put in evidence [7 C. L. 193].

30. As to the power under provls (b) of District Magistrate to set aside proceedings irregularly held by first class Magistrates purporting to act under proviso (a) = See O. L. 100 : 8 M. 18 (F. B.). 12 C. 173 (F. B.) ; 7 A. 853

351. (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard.

Notes.

S. 351 = S. 104 (1872) = S. 206 (1891).

1. Scope of S. 351 Cr. P. C.—S. 351 Cr. P. C. is self contained and complete in itself and quite independent of the provisions of S. 100 and necessarily of S. 191 of the Code; for the accused against whom action is taken under this section has full information as to the source and particulars of the material upon which the Magistrate takes action. He can if he so chooses, destroy by argument or counter-evidence the probative effect of those materials in so far as they affect him injuriously. He therefore labours under no difficulty in combating the effect of the suspicious circumstances operating upon the mind of the Magistrate and influencing his judgment, as he would if cognizance were taken under S. 190 (1) (c) Cr. P. C.—5 N. 113 : 4 S. 253 : 3 C. N. 103. See however 1 C. N. 103 below.

2. Proceedings against a witness.—A Magistrate taking cognizance of an offence against a witness in a case which is pending before him, upon the facts disclosed by the evidence of another witness does so under S. 191 (c) and not under S. 351 Cr. P. C.—1 C. N. 105.

3. S. 351 does not apply unless the person proceeded against is actually in attendance.—Where the police in sending up the accused was instituting a case against him may be held to be acting against him if he was not in attendance under S. 351 Cr. P. C. as he was not in attendance in his Court—5 S. 1.

4. Scope of subs (2).—S. 351 cl 2 empowers a Magistrate to join as a co-accused any person attending his Court, who seems to him to be implicated in the case under trial. A Magistrate acting under this section, if he has already taken

cognizance of the offence on a complaint or police report is not acting under S. 190 (c).

4 S. 253.

5. The principle embodied in the section.—One L was challenged by the Police After

Magistrate took cognizance of S's offence under cl. (b) and not cl. (c) of subs (1) of S. 190 Cr. P. C. and was consequently not bound to act under S. 191. —9 N. 65 [32 P. R., 1901 : 4 C. N. 357 : 20 C. 786 Relied on]

6. Scope of the Section under the Code of 1881.—A Magistrate is not justified by S. 206 of the Code of Criminal Procedure (= S. 351) in taking a person, without any previous notice or summons, from among the audience or attendant witnesses in open Court placing him in the dock to be immediately tried upon a charge which has already been commenced to be entertained against other prisoners, and on which evidence has already been given. That section applies to investigations preliminary to commitment for a subsequent trial and not to cases where the trial is being actually proceeded with.—14 W. R. 20

Note.—The change introduced since —See subs. (2)]

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person shall not have access to, or be or remain in the room or building used by the Court.

Notes.

1. **Trial held at the private residence of the Magistrate.**—The practice was condemned in *Surendra Nath Banerjee* 10 C. N. 1062; See Cal Rules and Orders p. 1. [dated 21-4-69]
2. **Trial held in Jail.**—In the absence of anything to show that admittance was refused to any one who desired it or that the prisoners were unable to communicate with their friends or counsel, the whole trial in Jail is not vitiated by reason of the provisions of S 352 Cr P. O. But such trials are usually undesirable as it is no doubt difficult to get counsel to appear in the Jail.—21 P. W. 1917.
3. **Exclusion of the investigating Police officer.**—A Police officer who investigated the

case should not be allowed to be present in the Court-house, when the Magistrate records a confession made by the accused.—(85) A.N. 221 (221).

4. **The English practice.**—It is the practice in England to exclude females and boys when cases involving indecent details are called on for trial.—See Halsbury's Laws of England, Vol. IX, p. 362. 363 Archbold : p. 217.
5. **"Gosha" women.**—evidence of *Gosha* women should only be taken in cases where the ends of justice cannot be otherwise attained. The Court must adjourn to some place where she can come; and examine her behind *Sardah*, in the presence of the accused, the Judge taking such precautions as he can to secure her identity.—2 Weir 132.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII, and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with in presence of his pleader

Notes.

S 353 ~ 191 para 1 (1172) S 191 (1834)

1. **Scope of the words "all evidences"**—The words "all evidences" in S 353 include the evidence for the defence as well as for the prosecution (12) U. II 1 q 132
2. **When the presence of the accused may be dispensed with.**—Unless and until a Magistrate has good reason to believe that there is a strong likelihood of the charge being proved, an accused person, if she really be a *pardah* lady of good position should not ordinarily be compelled to appear in person in the first instance.—[21 P. W. 1918. O. A. 59. 21 C. 588. 5 P. W. 1907]
3. **Illhealth of the accused.** The High Court has power under the provisions of S 353 Cr P. O. to dispense with the attendance of an accused person during his trial before it in the Sessions on the ground of ill-health.—11 R. E. 296.
4. **Evidence for the prosecution.**—All depositions of witnesses in criminal cases should be taken and attested in the presence of the accused and a few apt words should be used on the face of the deposition to make it apparent that this has been done.—[10 A. 74] *Palmer* S. 191 (- S. 353).

it is not enough to read over the deposition of the complainant in the presence of the accused person. The examination must take place in his presence.—*Rat. 21* See 21 W. R. 14. 1 Bur. 8. 307. Where the witnesses are not examined in the presence of the accused the conviction is bad. [2 N. P. 19]

Note.—But when, the evidence given by a witness in a previous trial was admitted at the request and on the agreement of the accused, the prosecutor, the counsel, in fact all the parties concerned, the High Court refused to interfere, in the absence of prejudice.—[13 W. R. 40. See 9 A. 704]

5. **Pardah witnesses.**—A *pardah* woman lady was placed in a passage screened from direct view of the Judge who sat close by. A sworn interpreter, a member of the family to which the lady belonged, was so stationed as to be able to see the lady all the time. The lady's voice could be heard perfectly. It was held that the mode of examination was virtually a hearing of the evidence in the presence of the accused.—[1 P. R. 1887. 85 P. R. 1889. See 2 Weir 432]
6. **Note.**—A *pardah* lady has a right, as a witness in a criminal case, to be examined from

personal attendance at Court and to be examined on commission—[4 C. 20; See 21 C. 531, 12 A. 69] It has even been held that the exemption would apply even if she herself is the complainant—[2 Weib. 659 10 P. R. 1896. Con 5 A. 92]

7. **Medical evidence.**—Before the deposition of a medical witnesses taken by a committing Magistrate can under S 309 Cr. P. C. be given in evidence, it must be appear from the Magistrate's record or be proved by the evidence of witnesses to have been taken and attested in the accused's presence—9 A. 720-10 A. 171 8 C. 739 18 C 129 4 C. N 49. See. Rat 81.

8. **Evidence for the defence.**—Where the evidence for the prosecution was recorded in the presence of the accused, but he disappeared when his own witnesses were called and his personal attendance was not dispensed with either under S 205 or S 366 (2) Cr P. C., and the Magistrate, recorded the evidence of the defence witnesses in the accused's absence and committed them held that S 353 applied and the words of the section were clear and peremptory. The procedure adopted was illegal and the irregularity could not be cured under S 537 even though it had not led to miscarriage of justice.—(12) U. B. 4—q 152.

9. **Hearing of which the prisoner was not present** by merely reading them over and getting the witness to affirm the truth of the same. The consent of the prisoner under trial or his plea will not cure this irregularity for such a course cannot give the look or manner of a witnesses, his hesitation, his doubts his variation of language or his prepossessions his calmness or consideration. It is the dead body of evidence, without the spirit which is supplied when given openly and orally by the ear and eye of those who receive it.—3 B L. (sup) 20; 1 B L. (p) 37; See 8 W. R. 57-7 W. R. 8; 15 W. R. 6; W. R. (Gap) 1, 34; 1 W. R. 36.

10. **Commitment on evidence not recorded in the presence of the accused.**—Where one of the accused was wounded by a gun shot and could not appear either before the committing Magistrate or the Sessions Judge a commitment on evidence recorded in the presence of the remaining accused and conviction on the basis of the same is altogether illegal—200 P. L. 1913.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner

Note.

1. **Evidence to be recorded legible.**—Difficultly having been frequently experienced in

the paper only, a margin of one fourth of the sheet being left blank. In the case of records of trials forwarded to the High Court, in which from any cause, the evidence has been indistinctly or illegibly recorded, copies of such evidence should be submitted with the record of the case.—*Wilkins 116.*

355 (1) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive when tried by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written and signed by the Magistrate with own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

Notes.

1. **Scope of the Section**—S. 355.—Merely prescribing a briefer record in summons cases and other cases which may be tried summarily when they

are as a matter of fact tried regularly—3 L. D. 3 See 21 Cr. 23 (A)

2. **Application of the Section.**—In the case of theft combined with a charge of previous conviction, the Magistrate should not record the evidence in the form of a memorandum, as such offence is not triable summarily.—2 Weir 432 ('88) 2 Weir 433; See 21 Cr. 28 (A).
3. **Magistrate bound to make a memorandum.**—A Magistrate proceeding under this section is bound to make a memorandum, as the examination of the witness proceeds and not after the examination has been concluded, from the recorded deposition of the witness.—See Ag 8 O Cr. No. 13 of 1866; No. 18 of 1865
4. **When the deposition should be recorded in full.**—When, during the investigation of a case coming within the provisions of S 355, it appears to the Magistrate that a witness is giving false evidence, so that criminal proceedings against such witness are likely to be necessary, the Magistrate shall, in that case, under S 358 *infra*, take down the evidence of the particular witness at length in the manner prescribed in S 356 or S 357 *infra* as the case may be.—Oudh Cr. Dig. p. 22
5. **Record to show that evidence was taken in the presence of the accused.**—See Note No. 4 under S 353 *Supra*.
6. **What is not compliance with the provisions of this section.**—Where a Judge merely recorded "of four witnesses to character, two give the defendant a bad character one says he knows nothing and one gives him a good character"—Held that this was not such a memorandum as was contemplated by this Section [Ag Niz Ad. 29 6-62, p. 127] The direction that "the Magistrate shall make a memorandum of the

evidence of each witness as the examination of the witness proceeds" is not complied with by a mere statement that a witness "deposes as the law".—[1 B. 11. 91; See W. R. (Gap) 18]

7. **Procedure in maintenance cases.**—In proceedings under Chap. XXXVI of the Code, evidence ought not to be recorded as in summary trials under Ch. XXII of the Code but in the manner provided by S 355.—20 C 351 (352).
8. **Effect of omission to read over the deposition.**—In summons cases, the reading over of the recorded deposition is not prescribed by law and its omission cannot therefore *per se* be regarded as a fatal defect.—[2 Weir 433]
9. **When re-affirmation is unnecessary.**—Where a witness is recalled shortly after the close of his first deposition, the further statement may be deemed to be made under the original affirmation.—2 Weir 433
10. **Memorandum in English.**—There is no provision of law which renders it illegal for a native second class Magistrate to record the memoran-

been occasioned thereby.—18 M. 209

11. **Change in the Law.**—It should be noted that the words "otherwise than at a summary trial" in the corresponding S 333 of the Code of 1872 have not been retained in S 355 of the present Code. The words "and in the case of offences mentioned in Subsection 1 of section 209 clauses (b) to (m) clearly indicate that the procedure in S 355 applies to warrant cases of the description mentioned therein

356. (1) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII of the Code, the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Session Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

(2) When the evidence of such witness is given in English the Magistrate or Sessions Judge may take it down in that language with his own hand, and unless the accused is familiar with English, or the language of the Court is English, an authentic translation of such evidence in the language of the Court shall form part of the record.

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Session Judge he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge with own hand and shall form part of the record.

(4) If the Magistrate or Session Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Notes.

1. **Application of S 356 (3) Cr. P. C.** The provisions of S 356 (3) apply only to cases in

which the evidence is not taken down in writing by the Magistrate or Session Judge.

- hand. The provisions of the first subsection are imperative, and therefore where only a memorandum has been made of the evidence in a proceeding under S 145 Cr. P. C. the non-compliance with S 356 (1) is fatal.—42 C. 381.
2. **Vernacular Record.**—Where a Magistrate omits to prepare a vernacular record of the evidence as required by S 356 of the Cr. P. C., he commits an irregularity which vitiates the trial.—21 Cr. 28 (1). (80) A. N. 164 (165).
 3. **Proceedings under Chapter XII.**—In proceedings under Ch. XII, the evidence must be recorded under S 334 and the following Sections of the Code (=Ss 356, 357, 358). The omission to do so is a material error sufficient to vitiate the proceeding.—[11 B. L. (np) 15 See 30 C. 504]
 4. **Memorandum.**—A memorandum by a Judge [See Subs (1)] that certain witnesses had deposed the same as the former witnesses is not in accordance with the requirements of S 185 Cr. P. C. (Code of 1861)=S 356. [W. R. (Gap) 161 See 1 B. H. 91 (92). It is not sufficient compliance with the Code, to record that one witness corroborates another, because it is a deduction from the comparison of the depositions. The evidence of each witness must be recorded as it is given.—[100/02] L. B. 338 (241)]
 5. **In sessions trial.**—In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case was entirely new and the witnesses had not been examined before.—W. R. (Gap) 1 and 13

6. **Record of evidence.**—The Judge's notes should be notes of evidence taken from the mouth of witnesses and orders recorded at the time they are issued, not abstracts made afterwards. The notes must be legible, complete and properly arranged, and must attest the presence of the witness at the time, and mark every postponement and change of time or scene at the trial of the case, so that their *lumi file* character may be apparent.—[Oudh Cr. Dig. p. 21.]
7. **Use of typewriters.**—Sessions Judges, Additional Sessions Judges and First Class Magistrates may use a typewriter instead of a pen for the purpose of recording depositions and memoranda of evidence, but every sheet of any judgment deposition or memorandum so recorded must be signed.—Bomb. H. C. Cr. Cir. p. 31.
8. **Medical evidence.**—The testimony of a medical witness, especially in a case of murder, ought, when he is present, to be taken fully, and not supplemented by reading over his testimony given elsewhere and recording an answer that the earlier testimony is true.—[Int. 792.]
9. **Effect of irregularities.**—Where the Judge failed to comply with the requirements of S. 356, the High Court held that they could not act on the evidence on the record, and ordered a new trial.—[1905] 1 N. 145.] But where the accused d him on inform- conviction

[3 C 756]

357. (1) The Local Government may direct that in any district or part of a district, or in Language of record of evidence proceedings before any Court of Session or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record.

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

Notes.

1. **Scope of the Section.**—The authority conferred on an officer under S 196 Cr. P. C. (=S. 357) is personal to that officer and is in force only so long as he remains in the particular district in which it has been conferred.—5 M. H. (app) 17.

another district, his authority remains in force so long as he remains in the district in which it has been conferred. But if after such transfer he takes down depositions in his own hand-writing and makes a commitment, the commitment although irregular, is valid unless the accused has been prejudiced thereby.—2 Weir 434

3. **Special Magistrates.**—Sessions Judges and Deputy Commissioners shall, with all due courtesy, impress upon special Magistrates, that they must comply with the requirements of the law

in regard to recording evidence in their own handwriting. It is not necessary that they should take up cases at all, but it is necessary that if they do, they should conform to the provisions of S 357 of the Code, viz., that they take down the evidence of witnesses with their own hand, unless they be prevented by sufficient reason from doing so, in which case they

should record the reason, and cause the evidence to be taken down in writing from their dictation in open court—*Bath Cr. Dig* pp 21, 22.

4. Language in which the plea is to be recorded.—The language in which the plea is to be recorded is the language in which it is conveyed by the interpreter to the court—S O. 826

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section

Mode of recording evidence under section 356 or section 357. 359. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down any particular question and answer.

Notes.

1. How to take down in the evidence.—Though the deposition cannot always be taken down in the *exact words* of the witness, Judges should, as far as possible adhere to the *words actually used* either in the question or in the answer. It is not a compliance with the law to record a more or less accurate paraphrase of the evidence [11 Bur R 8] The ordinary and proper and convenient way of recording evidence is to take it down in the first person, exactly as spoken by the witness [8 B L (apps) 21]
2. "Shall not ordinarily take down in the form of question and answer."—It is in

the discretion of the Judge to take down in the form of question and answer, if either side specially request him to do so—11 Bur R 8

3. Interference by the Judge with cross examination.—Under this section, the cross examination is to be ordinarily taken down in the form of a narrative. A Judge should not therefore under s 163 of the Evidence Act which gives him the right to ask any question at any time, try to anticipate questions or interpose his own questions as that would break the thread of the cross-examination and tend to destroy its effect—*See ibid*

360. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused if in attendance or of his pleader if he appears by pleader and shall, if necessary, be corrected

Procedure in regard to such evidence when completed

Note.—If depositions of witnesses taken before a Magistrate be used in appeal, it should be shown either in the depositions or elsewhere, that the evidence was read over or interpreted to the respective witnesses.—14 W. R. 13.

2. **Scope of the Section.**—The provisions of S 199 of the Code of 1861 (=S. 360) do not apply to the examination of an accused.—12 W. R. 44.

(2) The effect of informality.

3. **General remarks.**—There is a marked conflict of judicial opinion as regards the effect of a failure to observe the strict provisions of this section. A tendency is seen in some of the later rulings to disregard an informality or irregularity which, however patent, is not calculated, to throw doubt upon the authenticity of the deposition. Where however all the guarantees of authenticity which the law prescribes, have been violated, there is a consensus of opinion that the deposition will not be accepted in evidence by the Court, before which the witness is later on arraigned on a charge of perjury.

(3) Irregularities held to be fatal.

4. (1) Where the deposition after being recorded, was handed over to the witness and was not read over to him in the presence of the accused, *held* that there had not been a sufficient compliance with the provisions of S 360 subs (1) Cr. P. C. and it was therefore inadmissible in evidence.—42 C. 240.

5. (2) A Sessions Judge refused to read over to the witness his deposition on the ground that it would involve a great waste of time to do it. He said, "the section seems to me to be directory and not obligatory. If the witness detects a mistake, he can come back and say so. This is the universal practice in Sessions Courts, my experience extending to six such Courts. *Optima est legum interpretatio consuetudo*" *Held* that S. 360 Cr. P. C. is mandatory and not merely directory. Depositions of witnesses should be read over to them in the presence of the accused or his pleader as required by S 360. A custom to the contrary cannot alter the plain words of the Act.—[*Per Jenkins C. J. and Cusper J.*]. 30 C. 957. 42 C. 937. 6 C. 762. 12 C. N. 845. (17) Pat 294; 54 P. R. 1857.

6. (3) Where the witness was taken aside by the clerk and his evidence was read over to him in a place where neither the Judge nor the Vakils were present and the witness signed the deposition, *held* that the deposition not having been taken in accordance with law *it could not be used when the*
Con 10 L B.

7. (1) Where the deposition of a witness was read over to him by a clerk in the verandah of the Court-house, though both the witness and the clerk were in view of the accused and his advocate, *held* that the procedure was a gross infraction of the plain provisions of S 360 Cr P C and the deposition was one which was not taken

in accordance with law.—(12) U. B. L. q. 123. 11 Bar T. 202; 11 Bar R. 8.

(4) Irregularities held not to be fatal.

8. (i) Where the alleged false statements were given in a deposition in a case in which there were twenty-seven accused persons and it was proved that it had been read over in the presence of the pleader of one of them. *Held* that the deposition was undoubtedly admissible in evidence against the accused, and was therefore also admissible against the witness on his trial for perjury. S 360 Cr P. C. had not been contravened. [*Per Jenkins C. J. and Moxley J.*].—36 C. 804; See 25 P. R. 1590.

9. (ii) A deposition irregularly recorded without compliance with the provisions of S. 360 Cr. P. C. is not necessarily to be treated as a nullity for all purposes, even as against the man who made it and who has admitted that it represents what he said. If the deposition has been read over to the witness and he has admitted it to be correct, a conviction for perjury may be upheld, though the reading over was not in the presence of the Judge, the accused and the pleaders on both sides.—20 M. J. 943.

10. (c) Objection being taken to the admissibility of a deposition on the ground that while it was being read to the accused, another witness was being examined, *held* that the deposition was admissible, as the provisions of S. 360 Cr. P. C. had been complied with both literally and in the spirit.—21 M. J. 111; *Con 2 Weir 435.*

11. (7) Where the deposition of the witness was found not to have been read over to him in the presence of the accused or his pleader as required by S. 360 Cr. P. C., *held*, that the deposition should not have been treated as a nullity merely because of the irregularity in not reading it over to the deponent in the presence of the accused or his pleader. It could be proved by other evidence as e.g., by evidence that the witness admitted it to be correct when it was read over to him and the evidence of the Judge who recorded it.—10 L. B. 16; 45 C. 825.

(i) In summons cases the reading over of the recorded deposition is not prescribed by law and its omission is not therefore, not *per se* a fatal defect.—2 Weir 473.

12. **Peremptory exclusion of deposition.**—where in a Session case, it was sought to contra-

over to witnesses, *held* that the Sessions Judge was wrong in not giving the party producing them an opportunity to call the Magistrate and to prove that the requirements of S 360 had been complied with.—13 C. 121.

(5) Witness' right to correction of errors.

13. "It is no doubt, very important that a witness honestly desiring to correct an error in his evidence should not be deterred from doing so by

the risk of a criminal charge" [*Per Tottenham J* in 10 C 337 (911). See 18 W. R. 57]. Before a deposition is closed, a witness should be given an

ment he intended to make [Nat 54; See Nat 502]

(6) Memorandum.

14. **Attestation in the presence of the accused not obligatory.**—Although all depositions of witnesses in Criminal proceedings should be taken and attested in the presence of the accused and a few apt words should be used on the face of the deposition to make it apparent that this has been done, there is no provision of the law which makes the attestation of deposition by the Court in the presence of the accused obligatory.—10 A. 174

[Note.—The memorandum required by S 199(—S 360) should always be appended to the deposition.—13 W. R. 17]

15. **Proof of the correctness of the deposition.**—To render the deposition of a Civil Surgeon or other Medical witness admissible in evidence under S 503 Cr P C it must be shown to have been taken and attested by the Magistrate

in the presence of the accused. In the absence of proof of authenticity, a Court will not be bound to presume either under S. 80 or S. 111 (c) of the Evidence Act, that the deposition was so taken and attested.—31 A. 720. 10 A. 171; 18 C 120

(7) Interpretation of evidence.

16. **Judge's duty.** It is the duty of the presiding officer to see that the evidence is clearly and properly interpreted to the party making a statement and the certificate or memorandum specified in S 199 (Code of 1861)—S. 360, is sufficient proof, until the contrary is shown that the deponent understood all that was written down as deposed to by him.—16 W. R. 71.
17. **Effect of failure to interpret.**—Where a Magistrate took down the evidence in English, but there was no memo as required by this section to show that the evidence was read over and explained to each witness in a language which he understood, held that the evidence was not recorded according to law and that the irregularity had prejudiced the accused.—9 W. R. 63. 13 W. R. 1 (7) 4 B L (app) 1 (11)
18. **Who is to interpret.**—Under S 104 of the Code of 1861 (—S 360) it was not necessary that the evidence of each witness shall be interpreted to him by a sworn interpreter.—16 W. R. 61

361. (1) Whenever any evidence is given in a language not understood by the accused, and

Interpretation of evidence to
accused or his pleader

he is present in person, it shall be interpreted to him in open
Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court and not understood by the pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary

Notes.

1. **The Section refers to oral evidence.**—This section relates to the oral evidence of witnesses. As to documentary evidence, although a prisoner has the right to have all or any part of the document used on his trial translated and interpreted to him, yet in the case of documents like the *Gazette of India* or the *Calcutta Gazette* (containing e.g. the official letters on the subject of hostilities between the British Crown and Mohammedan fanatics on the frontier) or a printed letter from the Secretary to the Government of the Punjab to the Secretary to the Govern-

ment of India, it is not necessary that they should be interpreted to the prisoner. It is sufficient that the purposes for which they were put in were explained. To interpret them at length would be simply wasting time.—[7 B L. 13.] Where the evidence of a Civil Surgeon recorded in English was not interpreted to the accused but the accused's counsel fully cross examined the Surgeon on all points, held that the omission was not important.—[21 W. R. 50 (11)].

2. **Interpretation to be made by whom.**—See Note No 18 under S 500 also S 60 &c.

362. (1) In every case in which a Presidency Magistrate imposes a fine exceeding two hundred

Record of evidence in Presidency
Magistrate's Courts

rupees or imprisonment for a term exceeding six months, he
shall either take down the evidence of the witness with his own

hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

(2) Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

(3) Sentences passed under section 35 on the same occasion shall, for the purpose of this section, be considered as one sentence.

Proposed amendment to the section—In section 362 of the said Code,—

(i) In sub-section (1), for the words "in which a Presidency Magistrate impose a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he" the words "tried by a Presidency Magistrate in which an appeal lies, such Magistrate" shall be substitute.

(ii) In sub-section (7) after the word "sentence" the words "unless they are sentences of imprisonment ordered to run concurrently" shall be added.

(iii) After sub-section (3) the following sub-section shall be added, namely:—

"(4) In cases other than those specified in sub-section (1), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge."

Notes.

1. **Scope of S. 362.**—S. 362 Cr. P. C. does not mean that a Presidency Magistrate can act arbitrarily and record nothing by way of evidence in cases in which he is not bound to take down evidence in the manner prescribed by the section. In such cases, the section merely gives him a discretion to take down the evidence or not, and the discretion should be exercised judicially in a reasonable spirit, and not arbitrarily. There may be no necessity to record any evidence in 'morning cases'. But where a respectable person is charged with an offence, reflecting on his character and serious allegations are levelled against him, there ought to be some record of evidence to enable him in case of a conviction to go to the High Court.—10 B. R. 201; 33 C. 1036.

2. **The Section does not apply to bad livelihood cases.**—S. 362 Cr. P. C. does not apply to a case under S. 110 Crim. Pro. Code, in which the Presidency Magistrate has to make a reference to the High Court under S. 123 (2) Cr. P. C. so as to absolve him from the duty of recording evidence. But the record of evidence by the Presidency Magistrate in such case need not be as full as in a similar case in the Court of a Sessions Judge.—13 C. N. 318. See 33 C. 1036.

3. **Mode of recording evidence.**—In a case under Ss. 157 and 350 or 411 P. C. a Presidency Magistrate purporting to act under S. 362 Cr. P. C. recorded evidence in the following manner: "Prosecution 4th witness "speaks to the iden-

tification by prosecution 1st witness of some of the jewels." "Prosecution 5th witness proves his signature to search lists" and "prosecution 7th witness identifies recovered jewels." Held that the statements should have been recorded in the direct narration but the irregularity, if any was cured by S. 537 Cr. P. C. as no failure of justice had been occasioned thereby.—18 Cr. 336 (M) [19 M. 269 (1)]

4. **The duty of the Magistrate.**—It is the duty of the Magistrate in a case which comes under S. 362 Cr. P. C. to take a note of all the material facts stated by a witness, whether they appear in the course of the examination in-chief or cross-examination.—46 C. 411.

5. **Procedure in Presidency Magistrate's Court.**—The provisions of Ch. XXII Cr. P. C. (summary trials) do not apply to trials before Presidency Magistrates. The procedure to be followed in warrant cases is that laid down in Ch. XXI, subject only to the special provisions of this section as to the mode of recording evidence.—Rat 539

6. **Recording of evidence in appealable and non-appealable cases.**—In a case under S. 362 Cr. P. C. all appealable cases require the evidence to be recorded by a Sessions Judge or a Magistrate of the first class.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall

Remarks respecting demeanour of witness also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Notes.

1. **Demeanour of the witness.**

Judges regarding the demeanour of the two witnesses Buta and Jwala. The learned Judge had the great advantage of seeing the witnesses in the box and of watching them as they gave their

evidence, and when we find a Sessions Judge of

to assume that it is so, till the evidence has been exhausted—2 Weir 435.

3. **Object of the Section.**—The object of this Section is to give the Appellate Court some aid in estimating the value of evidence recorded by another Court.

case. [6 P R 1898]

4. **Magistrate's remarks prima facie proof of the facts stated therein.**—The remarks by a Magistrate on the evidence are not to be taken as questions when the excessive weakness of the witness obliged him to stop, is *prima facie* proof of those facts and can be put before a Jury—12 W. R. 51.

2. **Remarks should be passed only after the whole of the evidence is taken.**—It is always unsafe to pronounce an opinion on the credibility of witness, until the whole of the evidence has been taken. A Judge may note the demeanour of a witness, but except where there is very clear proof afforded by his own statement that the witness is unworthy of credit, it is unsafe

364. (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter * * * * * [or the Chief Court of Lower Burma], the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or if that is not practicable, in the language of the Court or in English, and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge or such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language, and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 267.

ARRANGEMENT OF NOTES.

S 364 S 369 (1872) S 295 (1861-9)

I. Object and application of the section.

- (1) The object of the Section
- (2) The application of the Section
- (3) Procedure

II. Mode of recording examination.

- (1) General rules of practice
- (2) The signature of the accused
- (3) Memorandum or certificate prepared by judge (2)

- (4) Statement should ordinarily be recorded in the language in which it is made

- (5) Record to be made in the form of question and answer

III. Effect of Violation of the provisions of the section.

- (1) Effect of infirmities
- (2) Defects which are not necessarily fatal
- (3) Is 'omission' to be cured

I. OBJECT AND APPLICATION OF THE SECTION.

(1) *The object of the section.*

1. (1) The examination of an accused person contemplated by Ss. 342 and 361 Cr. P. C., is for the purpose of enabling him "to explain the circumstances appearing in evidence against him" and not to empower a Judge, before any evidence, has been recorded to extract damaging admissions from him upon which to build up the case for prosecution—(84) A. N. 106; 14 A. 212; 15 C. J. 323.
2. (2) Before examining a man upon his own statement under examination it is necessary to see that such statement was deliberately made and recorded, that after being recorded it has been shown or read to the accused, and the examination has been attested by the signature of the Magistrate following a certificate to be given under his own hand—7 W. R. 40.

(2) *Application of the Section.*

3. **Analysis of Chapter XXIV.**—Ss. 375 to 363 relate only to the mode of recording the statements of witnesses, while S. 364 deals with all statements made by accused persons, whether amounting to confessions or not—2 C. N. 702.
4. **Procedure under S. 364.**—A Magistrate,

prisoner that he is charged with a certain offence and ask him if he has any explanation to give and whether he wishes to make any statement

2 Weir 438.

5. **S. 364**—other
ment of
S. 202
ment can be recorded only under S. 364 Cr. P. C. and that only when a person is being tried for an offence
32 C. 1085 10 B. H. 160 2 O. L. 317
6. **Application of the Section.**—Statements made by accused persons before the case has reached the stage at which the examination of the accused is authorised, if they do not amount to confessions are inadmissible in evidence—2 C. N. 702
7. **Section applies to examination of the accused under S. 342.**—The section lays down the procedure to be observed in examining the accused under the provisions of S. 342 Cr. P. C.

Nature of examination to be conducted.**General Rules:—**

- (1) Questions should be made with the sole object of ascertaining from the accused how he is able to meet facts standing in evidence against him so that those facts should not stand against him unexplained.
- (2) It is illegal to put questions in the nature of cross examination to the accused.

[For a typical case—See 7 O. C. 191]

(3) The examination is not to be made for the purpose of supplementing the case for the prosecution.

(4) Magistrates should inform the accused that he is not bound to answer.

[See—Notes under S. 312]

8. **Confession recorded by the Magistrate of a Native State.**—A confession made to a Magistrate in a Native State is admissible in evidence in a trial in British India, if it is duly recorded in proceedings under and in the manner required by the Code of Criminal Procedure—2 P. R. 1909. S. P. R. 1907; 12 A. 593
9. **S. 364 do not limit the scope of S. 21 of the Evidence Act.**—The argument that the confessions if recorded after the commencement of the trial, would be inadmissible in evidence, cannot be sustained, because the argument seeks to derive from the provisions of the Code a limitation on the law of confession as defined by the Evidence Act for which there is no sufficient warrant Ss. 164, 312, 364 Criminal Procedure Code are not exhaustive and do not limit the generality of S. 21 Evidence Act as to the relevancy of admissions—37 C. 407 See Rat 679
10. **S. 364 does not apply to confessions recorded by Presidency Magistrates.**—Chapter XIV Cr. P. C. (except S. 155) does not apply to the Police in the town of Calcutta. Therefore neither S. 164, nor as a necessary consequence

a crime committed in Calcutta.

15 C. 595 (F. B.); 21 B. 485.

(3) *Procedure.*

11. **How to record the examination.**—In taking down the statement of an accused, under S. 312, a Magistrate should record in full the questions put to and the answers given by the accused, and the whole must be made conformable to what the accused declares to be the truth; he must certify that his examination of the accused contains a full account of the statement made by the accused—4 B. R. 461. 1 Bar R. 320 5 A. 253—(83) A. N. 243
12. **Questions calculated to draw incriminating statements illegal.**—All that a Court has the right to do under S. 364 Cr. P. C. is to ask the accused person to explain the circumstances which appear in evidence against him, where questions were put to the accused person which elicited a statement of a confessional nature, held that such examination, though purporting to have been made under S. 364, was wholly inadmissible—15 C. J. 323.
13. **...**

26. Object of the memorandum—
 memorandum
 ss 122 (=16
 confession,
 of the accused
 of a Magistrate, and of the voluntary nature of
 of the confession—1 B. 219.

(3) Memorandum or Certificate
 prescribed by subv. (2).

27. Informalities not necessarily fatal.—
 A confession does not become unworthy or con-
 sideration, merely because, the memorandum
 required by law to be attached thereto has not
 been written in the exact form prescribed—
 3 A. 338. 2 Weir 436. 22 M. 15.

28. Magistrate recording confession may
 be examined to rectify omission.—A

22 M. 15; 2 P. R. 1909; 8 C. N. 22; 3 C. N. 387;
 See 2 M. 5; 21 P. R. 1891. 21 W. R. 29; Rat see
 12 W. R. 41 7 W. R. 49; 5 C. I. 209 4 C. 496
 1 B. 219; 10 B. 11. 166. 6 B. 258.

29. Form of the certificate.—No particular
 form of certificate is prescribed by this section.
 The want of a certificate may be remedied, the
 Appellate Court directing the Magistrate to supply
 the omission [7 B. 11. 50 (53)] A certificate
 which contained the words "taken by me" but
 in which the magistrate omitted to record that
 the prisoner's statement was taken in his hearing,
 was treated to be substantially a compliance with
 S 349 (=S. 364)—5 C. 358; See 1 B. 219.

30. Attestation of the Magistrate.—It is not
 necessary under S 205 C P. (=S. 364) to state
 in the body of the examination of the accused
 that the statement comprises every question put
 to the accused and every answer given by him, or
 that they—
 and that
 his answer

foot of the examination when duly recorded in
 the terms of that section is sufficient *prima facie*
 evidence of such examination, unless the Session
 Judge doubts the genuineness of the Magistrate's
 signature, in which case he should take evidence
 on that point. The examination of the accused,
 properly recorded, is evidence, and should be
 allowed to go to the jury.—7 B. L. (iv) 62.—
 See S. W. R. 55.

[Note.—The attestation required by this section is
 unnecessary when a confession is made in the
 Court to the officer trying the case at the time of
 trial.—3 C. 756].

31. Object of recording statement of ac-
 cused in his own language.—"The law re-
 quires that ordinarily such a statement, i.e. the
 examination of the accused should be recorded
 in the language of person making it, the object
 being to represent the very words and expressions

used, so as to ensure accuracy and prevent mis-
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(4) Statement should ordinarily be re-
 corded in the language in which it is made.

32. The statement should be

be admitted to prove a statement—

it is not practicable in the language of
 the Court or English. It would be for the prosc.
 cution to establish the impracticability if any
 existed—[15 C. 593 (P. B.). 17 C. 562 21 W.
 R. 54. 2 L. B. 19; Rat see 5 C. P. 21]

33. What is meant by "impracticability"—
 Where a Committing Magistrate recorded in

columns, held that the provisions of S. 364 of the
 Code had been sufficiently complied with—22 C.
 817.

34. Impracticability will be presumed un-
 less controverted.—A confession made in
 Urdu (Hindustani) in the presence of a Subdivi-
 sional Officer who was a Mohammedan gentleman;
 was recorded by the Court Officer in Bengalee

10 C. 112 See 21 B. 493; 23 B. 231.

Instances of irregularity.

35. (a) Where a Bhill accused having been examined
 by a Magistrate in the Marathi language, and the
 accused's answer having been given in Marathi
 with a very large sprinkling of Bhill terms, the
 Magistrate recorded the accused's statements in
 English, held that the Magistrate's procedure was
 irregular and he should have recorded the
 accused's statements in Marathi—Rat 633

36. (b) The accused, a Manipuri, was examined
 through an interpreter who obtained the answers
 in Manipuri and translated them into Bengali and
 the Magistrate recorded them in English. The
 statement in Manipuri and the statement in
 Bengali—
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 proper
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 the pro.

26. **Object of the memorandum.**—Both the memorandum and the certificate prescribed by S. 122 (=10), 310 (=381) should be attached to confessions. The effect of these is to afford proof of the accuracy of the record, of the presence of a Magistrate, and of the voluntary nature of the confession.—1 B. 219

(3) *Memorandum or Certificate prescribed by subs. (2).*

27. **Informalities not necessarily fatal.**—A confession does not become unworthy or consideration, merely because, the memorandum required by law to be attached thereto has not been written in the exact form prescribed.—3 A. 338; 2 Weir 136; 22 M. 15.
28. **Magistrate recording confession may be examined to rectify omission.**—A defect in the memorandum to be attached to the examination of the accused by a Magistrate cannot be cured by the examination of a witness to prove that the statement was taken down in the handwriting of the Magistrate. The proper course is to examine either the Magistrate himself or some other person who was present when the statement was made.—8 C. P. G.; 23 B. 221; 21 M. 15; 3 P. L. 1909; 8 C. N. 22; 3 C. N. 387; See 2 M. G.; 21 P. R. 1881; 21 W. R. 20; But see 12 W. R. 44; 7 W. R. 49; 5 C. L. 209; 4 C. 106; 1 B. 219; 10 B. 11; 160; 6 B. 288
29. **Form of the certificate.**—No particular form of certificate is prescribed by this section. The want of a certificate may be remedied, the Appellate Court directing the Magistrate to supply the omission [7 B. 11; 50 (53)]. A certificate which contained the words "taken by me" but in which the magistrate omitted to record that the prisoner's statement was taken in his hearing, was treated to be substantially a compliance with S. 310 (=S. 381)—5 C. 938. See 1 B. 219.
30. **Attestation of the Magistrate.**—It is not necessary under S. 205 C. P. (=S. 361) to state in the body of the examination of the accused

such, so as to ensure accuracy and prevent misrepresentation or misconstruction of what was said. If such a record is not practicable, the law directs that the statement shall be recorded in the language of the Court or in English; if however, as in this case, a second translation be made and the statement be recorded as so understood the accuracy which the law contemplates is made more remote.—21 C. 612 (660)

(4) *Statement should ordinarily be recorded in the language in which it is made.*

32. **The General Rule.**—If the accused is examined in a language which the Magistrate understands and is able to write, an English record of the examination is inadmissible, and no evidence can be admitted to prove what statement was made.—1 B. 219; 21 W. R. 20 (711). It is

not sufficient to establish the impracticability if any existed.—[15 C. 505 (F. B.). 17 C. 562, 21 W. R. 54; 2 B. 19; But see 8 C. P. 21].

33. **What is meant by "impracticability"**—Where a Committing Magistrate recorded in

Urdu, held that the provisions of S. 304 of the Code had been sufficiently complied with.—22 C. 817.

34. **Impracticability will be presumed unless controverted.**—A confession made in Urdu (Hindustani) in the presence of a Subdivisional Officer who was a Mohammedan gentleman; was recorded by the Court-Officer in Bengalee (the language of the Court). It was contended

Instances of irregularity.

35. (a) Where a Hindu accused having been examined by a Magistrate in the Marathi language, and the accused's answer having been given in Marathi with a Magistrate English, irregular and no known law. accused's statements in Marathi.—Rit 633
36. (b) The accused, a Manipuri, was examined

signature, in which case he should take evidence on that point. The examination of the accused, properly recorded, is evidence, and should be allowed to go to the jury.—7 B. L. (4p) 62—See 8 W. R. 55.

[Note.—The attestation required by this section is unnecessary when a confession is made in the Court to the officer trying the case at the time of trial.—3 C. 756].

31. **Object of recording statement of accused is his own language.**—The law requires that ordinarily such a statement, i.e. the examination of the accused should be recorded in the language of person making it, the object being to represent the very words and expressions

the form prescribed by S 364 Cr. P. C., but any defect therein may be cured by examining the Magistrate as a witness—44 P. W. 1921 (F. B.) [5 C 245. 5 A 253 R] See 24 W R. 29 3 A 339. 11 B. H. 237 Note the charge in law since 10 B H 166; 181. 11 B H 44. 1 B. 219

48. Scope of S. 533 Cr. P. C. not limited to any particular kind of non-compliance.—
The scope of S 333 Cr. P. C cannot be limited to

any particular kind of non-compliance with S. 364
No distinction can be drawn between a neglect to sign the confession or the certificate or to certify the facts requiring to be certified and a neglect

365. Every High Court established by Royal Charter, * * * * [and the Chief Court of Lower Burma],
Record of evidence in High Courts * * * may from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

Proposed amendment to the section—In section 365 of the said Code, for the word "may" the word "shall" shall be substituted, and the words and signs "(if any)" shall be omitted

Note.—The words "the Chief Court of the Panjab" was repealed by the Repealing and Amending Act 1919 (XIII of 1919)

CHAPTER XXVI.

OF THE JUDGMENT.

366. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be Mode of delivering judgment, pronounced, or the substance of such judgment shall be explained,—

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up or, if not in custody, be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted. in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof or of any omission to serve, or defect in serving, on the parties or their pleaders or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

Notes.

Meaning of the word "Judgment."

An order of discharge is not a "judgment".
Although the word "judgment" is not defined
Pro. Code, it is sufficiently clear

from Ss 366, 367, that the term is intended to apply to the final order in a trial, terminating in either the conviction or acquittal of the accused.
Per Pinkes J in 31 M. 513. 6 B R 897; 11 A 61; See 21 M. 120. (F. B.) 1 N. 18

297 and 297 Cr. P. C. the irregularity was one contemplated by S. 337 of the Code, when it had not amounted any failure of justice. [See also 23 C. 302; 5 N. 131].

17. **Death of Magistrate after conviction.**—least before writing the judgment.—The second class Magistrate who convicted the accused died suddenly after having sentenced them but before he had written his judgment in the case. In I B. R. 169 [see 2 Weir 438 Cases] the High Court reversed the conviction and ordered a retrial but in I B. R. 117, the High Court declined to interfere as the accused had neither exercised their right of appeal nor moved the High Court.

(3) Scope of sub (2).

18. **Scope of S. 386(2).**—S. 295 allows the accused to appear by pleader, and such appearance involves the performance of all acts which devolve upon the accused in the course of the trial, such as answering the examination by the Court, under S. 342 or pleading or refusing to plead under S. 253. The terms of S. 295(2) support this view for it contemplates the absence of the accused up to the stage of judgment or even after that stage when the judgment is one of acquittal or one awarding a sentence of fine only.—S. S. 295; 3 S. 167; See (12) U. B. 4-1. 132.
19. **The General Rule.**—An accused person was present throughout a trial whilst the evidence was taken; but he having absconded, the Magistrate passed sentence upon him in his absence and on his reappear, re-proclaimed his judgment. Held that S. 337 applied as no review was sought by the accused but that the Magistrate should not later pronounce judgment in the absence of the accused.—Rat 327.
20. **English Law.**—In England, if the Court is satisfied that the prisoner is too ill or infirm to

be brought up, the judgment may be pronounced in his absence.

R. v. Court; 7 D. and R. 663; See Arch. 1 p. 249

(4) Miscellaneous.

21. **Omission to read a portion of the judgment.**—The omission to pronounce a portion of the judgment imposing fine which the Magistrate has written and his omission to date and sign the judgment at the time of pronouncing it are omissions covered by S. 337 Cr. P. C.—2 Weir 711; 23 M. J. 445.
22. **The inherent power of Courts to restore lost records.**—In England the practice is as follows: "The power of supplying a new record where the original has been lost or destroyed is one which pertains to Courts of general jurisdiction independent of legislation." [Black on Judgments Vol. I, S. 125.] The principle is recognised in India in 11 C. J. 243 (248); "a Court has inherent power in the case of loss or destruction of a judicial record of restoring it." It has been held in 8 C. J. 521 that when a judgment has been lost, it is open to the Judge to rewrite from memory the substance of it.—See 23 M. J. 455.
23. **Delivering of a judgment should not be delegated.**—A Sessions Judge after holding trial in a district within his Session Division went back to his headquarters in another district and sent his judgment in the case to the Magistrate of the district in which the trial had taken place to be delivered by the latter, held that the procedure was illegal.—(59) A. N. 151; Rat See Note No. 14 above.
24. **Secs. 386, 387 read with S. 424 apply to appellate judgments.**—(Sec. 37 C. 194; 14 C. N. 2111) But not when the appeal is summarily dismissed under S. 421 *infra* [5 N. 76]

357. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be in the language of judgment. Contents of written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced,

(3) When the conviction is under the Indian Penal Code, and it is doubtful under which Judgment in alternative. of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed;

X. Alterations and interpolations (S. 369 Cr. P. C.)

- (1) Rules as to interpolations and alterations
- (2) Review by High Court and Subordinate Courts.
- (3) Remedy for errors

XI. Presidency Magistrates (S. 370.)**XII. Miscellaneous.**

- (1) Language of the judgment.
- (2) Absence of judgment.
- (3) Miscellaneous rules of practice.
- (4) Expunging Remarks.

I. OBJECT AND APPLICATION OF THE SECTION.**(1) General Remarks.**

1. Judgment, should be the same person as the presiding officer who is required to date sign and pronounce it in open Court.—18 M. J. 197.

2. If Judgment is delivered after the accused had been sentenced.—The procedure is more than a mere irregularity and vitiates the conviction and sentence.

27 M. 237; 14 A. 242; 21 C. 121; 13 B. R. 635; But see 23 C. 602; 5 S. 131.

3. Dictation.—The dictation of a judgment by a Magistrate who did not write it but signed it after it had been written to dictation is in contravention of S. 367—4 C. J. 111.

4. Proceedings written in pencil.—Pencil writing is precluded by common sense and common usage.—O S. 192

5. Judgment written after relinquishing charge.—A judgment written by a Magistrate after he had ceased to exercise jurisdiction is not valid.—15 C. P. 15; See 20 P. R. 1579.

6. Judgment must be delivered by the Judge himself.—The action of a Sessions Judge (after having written the judgment) in sending it to the District Magistrate to be delivered by him is illegal [the Sessions Judge having left the place where the trial had been held]—(59) A. N. 181.

7. Signature when to be appended.—The signature to a judgment should be appended at the time of pronouncing it is open Court.—Bat 429

(2) Object and Application.

8. Object of S. 367.—Object of the Legislature in formulating rules as to judgments was to insure that a Criminal Court should consider the case before it in its different bearings and should on such consideration, arrive at definite conclusions, and that the judgment should show that, in fact, the Criminal Court had considered the evidence, in a case of first instance or in a case of appeal, and had found in a case of a conviction, that the facts proved to the satisfaction of the Court, brought an offence home to the accused person whom the Court convicted.—10 A. 506 (F. B.) See 14 A. 232.

9. S. 367 applies only to final order.—S. 429 Code of 1861 (=S. 367) of the Code was held not to be applicable to all orders on petitions but to final orders made in the trial and investigation of offences.—Bat 61.

10. S. 367 does not apply to an order passed under S. 195 Cr. P. C.—The section applies to criminal trials.—See 6 B. R. 897.

It is open to doubt whether the provisions of Ss. 377, 421 Cr. P. C. govern an order under S. 123 Sub. Sec. (3).—37 C. 91.

11. Order of discharge under S. 285.—Accompaniment of the wording of cl. 1 and 2 of S. 253 Cr. P. C. and a reference to S. 367 show that an order of discharge, after all evidence is taken, is not a judgment, and that it is not necessary for the Magistrate to state his reasons though it is desirable that he should do so.—9 B. R. 250; 31 M. 543; 20 M. 126

12. Judgment of acquittal on petition of compromise.—It is doubtful whether the final order of acquittal on a petition of compromise is a judgment within the provisions of S. 367 (1) Cr. P. C.—20 P. R. 1914 (F. B.).

13. Judgment written but not delivered.—A judgment, though written and signed was not operative until it was pronounced and must be taken merely as an expression of opinion

[A Magistrate may after writing a judgment convicting the accused, change his mind before delivering it act under S. 319 Cr. P. C.]—15 A. J. 745.

14. Duty of the Appellate Court.—An appellate Court is bound to look into the defence evidence although the counsel for the appellant does not refer to it and after dealing with it must come to a decision, otherwise the judgment would be defective.—40 C. 370.

(3) Judgments how to be written.

15. The General Rule.—The decisions of Judicial officers should be written on a uniform, concise and complete plan; neither too prolix nor omitting all reference to the facts. First, there should be concise reference to the main facts and proofs on which the decision is founded. Secondly, the deductions and reasons should follow, and then in due course, will come, thirdly the sentence or decision. When a judgment makes reference to witnesses or accused persons, Judges should not content themselves with merely mentioning their number on the list, but should also mention their names. The name of the person referred to should be distinctly stated.—(Qudh Cr. Dig. p. 22; See B. H. Cr. Cr. p. 39. See 10 A. 506 (F. B.) W. R. (Sup) 6.

16. Evidence must be discussed.—Where the judgment of the Deputy Magistrate in appeal, contained a long recital of the facts preceding the alleged offence, but no discussion of the evidence or anything to indicate that the Magistrate considered such essential points, as the

ownership of the grain, or the good faith of the accused, on the evidence implicating the individual accused persons, *Id.* that it was not in accordance with law—12 M J 235.

17. The defence should not be treated as

a reason for enhancing the punishment. The defence put forward by the accused should not be treated by the Magistrate as a matter of aggravation in estimating the sentence to be passed by him—(13) A. N. 170.

II. CONTENTS OF THE JUDGMENT IN TRIALS.

(1) General Rules.

18. Judgment should be sober and temperate.—

(1) A judgment should confine itself to a consideration of the issues before the Court together with fair and legitimate comment on any errors or irregularities that may be disclosed in the course of trial. The language should be temperate and sober, not satirical—5 Mar T 20.

(2) A judgment should not contain remarks about the necessity to the effect that he was a person of wealth and influence and had prevented truth from appearing unless established by the evidence [5 W R 11].

19. Judge must clearly state the points for determination.—If a Judge does not state the facts of the case or the points for determination, or even the section under which he convicts the accused, the High Court will set it aside and direct a retrial [See H C N xlii].

20. Particulars of previous conviction must be stated.—Particulars of previous convictions and sentences, if any, should be given in the judgment. In the absence of those particulars, the Court of appeal or revision cannot have a proper idea of the appropriateness or otherwise of the sentence passed—See H C Cr, 218 & 5.

21. Remarks about Police officers.—The testimony and conduct of police officers concerned in the trial should be scrutinized and commented on in the same degree as those of other material witnesses and no further.—23 W. R 65.

22. Judgment must be self-contained.—A Magistrate cannot supplement his judgment by his explanation to the superior Court. If there are no material findings in the judgment, the defect cannot be cured by the Magistrate's explanation—7 C J 239.

23. Evidence.—The judge is bound to state in his judgment the evidence on which he convicts [5 W R 17] where the judgment of a Magistrate makes no mention of the evidence, 1 session [21 Cr. 140 (N)].

24. Duty of the Sessions Judge.—A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial.

13 W. R 50.

25. Findings on every head of charge.—To enter up findings on every head of charge is not only not illegal but is the most convenient course.

6 M. II, (ap) 47.

26. Accused entitled to an independent judgment.—An accused person is entitled to have an independent judgment of the trying Court, and such a judgment must be prepared in accordance with, and contain the particulars required by S 367 of the Criminal Procedure Code, otherwise it is no judgment at all. Where a second class Deputy Magistrate forwarding the proceedings under S. 310 Cr. P. C. to the Subdivisional Magistrate recorded his full opinion and the latter wrote "I have perused this judgment. I agree with the findings arrived at by the learned trying Magistrate and convict all the eleven accused persons for being members of an unlawful assembly with the common object of committing theft as stated in the charge". Held that upon the test laid down by S 367 Cr. P. C. this was not a judgment at all—20 Cr 441 (Pat).

27. Offences must be specified.—Under S. 367

(2) Judgment in summary trials (S. 263 Cr. P. C.)

- 28.

(30) A. N. 81.

29. (1) The law requires that a Magistrate or a Bench of Magistrates in a summary trial should give a brief statement of the reasons for their finding. A judgment in a single line is not a judgment in accordance with the law.

20 Cr. 431 (Pat).

(3) Judgment in Capital cases.

30. The rule laid down.—To justify the passing of a sentence of transportation for life in case of murder, the Judge should find that there are

imposing the penalty of death but whether there are reasons for abstaining from doing so—1 L B 216 (F. B.)

What are not sufficient reasons for not passing the capital sentence.

31. (i) Woman quick with child.—Capital sentence should be passed on a conviction for murder

even if it the accused be pregnant, although the execution of the sentence should be deferred till after delivery—15 W. R. 66 See W. R. (Gap) = 1 Marsh 131. But See 3 W. R. 15

32. (2) **Absence of premeditation**—In *Bumma* where knives are freely used on the highest occasion, it would be unsafe to lay down as general rule that mere absence of premeditation or deliberate intent to kill is a good ground for abstaining from passing a capital sentence where a knife is used—1 L. B. 216 (F. B.)
33. (3) **Not caught redhanded**—The fact that the accused was not caught while committing murder or while escaping, is no ground for not awarding a sentence of death—13 P. R. 1873
34. (4) **Sex**—In a trial of a woman upon a charge of murdering a child for the sake of her ornament the Sessions Judge after convicting the prisoner passed the following sentence:—"In consequence of her sex sentence of death need not be passed. Nibbia will be transported for life."—*Held*, the Judge had stated no reason from or judicial point of view why a sentence of death should not have been passed.—(88) A. N. 134
35. (5) **Character**—Where the facts

What are sufficient reasons.—

36. (1) **Sudden altercation**—Where the husband threw a stone at the wife and killed her in the course of a sudden altercation, *held* that capital punishment was not called for [103 P. R. 1866]
37. (2) **Character**—Where the facts
afflict with the
ly induced by
to confirm the
38. (3) **Case based on purely circumstantial avoidance**—See 2 Weir 736
39. **Raccommodation for mercy**—To refrain from passing or confirming a sentence of death on account of the criminal's youth is an act of pure mercy, the exercise of which is the prerogative of the Crown.—[1 L. R. 359] It is highly improper that a Session Judge should pass a sentence of death and at the same time in his reference to the High Court should recommend for mercy [M. H. O. P. 24 4. 66]
40. **What is not sufficient reason for passing a capital sentence**—The fact that, except death, no punishment severer than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted, is not of itself sufficient to justify the Court in condemning the convict to death.—19 W. R. 68.
41. **Doubtful cases**—It is the duty of the Judge to consider whether there are extenuating circumstances, but when he has given his mind to the question and still feels pressed by reasonable doubt as to whether death is the proper penalty, the

42. **Under S. 367 (5) the Session Judge**—is bound to state his reasons for not passing a sentence of death where the offence is punishable with death—S. M. T. 81; See 23 W. R. 32 W. R. (Gap) 27.

43. **Duty of Judge to pass capital sentence**—Judges are bound to pass a capital sentence in a case of murder when they believe the evidence, and they must not shrink from doing their duty

7 W. R. 33

44. **Casea under S. 303 I. P. C.**—When a person under sentence of transportation for life on a conviction for murder, is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him under S. 303 I. P. C. is a sentence of death.—19 W. R. 45

(4) Miscellaneous.

45. **Facts not established by evidence**—ought not to find place in the judgment.

8 W. R. 13.

46. **Omission to safe out with clearness either the facts of the case—or the nature of the evidence supporting it** was a good ground for ordering a new trial.

(86) A. N. 181.

47. **Speculation or theories**—The decision must be based on evidence and not merely on speculations or theories as to the probabilities.

(86) A. N. 20

48. **Judgments when accused is discharged under S. 253 Cr. P. C.**—See I Application of the section. Note No 11, above.

49. **Humorous judgment**—A humorous judgment is not necessarily a bad judgment. But its value does not depend on the quality of its humour. Facetious comments which do not contribute to the disposal of the case and which are calculated to wound the feelings of persons who are not parties to proceedings should not find place in a judgment—12 Cr. 464 (L. B.)

(5) The Rules Summarised.

50. **The following particulars must be set out in every judgment**—

- (1) **Name of the accused**—At the head of every written judgment and of the records of the heads of the charge to the jury, the names of all the accused persons should be set out, together with the numbers by which they may respectively be referred to by the Court in the course of the judgment or charge to the Jury.—Bomb. H. O. Cr. C. 39
- (2) **Offence must be specified**—See Note No 27 above and Mad. G. O. No 1448 J. dated 26-10-09
- (3) **Punishment must be specified**—See ('84) A. N. 219. Rat 892.
- (4) **Finding on all charges must be given**—See 13 W. R. 50
- (5) **Judgment should be signed, not initialled or stamped**—See Note No. 93 infra.

(6) The jurisdiction of the Magistrate should appear. In every sentence or order made in a Criminal Court, the jurisdiction of the Judge or Magistrate making it should distinctly appear on the face of the record.—*Rules 112 See M. H. C. Memo dated 27.7.74*

(7) List of witnesses and material objects

and exhibits must be appended.—*See Madras Rules of Practice (Rule no. 29)*

(8) In cases tried with the aid of assessors, the record of opinions of the assessors, must be appended to the judgment.—*Madras Rules of Practice (Rules No. 24 and 25) See G. B. H. V. G. P. R. 1876*

III. CONTENTS OF JUDGMENTS IN TRIAL BY JURY AND BY ASSESSORS.

(1) By jury.

51. The proviso to S. 367.—The words, that the Court of Session shall record the heads of charge to the jury "must be construed reasonably and include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection in the charge"—23 W. R. 32 See 10 B. R. 365 (103) A. N. 232 24 C. 776 (103) A. N. 232

52. Judgment need not be written *in extenso*.—Under S. 367, a Judge is not required to write out in *extenso*, the charge which he addresses to the jury. The term "heads of charge" implies that the Judge must faithfully record the lines upon which he addressed the jury, both on the evidence and on the law, and the object of these heads of charge is to inform the High Court, should occasion arise of what direction he gave in law to the jury and the nature of his summing up of the evidence not only for the prosecution but also for the defence.

1 Pat. J. 317 See 34 C. 618 36 C. 2st 39 A. 348 (103) A. N. 232

53. When the heads of the charge should be written.—The heads of charge to the jury should be written by the Judge as soon as possible after its delivery and while the facts are still fresh in his mind. S. 367 Cr. P. C. does not make it obligatory that the charge should be written out before delivery.

30 C. 2st See *Hillman* 116

(2) By assessors.

54. The summing up should not be incorporated in the judgment.—A Sessions Judge should not incorporate in and treat as part of his judgment his summing up of the case to the assessors, but if he does so it is not an illegality.—*3 C. J. 55*

55. Where the case is triable partly by jury and partly with the aid of assessors.—A reference to the heads of the charge to the jury is not sufficient compliance with the requirements of S. 367. The judgment should contain all the particulars specified in S. 367 Cr. P. C.—*1st 426*

IV. CONTENTS OF JUDGMENTS IN APPEAL.

(1) The principles applicable to appellate judgments.

56. "It is continually overlooked by Courts of Appeal that S. 424 of the Criminal Procedure Code prescribes that the rules contained in Chapter XXVI as to the judgment of a Criminal Court as may Appellate be of the such prescribes that a judgment shall, among other things, contain the point or points of determination, the decision thereon and the reasons for the decisions. Now the conviction in this case by the Court of first instance was both under Ss. 379 and 143. For the purpose of an offence under S. 379, it is necessary that it should be proved that there was an intention to take dishonestly any moveable property out of the possession of the person aggrieved without that person's consent, and one of the points for determination, therefore, is whether there was that intention. Admittedly, there is no finding on that point in the judgment of the lower Appellate Court. This is not a mere technical objection, because one of the points urged on the part of the defence is that, though there may have been the moving

of property, there was not the intention to take that property dishonestly out of the possession of any other person, in as much as, it is contended there was a *bonafide* claim of right, so that it is apparent that it was absolutely essential that that point should be contained in the judgment and that it should be decided"—*Per Sir Lawrence Jenkins C. J.* in 37 C. 194 See 21 Cr. 223 (P) 2 Pat. W. 49

(2) The Duty of the Appellate Court.

57. Duty of the Appellate Court.—The appellant is in simple justice entitled to have the evidence in the case against him duly weighed and examined, and it is the duty of the District

13 C. N. clxxv 7 M. T. 182 (12) M. N. 581.

58.

are fully explained, the judgment of the Court of Appeal, which confirms the judgment of the

and appreciated the arguments advanced against the credibility of the prosecution witnesses and still believed them—20 Cr. 238 (C). See 8 B. II. (C G) 101.

59. Judgment of Appellate Court not to be merely supplementary to the lower

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aid of the judgment of the trial Court. * * *
The law requires an Appellate Court, to write a reasoned and considered judgment setting out the facts and points arising for determination and stating the reasons and grounds for its decision—20 Cr. 613 (Pat); 35 C. 138; 7 C. N. 30 9 C. N. xviii 2 Pat J 675. 1 Pat W. 673 12 M. J. 333 See 14 A. 212 Cr. R. 7 of 1870.

60. Where there several accused.—Where there are several accused it must appear on the face of the judgment that the case against each of the accused has been taken into consideration and reasons should be given, so far as may be necessary, to show that the Appellate Court has devoted judicial attention to the case of each of the accused—35 C. 138. 22 C. 241; 20 C. N. 1296. 16 Cr. 196 (W).

61. An appellate judgment should.—(1) contain sufficient materials enabling the High Court to form a conclusion as to the propriety of con-

of the sentence which was passed upon each of the accused having regard to the nature of the offence with which each of the accused is charged. 20 C. N. 1296

62. Points of law must be discussed.—In a case of mischief, the intention of the alleged offender must be determined and whether he had acted in the exercise of a *bonafide* claim of right [2 A 101] In a case of criminal trespass, it is necessary that the Appellate Court should state the findings of fact on which the conclusions of law are based.—[20 Mys. 148.]

63. Practice.—The Judge is bound to record a judgment on various points, giving his reasons therefor. The High Court has always insisted upon this practice to safeguard the interests of the accused. Rat 826; Rat 844; Rat 833 5 M. II. (appx) 12 9 C. N. xviii. 22 C. 241.

64. Appeals from orders.—Where a Sessions Judge disposed of an application to revoke the sanction given by the Magistrate in the words, "I decline to interfere on revision, rejected."—held—the order did not fulfil the requirements of law

and that the Judge should have stated his reason (92) A. N. 60.

Note.—Judgment should be in strict conformity with S. 367 (—161 of 1872).—6 P. II. 1876.

65. S. 424 read with S. 367 Cr. P. C.—requires the judgment in appeal to state the points for determination, the decision thereon and the reasons for the decision. [(13) U. B. 24. 169; 8 N. 84; 13 Cr. 48 (O)] Where a Magistrate in an appeal passed the following final order.—"The appeal is dismissed under S. 423 Cr. P. C." Held that when an appeal is not dismissed summarily but under S. 423 Cr. P. C. after notice given under S. 422 Cr. P. C., it is incumbent on the Appellate Court to deliver judgment which should fulfil the conditions laid down in S. 367 S. 537 Cr. P. C. (c) cannot be invoked in a case in which there is no question of any omission or irregularity in a judgment but an absence of a judgment. [17 B. R. 1055]

66. Duty of Sessions Judges.—They should record their reasons for confirming, reversing or modifying the sentences or orders of Magistrates—5 M. II (ap) 12; 9 C. N. xviii. See Rat 833.

(3) Rules of practice.

67. Form of Appellate judgment.—To say simply that a charge is proved by the evidence of witnesses does not satisfy the requirements of the section. Though it is not necessary for an Appellate Court, in confirming a conviction by the lower Court to set forth its reasons in full, yet it is desirable that it should do so, when the circumstances of the case necessarily required special notice.—8 B. II. 101; See W. R. (ap) 5; 21 C. N. 350; M. II. C. Pro. 12-11-78. Where the judgment though not a long and elaborate one, affords a clear indication that the Judge has duly considered the evidence the judgment is a proper one.—1 C. N. 169.

Note.—A judgment in the nature of a stereotyped one is not in accordance with Ss. 367 and 424 Cr. P. C.—1 C. N. 169.

68. What the judgment must show.—Where

the individual accused person)—held—it was not in accordance with law—12 M. J. 335.

69.

it and giving judgment in compliance with Ss. 361 and 423 Cr. P. C.—5 N. 76 110. N. cxxxv.

70. to refer to

(4) *Cases in which the judgments though short have been upheld.*

71. (1) Where the Sessions Judge dismissed the appeal in the following words: "I have perused the record and see no cause for interfering with the finding of the District Magistrate. As regards the sentence it is not excessive but having regard to the great age of the appellant I reduce it to three years R. I. with three months solitary confinement"—19 A. 500 (F. B.)
72. The following judgment by the Sessions Judge: "The appellants have been convicted of breaking into H's house at night dragging his wife into the field and dishonoring her though they did not have intercourse with her. I have read through the evidence and heard the appellants' pleader and I think that the Deputy Magistrate was quite right to believe the evidence. The sentence of one year R. I. and Rs 50 fine is not heavy. I dismiss the appeal."—20 C. 353.

(5) *Judgments not in proper form—instances.*

73. (1) A Magistrate delivered the following judgment in appeal: "I see no reason to distrust the finding of the lower Court. The sentence passed however appears harsh. I reduce the term of imprisonment to fifteen days. The fines and terms of imprisonment in default will stand"—*held*—it was not a judgment within the meaning of S. 367 and 421 Cr. P. C.—13 C. 110
74. (2) The following judgment by a Sessions Judge: "It is urged that the evidence is quite untrustworthy and that the decision should be reversed. The depositions have been gone through and commented upon at great length. The Court finds no grounds of interference. 'The appeal is dismissed'—was—*held*—not be in accordance with Ss 367 and 421 Cr. P. C.—11 C. 419. See 31 P. R. 1881
75. (3) District Magistrate judgment in criminal appeal: "Read proceedings. I see no reason for interfering with the decision or sentence"—S. A. N. 280
76. (4) A Deputy Commissioner gave the following judgment in appeal: "After hearing the argument of the pleaders for the appellants and examining the record, I am of opinion that the lower Court had ample ground for convicting the accused of rioting. I do not consider the sentence too severe. *Held*—the judgment was not in accordance with Ss 367 and 424 Cr. P. C.—22 C. 211.
77. (5) Where the appellate judgment was as follows: "It is obvious that if one quarter for the evidence for the prosecution is true, and I see no reason to

doubt that it is, the appellant is a most proper person to be bound over under S. 110 Cr. P. C." *Held*—that the appeal had not been properly tried [ordered—It must be retried according to law—44 J. 141; See Weir 3rd, 1d. 1070]

78. (6) The following judgment of a District Magistrate on appeal:—"There is no reason to reject the evidence of many persons of position who prove the appellant a general position as a thief. I dismiss the appeal was—*held*—not to be a judgment as required by law—50 J. 80, 14 A. J. 270, 11 A. J. 115
79. (7) The following judgment: "I have heard the arguments and have perused the records. The conviction is in my opinion thoroughly justifiable on the evidence on record"—is defective—13 C. N. 1881. See 31 P. R. 1881, 18 P. R. 1887, 22 C. 211
80. (8) The following judgment in appeal recorded by the District Magistrate: "The affray was a faction-fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate's findings that the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed." *Held*—this was not a judgment in accordance with Ss 367 and 421 Cr. P. C.—15 B. 11
81. (9) Following judgment recorded by the Sessions Judge: "After reading the evidence and hearing the learned counsel for the appellant and the learned Government Pleader, I am convinced that the Deputy Magistrate has decided the case rightly. The appeal is dismissed—*Held* that it was not a judgment in accordance with the law,

23 C. 120

82. (10) The following judgment: "I do not find

ant 421 Cr. P. C. it was no judgment

(86) A. N. 280. See (132) A. N. 60 (88) A. N. 280, S. A. 544

- 82A. (11) "The Sessions Judge, on appeal, found that it had been conclusively proved that part of the stolen property was found in appellants' house, and he was implicated by the confession of his co-accused. The solitary remark 'I can see no reason to suspect the evidence as regards the finding of the property' does not in the circumstances appear to be a sufficient compliance with the provision of the Code of Criminal Procedure as to what a judgment should contain." *Per Saunders J. J. C. (13) 1 U. B. 160.*

V. JUDGMENT IN THE ALTERNATIVE.

83. *Conviction of each of (9)—The conviction of*

law to the proved facts. Where therefore the Judge himself says that there are elements of doubt with regard to the accused's guilt upon the

charge of murder, conviction in the alternative of offences under Ss 302 or S. 201 P. C. is not contemplated by law—11 P. R. 1913. See 11 P. R. 1887; N. P. 137, 21 C. 955 (973)

84. *When the power should be exercised.*—It is only when the committing Magistrate and the Sessions Judge are satisfied that no reliable

evidence is procurable in support of one or other of the charges, the Court should exercise the power of passing judgment in the alternative—12 W. R. 11.

85. In cases of perjury.—In a case under S 193 1 P. C. upon two contradictory statements, judgment in the alternative cannot be passed where the statements are not absolutely contradictory or where in one of them, the accused gives only hearsay evidence. The presumption should be made in favour of reconciliation [See 18 B. 377 (F.B.)] But a conviction is legal under the Code

of 1698 on an alternative charge, under S. 193 I. P. C.—*Per Aston J.* [28 B. 533]

88. Finding of "one or other of two intents" As, 367 allows a judgment to be given in the alternative where it is doubtful under which of
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5 P. R. 1856

VI. SUMMARY DISMISSAL OF APPEALS (S. 421 CR. P. C.).

87. The order does not amount to a judgment.—An order summarily rejecting an appeal under S 421 does not amount to a judgment within the meaning of S 424 Cr. P. C. [i.e. Chap XXVI, does not apply]

6 C P 24.

88. Reasons however concise should be given for rejecting an appeal under S. 421 Cr. P. C.—38 C 307, 32 C 178, 6 C. P. 24 13 N. 169, 8 A 314, 17 A 241 (F.B.) 19 A 306 (F.B.) 9 P. R. 1876. But See 21 C 92 9 C. N. 623 8 N 84 (45).

Note.—It is advisable that the Appellate Court

should in summarily dismissing an appeal, give reasons for rejecting it, in view of the possibility of the order being challenged by an application for revision

[36 A 406].

89. S. 367 does not apply.—An appellate Court, in rejecting an appeal under S. 421 Cr. P. C. is not obliged to give a judgment containing the particulars enumerated in S. 367 nor to give reasons for its decision.

21 C 92 36 A 406, 24 P. L. 1905, 20 B 540 25 M 631 (06) U. B. 2 q. 19, 9 C N. 623 2 Weir 173 1 L. B. 270

VII. JUDGMENT ON EVIDENCE RECORDED BY PREDECESSOR.

90. Transfer before the finding is recorded.—Until the finding is recorded the trial incomplete. If the presidency officer is removed at their stage, his succession cannot pass judgment upon consideration of the evidence recorded by him—4 M. H. (11) 42.

91. Discretion of the successor.—See 367 requires the dating and signing to be in open Court at the time of pronouncement. It is in the discretion of a Magistrate to adopt and deliver a judgment written and signed by his predecessor in office, but not pronounced or to grant a *de novo* trial under S 350 Cr. P. C.

40 M 108 See 18 M J. 197.

92. Effect of going on leave before pronouncement.—Judgment purporting to have been written and signed by a Magistrate who had proceeded on leave and had ceased to exercise jurisdiction is no judgment at all—21 C. N. 755.

93. Scope of S. 367.—Under S 367 it is not necessary that the presiding officer of the Court, who wrote the judgment, should be the same person as the presiding officer who is required to date, sign and pronounce it in open Court—18 M. J. 107.

VIII. JUDGMENT MUST BE WRITTEN BY THE COURT.

94. The practice.—The judgment must be written by the Court itself. It will not do if it is written by a clerk and signed by the Court.—Rat 545. O S 192 11 A. 212

95. Judgment written to dictation.—Where the Magistrate did not write the judgment himself but dictated and signed it—*ibid*—that the dictation of the judgment contravened the provisions of S 367 Cr. P. C.—4 O J 111

96. v. 23...

97. Judgment in summary trials.—In a summary trial, under the provisions of Ch XVIII of the Code, the record in non appealable cases and

the judgments in appealable cases must be written by the Magistrate. A Magistrate in such cases is not authorised to depute that duty to a clerk.—6 M. 396

98. The signature.—(a) Judgment should be signed and not merely initialled.—[O S 192] The affixing of a signature with a stamp would be more than an irregularity. [6 M. 396; See Williams 119]

(b) The dating and signing must be in open Court [31 W. 400, 19 M J. 197] The signature must be appended at the time of pronouncing it. It is the signing of the judgment which deprives the Court of the power to act or review it under S 360 *infra*. [Rat 121]

99. **The duty cannot be delegated.**—The presiding officer shall not delegate to any clerk his duty of stating and signing the same. Where a Sessions Judge, after holding trial in a district within the Sessions Division went to his headquarters in another district and sent his judgment

in the case to the Magistrate of the District in which the trial had taken place to be delivered by the latter and the latter delivered it accordingly. Held that the trial had never been legally complete and must be set aside.—(50) A N 181

IX. EFFECT OF NON-COMPLIANCE WITH THE PROVISIONS OF S. 367 AND S. 424.

100. **Mere Non-Compliance will not invalidate.**—The mere fact that a judgment does not comply with all the requirements of S. 367 will not invalidate it.—23 C 373 6 H 1155.

[Note.—A conviction on a trial regularly held will not be set aside merely because the Magistrate has been unavoidably prevented from recording a judgment in accordance with the requirements of this section (2 Weir 475)]

101. **The High Court**—will set aside the appellate judgment and direct the appellate Court to rehear the appeal when the judgment is defective in this, that the Court by failing to deal fully with the evidence by the light of the established rules applying to criminal cases, has judged the appellant in propriety.—Hart 772

102. **Defective judgments.** When in the judgment of the appellate Court no facts are stated nor reasons are given for the conclusions arrived at by the appellate Court in upholding the conviction, the deficiency in the judgment cannot be made up by having recourse to the judgment of the Magistrate who convicted the accused. The appeal must be retried again.—7 C N 30 See 35 C 134 13 Cr 14 (Ajmer)

103. **Meagre judgment of acquittal.**—Where the judgment of a District Magistrate acquitting on

of acquittal and directed the appeal to be reheard. 2 C J 152 See 91 P R 157

101. **Duty of the Appellate Court**—Where in an appeal to the Court of Sessions, the Judge finds that the Magistrate has not written a judgment in conformity with the provisions of S. 367 Cr P C, the correct procedure is to accept the appeal, and to remand the case for hearing *in toto* S. 124 of the Code does not authorise the retention of an appeal on the file of the Sessions Judge when asking for a judgment which the Magistrate has failed to record.—21 Cr 52 (M)

105. **Case cannot be remanded for a proper judgment.**—Although the High Court, in revision, may direct a rehearing for insufficiency of judgment, an Appellate Court is not competent to remand a case because the Court of first instance has not recorded a proper judgment. Its duty is to go into the whole facts fully and dispose of the case on the merits.—32 O 1069

106. **High Court will not interfere where there has been unconscionable delay.**—Where a Sessions Judge rejected the appeal summarily in the terms "appeal rejected" but the application for revision was put in nine months after—held—that the Court would decline to interfere as the application was made after great delay.—8 A 514

107. **Omission to state under which of the two sections the offence falls.**—An omission to state in a judgment in express terms under which of two sections the offences fell, would amount, at the most, to an irregularity and would not vitiate the judgment.—2 Weir 110

application of the complainant set aside the order

X. ALTERATIONS AND INTERPOLATIONS (S. 369).

(1) Rules as to interpolations and alterations.

108. **The stage at which an alteration may be made.**—If before judgment had been recorded the attention of the Court has been called to any error or mistake in the Judgment pronounced, the Court has the power of correcting such error or mistake. [Rat 659] Where an order by a Judge of the High Court, summarily dismissing a petition in the form of an appeal from a person who was confined in jail owing to failure to furnish security for good behaviour, has not been sealed, there is nothing to preclude the Judge from entertaining a petition for a review of the order.—[27 A 92]

109. **Interpolations.**—No Magistrate can add to or alter the judgment in any case after it has been signed and published. It is specially irregular when made in the absence of the accused and without notice to him.—10 C N 1062 (83) A N 16

110. **Addition of a note**—to the Judgment delivered in a criminal case by which the Judge tries to throw doubts on the conclusion at which he arrived on the evidence, amounts to a most unwarrantable proceeding.—Per Stuart J.—2 A 33.

111. **A Sessions Judge**—has no power under S. 491 (S. 369) to alter or set aside a conviction and sentence once made and signed by him.—23 W R 49 Kit 601

112. **Supply of an omission.**—When a Sessions Judge has annulled a conviction in appeal but omitted to order a new trial, he is competent to add a direction to this effect afterwards.—3 M 48

113. **Order under S. 379. Cr. P. C.**—is not a part of the judgment and may therefore be made after the judgment has been signed

Cr R 45 of '88

114. When alteration is not fatal.—The mere fact of an addition being made to a judgment after it has been signed and delivered, where such addition does not materially prejudice the accused and has not occasioned a failure of justice, does not vitiate the whole judgment or justify an order for new trial.—(25) A. N. 11

114A. S. 369 should be read as controlled by S. 437 Cr. P. C.—24 B. 102.

114B. Summary disposal of appeal—is a final order within the meaning of S. 369 and cannot be reviewed.—4 B. 101

115. When a Subordinate Magistrate finds that he has passed an illegal sentence—he cannot alter his judgment. His proper course is to submit the record to the District Magistrate for action under S. 435 Cr. P. C. [2 L. B. 41; 16 O. C. 192 23 W. R. 49; See Rat 137; 1 B. H. 3. Con 28 C. 825, Weir (3rd Ed.) 993] He ought to direct the judge to suspend the execution of the sentence and merely keep the prisoner in detention which in no case should exceed the term of the imprisonment awarded pending a reference to the High Court.—Rat 137. 1 B. H. 3.

(2) Review by High Court and subordinate Court.

115A. Review by the High Court.—The words "other than a High Court in S. 369" do not give to a Division Bench of the High Court power to review its judgment in Criminal appeal. The remedy against any error in an order passed in an appeal by a Divisional Bench is afforded by petition to the Government, "the authority with whom rest Discretion either of executing the law or commuting the sentence"—Rat 191; 458 7 A. 672 14 C. 42 (F.B.), 46 C. 60 5 W. R. 61 (F.B.). 38 A. 134 11 P. R. 1909; 20 Cr. 447 (Pat)

Note.—where a case is disposed of merely for default of appearance or where an order is passed to the prejudice of an accused person and by mistake or inadvertence no opportunity has been given to him to be heard in his defence, the order of the High Court in such a case may be reviewed.—46 C. 60 10 C. I. 80.

116. Review by Magistrate.—The Code of Criminal Procedure does not authorise a Magistrate to review the final order made by him in a proceeding under S. 489 Cr. P. C., as the principle enunciated in S. 369 Cr. P. C. applies to judgments passed in a proceeding under S. 489 Cr. P. C.—21 C. N. 314. 3 C. 350. 16 Cr. 584 (N); 22 B. 919; (O) U. B. 35.

117. Review by Sessions Judge.—A Sessions Judge cannot in view of S. 369 Cr. P. C. review his own order. An order reviewing his judgment made by a Sessions Judge is illegal.—25 P. R. 1916; See A. P. R. 1909; 35 C. 350 22 B. 919 16 Cr. 584 (N); 34 A. 134 16 O. C. 102.

118. When a District Magistrate may set aside his own order.—A District Magistrate who has ordered the dismissal of a criminal appeal, merely by reason of the non appearance of the appellant, is competent to set aside such

order and thereafter to hear and decide the appeal according to law and S. 369 is no bar.—5 N. 76; 7 M. H. (Appx) xxv. See 10 C. 60; 10 C. J. 80; 24 C. 102; 7 C. N. vii.

119. District Magistrate cannot review his order in revision.—Where a District Magistrate has already dealt with a case in revision and decided that there was no cause for interfering with the order of discharge of the accused, he cannot subsequently order further enquiry under S. 437 Cr. P. C. such an order is an order reviewing the earlier one and is prohibited by S. 369 of the Code.—5 Bur. T. 37; (30-01) U. B. 37; See 4 C. N. 46.

120. The High Court.—A Division Bench of the High Court cannot review an order which they have already made, as a Court of Revision, under S. 439 Cr. P. C.—10 B. 176 (F. B.); 7 A. 672; See 38 A. 131; (O) U. B. 35 (P. C.)

121. Sessions Judge cannot review order under S. 195 Cr. P. C.—An application to a Sessions Judge to set aside a sanction granted under S. 195 Cr. P. C. in a criminal proceeding in revision and not by way of appeal. His order thereon being final, he has no power to review or revise it.—23 B. 50 See also 14 A. 61

122. Miscellaneous proceeding.—Orders under S. 110 Cr. P. C. cannot be reviewed by the same Court, clerical errors may be corrected under S. 369 of the Code.—[19 Cr. 225 (Pat); See 16 O. C. 192 See 35 C. 350. S. C. 580.] A Magistrate having once refused a sanction cannot grant it.—[10 M. T. 389]

122A. Omission to proceed under S. 75 I. P. C. cannot be remedied after passing

with S. 349, which was not proceeded with until after the sentence in respect of the offence under S. 379 had been passed. Held that having regard to the provisions of S. 369 Cr. P. C. the Judge had no power to proceed with the trial of the charge under S. 75 I. P. C. and enhance the punishment after having once pronounced his sentence.—42 B. 202

(3) Remedy for errors.

123. Expunging remarks from a judgment See Notes (under the Heading XII. Miscellaneous) nos 118-149

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High Court under S. 435 infra—6 B. R. 360;
Weir (3rd Ed.), 953. 19 B. 732 1 Bar. S. 334.
M. H. O. Pro 13-11-73.

125. Judgment obtained by fraud or trick.—The accused obtained his acquittal under S. 237 supra by having the complainant wrongfully arrested and detained on a false charge, thus preventing him from appearing when the case was

139. Ante-dating is illegal.—A Sentence follows and does not precede a conviction. Therefore antedating a sentence is illegal. It is not competent to a Magistrate to confine the sentence of imprisonment imposed by him to the days the accused has been in custody during trial and to release him at once.—*Rat 892*

140. Sentence a necessary part of a judgment of conviction.—Every conviction must be followed by a sentence however light it may be. Even a single day's imprisonment must be passed to legally complete the record.—(84) A. N. 219

141. Courts of limited jurisdiction.—Every conviction by a Court of limited jurisdiction ought to contain a statement of its legal jurisdiction with itself. Where therefore a Magistrate convicted an accused under S. 41 of the Bombay Alkali Act for being in possession of more than a gallon of country liquor without a permit or pass from

police and no authority had been cited in support of it.—*Rat 310*.

142. Immediate discharge of prisoner on acquittal.—A prisoner is entitled to be discharged from custody immediately on the judgment. There is no further

143. Information on conviction of military pensioners.—When a Military pensioner is convicted and sentenced to imprisonment in a Criminal Court, the facts of the case should be reported, without delay to the Pensionary Master of the circle to which the pensioner belongs. [*Bomb H. Cr. Cr. p. 30. See also Punj. Cr. p. 32.*] When any person serving under the Government of Bombay in the Military Department has been convicted in a Criminal Court,

such Court shall inform the officer commanding the regiment or corps to which the convict belongs.—*B. H. C. Cr. Cr. p. 38; See Punj. Cr. p. 24; Wilkins 139*

144. Delay.—Delay in delivering judgments in cases is opposed to the principles of law. 5 C. P. 24

145. The chief Court.—can in revision set aside a defective judgment. 6 P. R. 1676.

146. When S. 537 does not cure defect.—S. 537 of the Code does not cure the defects in a judgment which was at variance with the directions given by law and materially prejudiced the appellant at the trial of the appeal.—10 A. J. 435.

147. Conclusions inconsistent with the findings.—Where the judgment shows that the Judge has come to several conclusions inconsistent with his final finding that the accused was guilty held—the judgment was bad in law and must be vacated.—13 Cr. 595 (C).

(4) Expunging Remarks.

148. High Courts power of expunging.—The High Court has power to order that irrelevant matter in the judgment of a lower Court should be expunged. 5 Bur T. 20

Note.—In 187 P. L. 1978 *Clarke C. J.* and *Chatterji J.* directed the words "I am of opinion that both the accused have deliberately perjured themselves" in an expunged from the judgment of the Magistrate discharging the accused.

149. A Judge may himself expunge remarks.—It is open to a Judge to reconsider and expunge damaging observations regarding a witness in a criminal case who had at the trial no chance of defending himself. This does not amount to the reviewing of a criminal judgment as there is no question of reconsidering the guilt of the accused.—2 P. W. 1010.

371. (1) On the application of the accused a copy of the judgment, or when he so desires, a translation in his own language, if practicable, or in the language of the Court shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the head of the charge to the jury shall on the application of the accused, be given to him without delay and free of cost.

(3) When the accused is sentenced to death by a Session Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Notes.

1. Limitation.—Under Art 159, Sch. II of the Limitation Act (XV of 1877) and Art IX of 1908 an appeal against a sentence of death must be filed within 7 days from the date of sentence.

[Note.—In computing the period of limitation of appeal the time spent in obtaining copies must be excluded under S. 12 of the Limitation Act.]

2. The Duty of the Court as laid down in subs (3).—In all cases in which a person is sentenced to death, the Sessions Judge must explain to the convict that he must file his appeal in the Sessions Court within seven days and the Judge must record whether the convict desires to appeal and that the convict was informed that his

appeal must be made, within seven days.—See VII H and L 10, p. 42 (N. B. P. 63: 1871 p. 101)

3. **The District Magistrate to telegraph to Government pleader if prisoner retains counsel.**—See Mad. Not. D. 7: 84 p. 73

4. **Remission of Court-fee.**—In the exercise of powers conferred by S. 35 of the Court Fees Act (VII of 1870), the Governor General in Council is pleased to remit the Court fees in a copy or translation of judgment in a case other than a summons case and a copy of the heads of the charge to the jury when the copy of the translation is given under this section after a copy of translation of a judgment in a summons case when the record is in full cost of Ind. Not. No. 1620 dated 10/4/80 (*Gaz. of Ind.* 1880 pt. I p. 506)

5. **When an advocate would be entitled to a copy.**—An advocate against whom remarks have been made by Court imputing to him misconduct should have furnished to him a copy of the written judgment containing those remarks, in order that he may place his conduct before the particular Court in the light most favourable to himself.—(H. R. 510.) Prosecutors in Presidency Magistrates Courts whose charges are dismissed are entitled under S. 170 of the Presidency Magistrates Act to obtain copies of the orders made by and of the depositions taken before the Magistrate.—S. D. 160

6. **Rules regarding copies.**—In order to aid the Appellate Courts in determining whether appeals are time barred by limitation every Criminal Court subordinate to the High Court shall cause to be endorsed the following particulars on every copy of a judgment, order or charge to a jury furnished under the provisions of Ss. 371 and 515 Cr. P. C. (1) The date on which the copy was applied for, (2) the date on which it was ready for delivery, and (3) the date on which it was delivered. To prevent unauthorised alterations being made, the date should be written in letters in distinct handwriting, and such endorsement should be signed by some responsible officer of the Court on the date to which it refers.—*Bomb. H. C. Cr. C. p. 72* Wilkins 138

7. **Appeal cannot be rejected because copy of judgment is not stamped.**—A Magistrate of the first class rejected the appeal before him because the copy of the judgment appealed from was not, in his opinion "stamped as required by law," the High Court reversed the order as by cl (9) of the Govt. Not. no 532 of 20-1-86 [*Bombay Govt. Gaz.* 1886 p. 81]. The Court-fee is remitted on the copy of the judgment in a warrant case, when given under this section.—*Pat* 361

8. **Application for copy.**—Need not be stamped. See *Gaz. of India* 1873 p. 530 1889 p. 540.

372. The original judgment shall be filed with the record of proceedings, and, where the original judgment when to be translated is recorded in a different language from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record

373. In Cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of and sentence to District Magistrate of whose jurisdiction the trial was held

Notes.

Rules under S. 373.

1. **Bengal.**—Sessions Judges are directed to give every facility to Magistrates and District Superintendents of Police for inspecting the records of cases in their Courts and for the preparation of copies by clerks sent by the District Magistrate—care being taken that the records be not removed from the Judge's office.—C. H. C. Cr. No 5 of 21 9 '80.

2. **Bombay.**—In Bombay, the Court of Sessions should at the conclusion of every trial of prisoners committed thereto, communicate the result thereof to the committing authority for his information. *Bomb. Gaz.* 1879 pp. 471, 475

3. **Madras.**—In Madras, the Magistrate should communicate the finding and sentence to the Superintendent of Police.—M. H. C. Pro. 19 6 '86

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

375. (1) If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court the result of such enquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

- (a) may confirm the sentence, or pass any other sentence warranted by law, or
- (b) may annul the conviction and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or
- (c) may acquit the accused person

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period until appeal is disposed of

Notes.

1. **Scope of Ss. 374 to 376.**—The High Court, as a Court of Reference, can only deal with cases in which a sentence of death has been passed.—5 N. P. 130.
2. **Practice of the Bombay High Court.**—“It appears to be the practice of the Bombay High Court that where a prisoner has been sentenced to death, even though the conviction was bail on the unanimous verdict of a Jury, the whole case is re-opened before the High Court both on matters of fact as well as on matters of law.”—*Per Ritchie J.* in 17 B. H. 1072 Rat 710
3. **Practice in undefended capital case.**—There is here a practice long established and well recognised that when an accused person appears before a Judge on a capital charge, the Judge is accustomed to require a member of the Bar who practices before him to undertake the defence of the accused. The Judge should either appoint or require any member of the profession to conduct the defence.—14 C. N. 526.
4. **Power of Remand.**—The High Court has power under S. 376 (b) to order a new trial on the same or an amended charge [19 C. N. 536, See 6 C. N. 121]
5. **Police Diaries cannot be looked into by the Court.**—*See 24 C. N. 110*
with a view to the testimony of the witnesses on which the trial Judge has properly dwelt, to test that testimony still further by reading the earlier statements of those witnesses made to the police and entered in the police diary, in other words to treat as evidence what could be used at all events for the purpose of discrediting those witnesses. 14 C. 879 (P. C.)—56 L. J. P. C. 110
6. **Power to take further evidence.**—Where during the course of a trial for murder the accused person applies to call certain further material evidence bearing on the line of the defence, there

another Judge or, if the Chief Justice or the Judicial Commissioner so direct, before three other Judges, and the judgment or order shall follow the opinion of the majority of Judges so so hearing such case "

Notes.

1. Propriety of reference to the third Judge.—In (86) A. N. 275 *Mukhood J* discusses the propriety of referring to a third Judge when there is a difference of opinion between two Judges. His views have been criticised by *Judge C. J.* in (87) A. N. 123, who says that it is the duty of the third Judge to express and act upon the opinion at which he has himself definitely arrived and not necessarily to hold that

the the opinion of the one in favour of an acquittal should prevail

2. Sentence committed.—In 17 C. N. 1213 *Carnell J.* as the third Judge, did not pass the capital sentence because (1) one of the Judges had expressed himself as dissatisfied with the evidence and (2) the appellants had, through no fault of theirs had the capital sentences hanging over their heads for nearly six months

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the Court of Session.

380. Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such enquiry or evidence to be made or taken.

Note.

1. Power to acquit.—A Magistrate to whom proceedings are submitted under S 562 Cr. P. C., has authority, if on perusing the evidence he comes to the conclusion that the accused is not guilty to acquit him. [(15) 2 U. B. 55. See 4 L. B. 277].

Note.—Quere — "Whether a Magistrate to whom case is submitted under S 350 can pass any order other than a sentence or an order for release on probation? 4 L. B. 277.

3. Case cannot be sent back to the referring Magistrate.—A second class Magistrate found the accused guilty of an offence under S 325 I. P. C. and he sent the record and the accused to the District Magistrate under S. 562 Cr. P. C. The District Magistrate sent the case back to the second class Magistrate pointing out that S. 562 was inapplicable. *Held*, the District

Magistrate's order was illegal inasmuch as S 350 Cr. P. C. enacts that such Magistrate may pass such sentence or order as he might have passed or made, if the case had originally been heard by him, and he could not have sent the case to the second class Magistrate for the purpose of sentence if he had originally heard it.—4 L. B. 150 [1 L. B. 121 E.]

4. Appeal from the order passed under this section.—"It seems to me to be clear under the provisions of S 350 that when a case is submitted to a Magistrate of the first class, or a subdivisional Magistrate as provided by S. 562, * * that for the purposes of appeal, ultimately the conviction recorded is a conviction by the first class Magistrate or Subdivisional Magistrate * * The appeal therefore lies under S 408 Cr. P. C. to the Court of Session."—*Pri Shuk J* in 17 B. R. 895

CHAPTER XXVIII

OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Notes.

- 1. The warrant.**—The warrant should be addressed to the officer in charge of the jail. (M 11 170 13-3-83) For the form of warrant—See S. 4, V No 35 *infra* and on commutation No 36. Order must be communicated within 21 hours of receipt—Sessions Judges are directed to make arrangements for communicating every order of confirmation, reversal or commutation of sentence of death to the Superintendent of Jail wherein the prisoner is confined within 21 hours of the receipt of the order—Mad Rules of Practice S 429—[Civ dated 16-3-83]
- 2. Time within which the sentence is to be executed.**—In Madras [See G O dated 23-5-73] the sentence is not to be executed until the 15th day after receipt of the warrant from the Court of Sessions after confirmation.
- 3. Cases of Infanticide.** In all cases in which women are convicted of the murder of their infant children, a reference should be made through the High Court to the Government with an expression of his opinion by the Sessions Judge as to the propriety or otherwise of reducing the sentence.—Mad G O No 104 dated 13-2-81

382. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to transportation for life.

Notes.

- 1. Certificate of pregnancy.**—The pregnancy of the prisoner should be certified by a Civil Surgeon Bomb (Gaz 1878 p 471 See S. 4, V form No 36 for form of warrant after commutation of sentence)
- 2. The High Court the only tribunal empowered to stay execution.**—The High Court is the only judicial tribunal in which the law has vested the power of postponing the execution of sentence of death passed and confirmed on a woman found pregnant.—2 Weir 411
- 3. The English practice.**—If the jury find the prisoner quick with child, the Court stays the execution of the capital sentence until the prisoner is delivered of a child or it is no longer possible that she should be so delivered—See Halsbury Vol IX p 375 Archbold p 212 It is for the prisoner to plead pregnancy and unless she so pleads, a jury of twelve matrons need not necessarily be impanelled—R v Hunt, 2 Cox 261.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381 the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be confined and unless the accused is already confined in such jail shall forward him to such jail, with the warrant

Notes.

- 1. Application of S. 383 read with S. 541 Cr. P. C.**—A Magistrate has no power to sentence the accused to suffer imprisonment in a police lock up. See 353 directs that an accused sentenced to imprisonment shall be forwarded to a Jail with a warrant. A Magistrate should not mention the place of confinement in his order and the warrant should be addressed to the Superintendent of the District Jail or other jail to which persons sentenced in the District are ordinarily committed—7 L B 62
- 2. Meaning of the term "Jail"**—A Jail is a prison within the meaning of the Prisons Act 1891 and the Prisoners Act 1900, but the terms "prison and Jail" do not include any place for the confinement of prisoners who are exclusively in the custody of the Police—See S. 3 (1) Prison's Act—7 L B 62.

3. **Admitting to bail pending appeal.**—Where, after sentencing two prisoners to separate terms of imprisonment the Magistrate admitted them to bail so that they may leave the means of appealing, such admission to bail did not make the sentence omit to commence at a future date, and therefore illegal.—7 C L 393 But See 12 W R 47

4. **Commencement of the period of sentence.**—A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at a future period.—[12 W R 47] The accused after he had been in custody for a week, was convicted of petty theft and sentenced to undergo the imprisonment he has already suffered. *Held*, there is nothing in the Crim. Pro. Code to authorise a magistrate to anti-date the commencement of a sentence. The proper course would be to sentence the accused to a day's imprisonment.—[4 L B 132 9 P W 1907]

5. **Period of imprisonment how to be calculated.**—In calculating sentences of imprisonment the day upon which the sentence is passed and the day of release ought to be included and considered as days of imprisonment, for example, a man sentenced on the 1st January to one month's imprisonment should be released on the 31st January, not on the 1st February.—*Mad G O No 2411* dated 22 11 '81.

6. **In case of soldiers.**—In calculating their (soldiers') sentences of imprisonment, the rule laid down in para 776 (Queens Regulations) is that the day on which the sentence is signed and the day of release shall both be included. *** This rule is founded on the principle of English law, which omits to take notice of fractions of days, and considers a year completed on the last day of the year. A soldier who is sentenced to imprisonment for one year on the 1st January, is entitled to be released on the 31st December, and

9. (c) **Particulars to be endorsed.**—Every Criminal Court passing a sentence of imprisonment to transportation shall endorse, in the language in which the warrant is written the following particulars, viz, the age, caste, place of residence and the plea of the convict as also the opinion of the assessors, if any. If any previous conviction has been proved, the warrant should also contain on its back the name of the offence, the sentence, the date of the sentence and the name and designation of the authority who tried the accused.—*B H C. Cr. Cir.* p 38.

10. (d) **The date of termination to be mentioned.**—To obviate all mistakes in calculation, the date of termination of all terms of imprisonment should be distinctly impressed on the warrant.—*C. H C. Cr. No 3 of 19 12 '76*

11. (e) **Date of commencement to be noted when.**—If imprisonment is to take effect after a previous sentence, the date of the commencement of the imprisonment should be stated.—*C H Cr. Cr. No 3 of 19 12 '76*

12. **Where a woman is sentenced to transportation for life.**—In every case in which a sentence of transportation for life is passed on a woman for the murder of her infant and the sentence is not appealed against, the file of the case shall, after the expiration of the period allowed for appeal, be forwarded to the Chief Court for submission to Government with a view to the consideration of the question whether any commutation or reduction of sentence should be allowed.—*Page 7 Cr. Cr. Cir. P. 210.*

13. **Power of High Court sitting under S. 307 Cr. P. Code.**—The jurisdiction, which the High Court exercises in hearing a case submitted to it under S 307 Cr. P. C., is not original jurisdiction in any sense, the hearing not having any of the essentials of a original trial.

— Therefore it has power, on conviction and sentence, to send the accused to a jail outside the Presidency town.—29 C 250 (F B)

14. **Indefinite period of imprisonment illegal.**—An order directing an accused "to be imprisoned until he gives security" is bail. A definite period of such imprisonment not exceeding one year should be fixed in the order.—8 C 614

THE WARRANT FOR LEVY OF FINE.

The Warrant.

7. (a) **Form.**—Sec Sch V. Form 29

8. (b) **Signature.**—The signature of a Magistrate on a warrant should not be attested by a stamp.—C M. 396.

384 Every warrant for the execution of a sentence of imprisonment shall be directed to the Direction of warrant for execution, officer in charge of the jail, or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged,

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

386 Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its direction, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the

Warrant for levy of fine,

offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Notes.

I. SCOPE OF THE SECTION.

(1) Meaning of terms.

1. **Meaning of "moveable property."**—S. 386 provides for the levy of a fine by distress and sale of any moveable property belonging to the offender and the word "distress" is ordinarily used with reference to tangible property. It may include negotiable instruments, bonds or title deeds but we think ordinarily it would not include mere debts or choses in action. It is difficult to say that the word "distress" is used in Ss. 140 and 514 Cr. P. C. with reference to other than tangible moveable property—(17) M. N. 105.
2. **Meaning of 'Court.'**—The term 'Court' is not restricted to any particular individual who held office. The successor of a Sessions Judge may levy a fine imposed by his predecessor—(9) W. E. 50.

(2) Properties liable and not liable to distress.

3. **General Remarks.**—S. 386 prescribes that a fine, if not paid may be realised by distress and sale of any moveable property belonging to the offender but is silent in respect of any other mode of recovering the fine. The power to award imprisonment in default of payment of a fine, in the case of an offence, is contained in S. 641 P. C.—21 C. 979 (985).
4. (1) **Surplus sale-proceeds.**—Remaining in the hand of a mortgagee for payment to the mortgagor is not a debt but money held in trust by the mortgagee for the mortgagor (notwithstanding that it had been mixed up with the mortgagor's private money) and is liable to distress under S. 386 Cr. P. C.—40 M. 767. See 25 M. 457.
5. (2) **Growing Crops.**—Growing crops are not moveable property for the purpose of S. 386 Cr. P. C.—(75) 2 Weir 444.
6. (3) **Agricultural implements.**—Although agricultural implements are not exempt from distress and sale in realisation of a fine, the measure

is one which would be resorted to with discretion otherwise it may entail severe hardship in cases which do not require such severity—*Pang. Cr. Chp. II* p. 269.

7. (4) **Property situate in Native State.**—A fine adjudged by a British Indian Court, can, not be levied in a Native State as the provisions of the Code are applicable only to procedure within British India—(79) 2 Weir 444.
8. (5) **Immoveable property.**—Fine cannot be realised by attachment and sale of immoveable property—See (12) 23 C. 478. 15 B. II (CC) 63.
9. (6) **Joint family property.**—When a person sued under the Penal Code dies before the realisation of fine, the fine can be realised by attachment and sale of moveable property belonging solely to the deceased. It cannot be realised by attachment and sale of joint moveable property. The only remedy in such a case is by a suit. (30) C. 475. S. 307 (S. 386) directs that the warrant for the levy of the fine shall authorise the sentence and sale of any moveable property belonging to the offender. The section therefore is not applicable to mere rights and interests or shares in joint moveable—(76) 2 Weir 444. (100) 2 Weir 443. See 25 P. R. 1915.]

[Note.—In (100) 2 Weir 443 the property belonged to an *Ugaya* *antarna* family.]

(3) Application of the section.

10. (1) **Sec. 386, applies to orders of compensation under S. 545 Cr. P. C.**—A fine imposed by the Court does not cease to be a Crown debt merely because there is a direction in the judgment imposing it under S. 545 Cr. P. C. to the effect that on realisation it should be paid over to a private party. [*In re Arthur Harrens Smith* (1875) 2 Ex. D. 47. 25 M. 457. Ed.]—40 M. 767. 15 B. II. 21. 12 C. 415 (1887).]
11. (2) **Fines under special Acts.**—The section applies to (1) Fines imposed under (1) the Andaman and Nicobar Islands Regulations III. of 1876

[See Sec 35 as amended by Reg I of 1881] (3) the Arak in Hill Districts Law Regulation IX of 1874. See S 18 of the Regulation and S 3 (1) (3) under the Police Act V of 1861 - S 37.

12. (3) **Compensation (1) under S. 250 Cr. P. C.**—[See 5 C N 213 5 C N 214 28 C. 231 18 Cr 1014 (C) 28 C 164. 26 M 127. 3 L B 32] (2) under the *Cattle Trespass Act* [19 M 238].
13. (4) **Excess charge and fare under S. 113 of the Railway Act (IX of 1890).**—S 113 of the Railway Act directs that on failure to pay on demand excess charge and fare, when due, the amount shall, on application be recovered by a Magistrate as if it were a fine. The excess charge and fare referred to in S 113 is not fine, though it may be recovered as such. A Magis-

trate is not authorised to impose imprisonment in default of payment of the excess charge and fare—20 M 385

14. (5) **Court and process-fees.**—May be recovered from the accused but no imprisonment can be awarded in default—1 Bar S 595.
15. [Note.—Ss 63 to 73 I P. C. and the provision of the Cr. P. Code for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation Rule or By-law unless the Act, Regulation, Rule or By-law contains an express provision to the contrary, S. 25, General Clauses Act (X of 1897) as to Rulings under the Code of 1861—See Cr R 18-170; 17 W R 7; 8 B L (appx) 47.

II. PROCEDURE.

(1) The distress warrant.

16. **To whom to be addressed.**—It should be directed to a police officer and should fix a time for the sale and return of the warrant—Mad Police Manual I p 115, Wilkins 118
17. **Form of the warrant.**—See Sch V Form No. 87
18. **Warrant must be signed.**—The impression of a stamp bearing the officer's name is insufficient and illegal—See Wilkins 125 6 M 396 Punj Cr p 253
19. **Attaching officer.**—should have the warrant at the time of attachment—27 A 259 (59)

(2) Procedure.

20. **Fine should be immediately levied.**—There should be no delay in the levy of a fine. Directly on passing a sentence, which includes a fine leviable by distress, a Magistrate should issue the warrant of distress [21 C 139] A Magistrate cannot abstain from levying any portion of the fine imposed on the prisoner till the period of appeal shall have expired or until the orders of the High Court are received on appeal preferred by the accused [2 W R (Cr Let) 13] Superior Court has no power to order a lower Court to abstain from issuing the warrant [ibid]
21. **Imprisonment and issue of distress of warrant made be ordered simultaneously.**—See 8 B L (appx) 47 (49). 3 W R 61
22. **The effect of serving out imprisonment in default of fine.**—An offender who has undergone the full term of imprisonment to which he has been sentenced, in default of payment of fine is still liable to have the fine levied by distress and sale of any movable property belonging to him which may be found within the jurisdiction of the Magistrate of the district [3 W R 61 (62) See Rat 91 - 207]
23. **The Discretion of the Court.**—The law is merely permissive and not imperative. When circumstances have made it expedient to release a fine by distress and sale, and when the offender has undergone the imprisonment awarded in default of

payment of fine, the Court should exercise its discretion according to the circumstances of each particular case as to whether, after the release of the prisoner, any further steps should be taken towards the realisation of the fine within the period allowed by law. If there is reason to believe that the offender was able to pay and would not, preferring to undergo imprisonment, the law should be strictly enforced; but if it appears that the fine was not paid for want of means, or that its realisation would be ruinous to the offender or his family, it is not desirable that further steps should be taken—Punj Cr Chap. LL, p. 201. See Bomb H. O. Cr, Cr p 53 Wilkins 118.

24. **Fine against several persons.**—A sentence of fine imposed on more than one prisoner individually and collectively is not a proper sentence. It must be specific as to the amount which each of them should pay [5 M II. (app) 7] Where however payment of fine is ordered to be made jointly by several persons convicted together it may be recovered from all or any of them and if payment by one is nullified by the reversal of the order as to him, the liability of all and each of the others revives, as what was done subject to appeal was but provincial or subject to a condition subsequent—Rat 90
25. **Fine may be levied at any time within six years.**—Imprisonment in default of payment of fine is not satisfaction of the fine but is punishment for contempt; and the fine may be recovered by distress within six years after the passing of the sentence or during the term of imprisonment if it exceeds six years and the death of the offender does not discharge any of his property from liability which would after his death, be legally liable for his debts. The bar of six years provided in S 70 I P. C. may save the property of the accused but not his personal arrest [Rat 207 - See 4 W. B. (Cr, Let) 6]
26. **Observance of formalities essential.**—Formalities will be observed in attachment sale similar to those observed, with cases on the 24.

III. CLAIMS OF THIRD PARTIES.

27. **No provision in the Code**—The Code does not contain any provision for the trial of claims which may be preferred to property distrained under S. 346 Cr P. C. The principles applicable to attachments under S. 85 of the Code apply equally to attachments under S. 346—22 M. 88 22 C 335; (98) A. N. 173, 28 P. L. 1015. See 4 L. B. 109; Rat 976. But see 1 Bar 532 2 Weir 445.
28. **[Note.**—There is nothing in S. 346 or in Sch. V No xxvii indicating that it is the Magistrate's business to do more than issue the warrant. There is nothing in the Code to indicate how the claims to the attached property are to be disposed of and how the expenses of keeping such movable property as cattle, while such claims are being inquired into, or between the dates of attachment and sale, are to be met—4 L. B. 109 (111) 22 C 435 Rat 976]
29. **The remedy of the third party claimant**—The order of attachment under S. 346 Cr P. C. is not a judicial proceeding and is not therefore the proper subject of a criminal revision. No further proceedings lies in the Criminal Court [28 P. L. 1015. See the Judgment of *Bhur J.* in (98) A. N. 173 22 C 435 20 M. 88 (98) A. M. 173 Con O P. R. 1995]. The remedy of the aggrieved party is by a Civil Suit. A claimant may proceed against the purchaser but that does not prevent his proceeding against the Crown if he prefers to do so [(98) A. N. 173 Per *Jinnah J.* But See the judgment of *Bhur J.*] See 20 M. 88 4 L. B. 109.
30. **Duty of the Court on claim being proffered**—No provision is made in the Code for inquiring into the question of title, when a claim to the property under distraint is preferred by a third person. But the Court must stay the sale of the property and allow sufficient time to the claimant to establish his right to the property, unless by reason of the nature of the property, an immediate sale ensures the benefit of the owner in which case the proceeds should be held over—Rat 976, 2 Weir 445.
31. **Trial of claims—Warning to the objector**. When an objector comes forward, he should be warned of the penalties contained in S. 207 I. P. C. against a fraudulent claim to property to prevent its seizure in satisfaction of him. After this warning the objection should be enquired into and disposal of either by admitting the claim or referring to Civil action if his claim seems *prima facie* groundless [*Punj. Cr. p. 269*]. A claimant should prove that he has a *bona fide* interest before his claim can be allowed [1 Bar 332].
32. **Proceduro**—A warrant issued under this section for the levy of a fine should ordinarily be directed to a Police officer, and the authority issuing it should set a time for the return of the warrant. If no one claims the property, the Police have the power of selling within the time specified in the warrant, without any previous reference to the Magistrate. If a claimant comes forward, then the ownership of the property distrained must be determined by the Magistrate and not by the Police—Wilkins 118.

IV. MISCELLANEOUS.

33. **Application unnecessary for a refund of fine**—In cases where an Appellate Court has ordered a fine inflicted by a Court of first instance to be refunded, the Appellate Court should forthwith certify its order to the Court of first instance and the Court of first instance should on receipt of the Appellate Court's order for such refund of the fine, immediately prepare a payment order if the fine has been levied and deliver it to the payee, whether he applies or not. [*Bomb. Govt. Gaz. 1886 Pt. I, pp. 427, 428. Mal. Rules of Practice p. 65*]
34. **Information to Jailor**—The responsibility for intimating to the jail authorities, the fact of the payment rests entirely with the Court. Such information should invariably be acknowledged by the jail authorities and the acknowledgment should be filed by the Court for future reference [Mal. Rules of Practice p. 177 *Bomb. H. C. Cr. Cir. p. 54*].
35. **Liability of Judicial Officers for illegal distress**—Act XVIII of 1850 not only protects a judicial officer from suits for acts done or ordered to be done by him in the discharge of judicial duties within the limits of his jurisdiction, although the act is done maliciously with gross and culpable irregularity and without believing in good faith that he had jurisdiction to do the act complained of, but also protects him from suits for acts done or ordered to be done, in the discharge of judicial duties, without the limits of warrants the protection afforded by the Act is not against suits for executing lawful warrants or orders, but against suits for executing warrants or orders have been issued by a judicial officer in a matter within his jurisdiction and not merely in a matter in which such judicial officer has authority or power to issue the particular warrant. [12 A. 115] The term "jurisdiction" means authority or power to act in a matter and not authority or power to do an act in a particular manner [See *Ibid.* 2 M. 1 A. 293].
- Note**—In 12 A. 115, the Magistrate sold the attached cattle before the date fixed for sale in the distress warrant, in contravention of Sch. V, Form 37 and S. 554 Cr P. C.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court. and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found

Proposed amendment to the section—In section 387 of the said Code, for the words "Such warrant" the words "A warrant issued under section 386 (1)" shall be substituted, and for the word "distress," the word "attachment" shall be substituted.

388. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the Court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

Proposed amendment to the section—In sub-section (1) of section 388 of the said Code—

(i) For the words "and the Court issues a warrant under section 386, it," the words "the Court" shall be substituted

(ii) For the words "on the day appointed for the return to such warrant such day not being," the words "on a date not" shall be substituted

Notes.

- 1. Object of S. 388.**—Imprisonment in default of payment of fine is not a satisfaction of the fine but is a punishment in contempt [Rat 207 ut].
- 2. Effect of omission to pass an alternative sentence.**—Where a Magistrate has omitted to pass a sentence of imprisonment in default of payment of fine he has power to bind over the accused in his own recognizance to appear—244
- 3. Object cl. (2).**—S. 388 Cl 2, clearly contemplates the issue of a warrant but the object of the section (which in terms applies to all orders for payment of money whether by way fine or compensation, on non-recovery of which imprisonment may be awarded), is to enable the Court to pass sentence of imprisonment without waiting for the return of the warrant, of the person ordered to make the payment fails to execute a bond to

appear on the day appointed for the return—26 M. 127.

Note.—S. 250(2) not in consistent with S. 388 (2) and 28 C. 161 (103)

- 4. S. 388 (2) applicable to an order for repayment of the advance under S. 2 of Ac.**—
being to ordered but n
- 5. When suspension of sentence is illegal.**—The accused was sentenced to pay a fine, and in default, to three months' imprisonment. The Magistrate allowed her some days to pay the fine and released her on her giving security. *Held*, the procedure was illegal, unless at the same time, a distress warrant for the levy of fine was issued. The suspension of the sentence was not lawful in this case—1 L. R. 151.

Who may issue warrant

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office

Note—1. The word 'Judge' is not restricted to any particular individual who holds office. The

successor in office may levy a fine imposed by the predecessor.—19 W R 50

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

1. A sentence of whipping should be executed immediately. S 390 Cr P C does not authorise the Court passing a sentence of whipping to postpone the execution to a future day [Rat 186, 300 20 M 405 4 B R 629 See 6 M R (appx) 45 7 M R (appx) 29 (51) A N 135 1 L B 51] where execution has been so deferred the sentence was cancelled as incapable of being carried out [23 W R 72]
2. Sentence should not be executed before disposal of appeal.—A special class Magistrate under the execution of a sentence of

whipping pending an appeal. *Held*, that he had not properly exercised the discretion vested in him by S 390 Cr P C.—(1930) 1 L B 310

3. Punishment whoro to be executed—The punishment of whipping is never to be inflicted in public, or in front of the Court-house, but always within some walled enclosure and in the presence of a Magistrate or the Superintendent of a Jail and where practicable, of a medical officer.—*Punj Cr P*, 271 Madras Rules of Practice, 8, 80

391. (1) When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or if an appeal is made within that time, until sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months.

Notes.

1. Application of the section.—If a prisoner says he intends to appeal, a Magistrate should be guided by S 391 and should direct that the whipping should be inflicted as soon as possible after the expiry of fifteen days from the date of the sentence or if an appeal be made within that time as soon as practicable after the receipt of the order of the appellate Court—(1930) 1 L B 310
2. Scope of the section.—The Code makes no provision whereby a Magistrate imposing a sentence of whipping only can suspend its execution, nor does it provide for the detention of a person so sentenced to allow of his appealing, not for his re-arrest to undergo the whipping if the sentence is confirmed on appeal. It is only when whipping is added to imprisonment in an appealable case, that whipping may and ought to be postponed.—20 M. 467 :
3. Meaning of "sentence".—The word "sentence" in S 391 means the total punishment

inflicted. Thus, where a person is convicted at one trial of two offences and sentenced to a separate term of imprisonment on each count a sentence of whipping being added to the second, the two sentences being directed to run consecutively, the sentence of whipping ought not to be delayed until the expiry of the first sentence but must be carried out in accordance with the provisions of S 391 Cr P C.—Rat 603.

4. Postponement of whipping is illegal.—See Note no 1 above, under S 390, Cr P C
5. When the sentence may be executed at once.—where the punishment of whipping is not awarded in addition to imprisonment, but as a separate sentence for a separate offence, the immediate execution of it would not be illegal.—2 Weir 446.
6. S. 391(3) controls S. 3 of the whipping Act.—S. 3 of the whipping Act (VI of 1864) as amended by Act III of 1892 is to be read as subject to the provisions of S 391(3) Cr P C when

an accused is convicted of two offences for one of which he is sentenced to imprisonment and for the other to whipping it is not permissible to postpone the whipping merely because the appeals against his conviction for the latter offence.—1 B. R. 139

7. When a sentence of whipping becomes inoperative.—In passing a sentence of whipping in addition to six months' rigorous imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. The High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out by lapse of time. 23 W. R. 72 (41) A. N. 138. See 2 Weir 416 7 Bur 82

8. Note.—Delay due to...

... is immaterial on the expiration of the time prescribed by law. But if through accident

392. (1) In the case of a person of or over sixteen years of age whipping shall be inflicted

Mode of inflicting punishment with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs, and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as the Local Government directs

Limit of number of stripes (2) In no case shall such punishment exceed thirty stripes [and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes]

Rules made by Local Government.

1. (1) Persons of over sixteen years of age.—An analysis of the various notifications shows that (1) the person undergoing punishment should be tied to a triangle so as to secure his

should
(3) A 11
over

See A. & M. Gaz 1899 Pt. II p. 381. *Widhin* 148 (Bengal) *Bomb. Unit Gaz* Feb. 1 1893 Pt. I p. 110 *Bomb. G. R.* No 608 of 1897. *Fort St. G. Gaz* dated 11 83 *Gaz* 1898 Pt. I p. 1218 *Jur. Gaz* 1891 (Not No 203 dated May, 1891): *C. P. Gaz*, Not No. 20 of 4-1-90

2. (1) Persons under sixteen years of age.—(1) the rattan should be a light one not exceeding half an inch in diameter, (2) whipping should be inflicted in private in the case of boys above 12 years on the bare posterior and in the case of children under that age on the hands. (3)

Not to be executed by instalments
Exemptions.

with whipping, namely :—
(a) females,

or neglect or wilful breach of duty, the direction is not absolute, the prisoner is not thereby in any way freed from the liability of undergoing the sentence then subsisting [*Mat* 136]

B. When whipping is illegal.

- (1) The sentence of whipping in addition to imprisonment, the term of which is less than three months is illegal under S. 391 (3) Cr. P. C. [2 Weir 417 : 2 B. R. 51]

(2) Double sentence of whipping.—B was convicted under Ss. 454 and 480 I. P. C. and sentenced to two years' B. I. and 15 stripes for each of the offences. Held in giving the sentence to one of two years' B. I. and 15 stripes for both the offences, that it was doubtful whether the double sentence of whipping was legal under S. 391 Cr. P. C.—*Rat* 975; (91-00) L. B. 582. See (90) U. B. 17.

(3) Whipping of women and persons under sentence of death or transportation for life.—See 1 M. 50 S. 7 of Whipping Act.

Notes.

the punishment is to be inflicted in the way of school discipline (1) the prisoner should not be tied to a triangle.

See G. O. No 1290 of 12-5-98 (U. P.): *Punjab Gaz.* 1908 Pt. I, p. 314 [Not No. 677 dated 16-5-93]; *C. P. Gaz* Not. No. 20 of 4-1-90; *Bomb. G. R.* No 622 dated 16-9-98; *Madras Rules of Practice* P. 180 *Bur Gaz* Not. No. 193 dated 1-7-98 pt. I. 307.

[Note.—The expression "in the name of school discipline" finds no place in S. 392 Cr. P. C.—14 C. P. 61]

3. Shall not exceed thirty stripes.—Under the provisions of this section and S. 391, not more than one sentence of whipping and that not exceeding thirty stripes should be awarded at one time [(96) U. B. 47] Even if the accused is convicted of separate offences each of which is punishable with 30 stripes [See Cr. R. 23 of 21-4-96 43 of 19-7-01 : (92-80) U. B. 14, (97-01) U. B. 1 : 247 : B. W. R. 41 (F. B.) 14 W. R. 7 : See *Rat* 935; *Rat* 554 : 16 B 357 : 11 C. P. 13 : (97-01) U. B. 391]

393. No sentence of whipping shall be executed by instalments : and none of the following persons shall be punishable

(b) males sentenced to death or to transportation or to penal servitude, or to imprisonment for more than five years ;

(c) males whom the Court considers to be more than forty-five years of age.

Notes.

1. The section embodies the provisions of S 7 of the Whipping Act (VI of 1861) [See (1876) L M 56]. S 7 of the old Whipping Act VI of 1861 ran as follows: "No female shall be punished with whipping nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years be punished with whipping".
2. Scope of S. 393 (b).—The provision contained in S 391 (b) of the Crim. Pro. Code that the persons named therein shall not be punishable

with whipping refers to the execution and not to the passing of the sentence of whipping. A sentence of whipping in addition to 7 years' R 1 is illegal. 21 Cr 306 (1).

3. Sentence cannot be carried out by instalments.—Where the sentence of whipping has already been carried out, the High Court in revision cannot enhance the sentence by addition of more stripes, since no sentence of whipping under S 393 can be administered by instalments.—Rat 537.

394. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Note.

1. When Medical officer declares unfit.—A sentence of whipping is wholly prevented from being executed, when under S 394 cl. (1) of the Crim. Pro. Code, a medical officer certifies that the offender is not in a fit state of health

to undergo the punishment. It is partially prevented from being executed if during the execution of the sentence the medical officer certifies that the offender is not in a fit state of health.—31 M 81.

395. (1) In any case in which, under section 394, a sentence of whipping is wholly or partially prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or, in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Proposed amendment to the section—In section 395 of the said Code—

(i) In sub-section (1), after the words "twelve months" the words "or to a fine not exceeding five hundred rupees" shall be inserted.

(ii) In sub-section (2), after the words "for a term" the words "or fine of an amount" shall be inserted.

Notes.

1. Scope of the Section.—There is no provision of law authorizing a medical officer to give a certificate, before the commencement of whipping,

that the accused is fit to receive only a portion of the sentence, and such a certificate cannot be held as one granted under S. 394 of the Code.

The Magistrate is not, in such a case, empowered under S 305 Cr. P. C. to sentence the offender to imprisonment in lieu of so much of the sentence as was not executed—[31 N. 51.]

2. The term "Court," as used in 305—does not mean the same officer who inflicted the sentence of whipping originally, where therefore a first class Magistrate who passed the sentence of whipping was transferred, it was held that the District Magistrate who had jurisdiction over the whole district, was competent to commute the sentence of whipping to one of imprisonment—[31 P. R. 1901.]
3. Power of original Court to remit after confirmation of sentence.—The only Court which can sentence the offender in lieu of whipping is the Court which passed the sentence. While therefore a sentence of whipping passed by a District Magistrate was confirmed by the Sessions Judge, it was held that the fact that the sentence was so confirmed did not affect the power of the District Magistrate to revise the sentence under this section—[11 P. R. 1500.]

4. Fine in lieu of whipping.—In case a whipping cannot be inflicted, the only sentence that can be passed in lieu thereof is one of imprisonment; one of fine cannot be passed. It is in the discretion of a Magistrate to remit a sentence of whipping—[1 L. R. 202; 11 A. 305; 2 Weir 119.]
5. Solitary confinement.—When imprisonment is ordered in lieu of whipping under S. 305 Cr. P. C. solitary confinement may be ordered though it is not specifically mentioned in the section—[9 P. L. 1400.]
6. The limit of imprisonment in lieu of whipping.—Where a prisoner is found to be unfit and sentence is accordingly commuted to one of imprisonment, such substituted term of imprisonment must not bring the total term to which the prisoner is sentenced in excess of the maximum term which the Court passing the sentence is competent to inflict.—[21 A. 25; 11 P. R. 1901; 2 Weir 119.]
7. Meaning of the term imprisonment.—The term "imprisonment" in S. 305 means substantive sentence of imprisonment and imprisonment in default of fine—[11 A. 305.]

396. (1) When sentence is passed under this Code on an escaped convict, such sentence in

Execution of sentences on escaped convicts

death, fine or whipping, shall, subject to the provisions which before contained, take effect immediately, and, if of imprisonment penal servitude or transportation, shall take effect according to the following rules, that is to say

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a farther period equal to that which he has not

Explanation.—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment.

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Notes.

1. New sentences on a life-convict when to commence.—The accused, a life convict imprisoned in the Byapur prison under transportation for murder was convicted of the offence of attempting to escape from lawful custody under S. 221 P. C. and sentenced to four months rigorous imprisonment, which was directed to commence immediately and to be carried out before being sent to the Penal settlement. Held that having regard to the provisions of this section, the direction for immediate execution of the sentence was wrong and must be reversed—[H. 905; 1 R. 1 Weir 203.]

2. Application of the section to detention under S. 123 Cr. P. C.—The word "sentence" in S. 396 or 397 Cr. P. C. does not include an order of committal or detention under S. 123 Cr. P. C. [2 L. R. 72; See 4 L. R. 205 (F. B.)] This ruling is in conflict with H. 774 which lays down that the order of imprisonment under S. 123 Cr. P. C. is one to which the word sentence as used in S. 396 of the Code applies.
3. Court bound to comply with sub-sscs (2) and (3).—The punishment prescribed by S. 224 P. C. for escape from lawful custody is to be in addition to the original sentence. The Court

in passing the sentence, must comply with the provisions of S 316-S, 396 of the Code of 1894 1 Weir 201

4. Escape of a life-convict from Port Blair.

In all cases of escape by a life-convict the Superintendent of Port Blair, or other Magistrate having jurisdiction, as soon as the fact of escape is known, should issue a warrant charging him, with having committed an offence under S 224 I. P. C. to the chief of the police of the Province or Administration to which the convict is known

or is likely to be found, and he should forward a warrant forthwith to the Home Department. If the warrant is forthcoming, the Magistrate by whom the case is being enquired into will decide whether there is any reason why the accused should not be removed in custody under Ss 85 and 86 of the Criminal Procedure Code, to the Magistrate at the Andamans who issued the warrant—Order of Government of India, Home Department dated 18-5-74; Government of Bengal Cir. No. 22 dated 27-5-74

397. When a person already undergoing a sentence of imprisonment, penal servitude or trans-

Sentence on offender already sentenced for another offence.

portation is sentenced to imprisonment, penal servitude or transportation, such imprisonment penal servitude or transportation

shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced :

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Proposed amendment to the section—In section 397 of the said Code—

1) After the words "to which he has been previously sentenced," the words "unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence" shall be inserted

2) To the same section the following Explanation shall be added, namely —

Explanation.—An order under section 123 directing that a person be committed to or detained in prison in lieu of furnishing security is a sentence of imprisonment within the meaning of this section "

Notes.

S 397=S 317 (1872) -S 48 (1861)

1. Imprisonment in default of security is not a "sentence of imprisonment" within the meaning of S 397 Cr P C—See Note No 6 under S. 123 (p. 175) *supra*

S. 397 does not apply to detention in Civil prison.—A sentence of imprisonment under the Prisons Act must commence from the date on which it is passed. A prisoner cannot be further detained in the civil prison for the period for which he was kept out of it, for the object of his commitment to civil prison was to keep him under detention for a specified period or until he paid up the debt, whichever event occurred sooner and his detention in criminal jail may consequently be taken to serve the purpose of his detention in the Court prison—17 Cr 450 (L B)

Concurrent sentences.—S 35 does not authorise any Court to direct that two or more sentences shall run concurrently except sentences passed at one and the same time, S 397 is explicit and gives the Court no option, a sentence of imprisonment must commence at the expiry of the previous sentence—4 I. B 147 6 Bar T 67 15 C P 57 2 S 23. 105 P L 1910 20 P L 1912 4 B R 876; 2 B R 111. Rat 18 532 11 M. T 213 (F. B.); 21 Cr. 398 (1) 2 Weir 453; 11 A. J 293.

4. [Note.—Where the accused was convicted and sentenced to one year's R I. on a charge of cheating, and was immediately tried by the same Magistrate on a second charge of cheating convicted for the second time and sentenced to one year's R I. *Held* that the order of the Magistrate directing the two sentences to run concurrently was not illegal in as much as the trials took place on one and the same day and one after the other. It was, for all practical purposes, one trial 11 B R 200 19 Cr 207 (A) Con (12) 2 Weir 451 12 P R 1574

5. The rules as to concurrent sentences analysed.

(1) The only case in which a Court may pass concurrent sentences for two offences is when the accused is convicted at the same trial for both offences

(2) But if the trials are separate, S 397 Cr P C. applies and the sentences must take effect consecutively

(3) Ordinarily the first sentence takes effect first [S 397 (1)]

(4) But if the second sentence is one of transportation and the first of imprisonment, the Court has a discretion to reverse the order and direct that

the sentence of transportation shall take effect first and the sentence of imprisonment afterwards.

- (3) The Court has no power to direct that a sentence of transportation should take effect concurrently with a sentence of rigorous imprisonment that the accused was undergoing. 2 S. 23. See (33) L. B. 19.

6. The General Rule as to the time when a sentence shall take effect.—A person sentenced to imprisonment is “undergoing” that imprisonment within the meaning of S. 397 of the Code from the moment the sentence is passed. When therefore the same person is tried though on the same day for another offence and sentenced to another term of imprisonment that imprisonments must, by the terms of S. 397 and independently of any direction given by the Court commencing at the expiration of the imprisonment imposed by the first sentence — (94) 2 W. R. 451.

7. Effect of reversal of one of the two consecutive sentences.—Where a person was convicted and sentenced by two different Magistrates on separate charges and the sentence of one of them was reversed on appeal, held that the imprisonment suffered by him from the date of the conviction to that of the reversal of the sentence of one of the Magistrates, should be reckoned as the imprisonment suffered in respect of the unreversed sentence of the other.—2 W. R. 150. Wilkins 129. But see Rat 139. 522.

8. Procedure.—In a case where the accused is

convicted at the same trial of several distinct offences and the Magistrate intends that the separate sentences passed for those offences should not be concurrent, he should pass his order with a direction that each should take effect on the expiry of the next prior sentence.—23 W. R. 70. See 3 B. L. (A. C.) 59. (73) 2 W. R. 151.

9. Application of the Section.—(1) S. 397 applies to sentences of imprisonment.—It has no application to sentences of whipping. A Magistrate is therefore not competent to direct that a sentence of whipping should be deferred till the expiration of the sentence in another case.—Rat 300.

(2) Sentence by Foreign Courts.—It is competent to a Magistrate in British India to direct that the sentence passed by him should take effect after the expiration of the sentence in a foreign territory.—23 W. R. 114.

10. Order under S. 397 not a judgment within the meaning of S. 397 Cr. P. C.—An order made by a Court under S. 397, is not a part of its judgment, and may therefore be made after the judgment, has been signed.—Rat 391. See 3 W. R. (6) 141. 16.

11. S. 397 covers imprisonment in default of fine.—When a person is convicted and imprisoned under two warrants, and the sentences are ordered to run consecutively, the second sentence cannot be executed until the first sentence including the additional imprisonment in default of fine has been completely executed.—Rat 132. See S. 398 (2) infra.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part saving as to sections 396 and 397 of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Note.

1. Scope of S. 398.—Under S. 397 a Sessions Judge may direct that a sentence of transportation passed on a person already undergoing a sentence of imprisonment, shall commence from the date of the expiration of the imprisonment

to which he has been previously sentenced. S. 398 provides that nothing in S. 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.—2 W. R. 451.

399. (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct such person to be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) This section shall not apply to any place in which the Reformatory Schools Act 1897, is for the time being in force.

Notes.

1. **Confinement must not be for a short period.**—No boy shall be sent to a Reformatory School, if under 10 years of age, for a less period than seven years; if over 10 years of age, for a less period than five years, unless he shall sooner attain the age of 15 years.—*Bomb H C Cr Cr 38; Bomb Govt. Gaz. 1890 Pt. I p 758 See 1 Weir 878.*

[Note.—The least period of detention under the Reformatory Act is 3 years. See 25 C 33.]

2. **The order can be made only by first class Magistrates.**—The introduction of the Reformatory Schools Act 1876, repeals the operation of S. 379 Crim. Pro. Code "So far as may be practicable" under S. 7 and 8 of the former Act only a first class Magistrate can send a male youthful offender to a reformatory school. Therefore an order by a second class Magistrate sentencing a male juvenile offender to rigorous imprisonment to be sent to reformatory instead of being imprisoned in the criminal jail is invalid. (84) 12 M 94 (F B). See 25 C. 333 (330)

Note per contra.—See S 9 of the Reformatory Schools Act VIII of 1897]

3. **The rules to be observed.** (1) Under S 11 of the Reformatory Schools Act VIII of 1897, a Magistrate is bound before sending an offender to a Reformatory, to make an enquiry and record a finding as to the exact age of the offender as nearly as may be [1 Weir 879]. (2) It is not every boy that is convicted of an offence that can be sent to a Reformatory, but only such boys who, there is a reasonable cause for supposing is likely again to lapse into crime.—1 Weir 878 21 M 13
4. **Procedure in case of mistake as to age.**—The finding of a Magistrate regarding the age of a youthful offender is final in the sense that it cannot be altered in appeal or revision. But in case the Magistrate should have made a mistake and understated the age, the Local Government on the report of the Visitors or the Board of Management may order the removal of the boy, if and when he is found to have attained the age of 18 years.—21 M 13.
5. **Order to be self-contained.**—As a general proposition, it is clearly the duty of the Magistrate to define precisely the nature of the sentence intended. The order should be self-contained so that the functionary who has to execute it, should have nothing to do but to obey the direction given without making an inquiry on his own account.—*ibid.*

6. **Period of detention must be fixed.**—A direction that the accused be detained in a Reformatory School for five years "or until he attains the age of eighteen years" was held to be illegal and the words "or until he attained the age of eighteen years" were directed to be deleted.—[15 B R 306] The exact period of detention must be fixed. An order that the youthful offender (sentenced to six months) B I should be detained "unless he shall attain the age of 15 years at an earlier date" was held to be indefinite and therefore illegal [21 M 13]

7. **Subs (3).—is now.**—It incorporates the views of the High Court of Calcutta and Bombay [S 318 of the Code of 1872 (= S 319) having been repealed by S 2 of the Reformatory Schools Act (V of 1874), the corresponding S 391 of the Code 1882 must be taken to stand repealed in the provinces including Bengal to which the Act has been extended.—(97) 25 C 333 See (16) Rat 661, (97) Rat 915 (97) Rat 1297] See 399 Cr. P C has no application in the Punjab where the Reformatory Schools Act of 1897 is in force.—7 P R 1916 [See Punjab Govt. Not. No. 37 of 20 In Jan 1906]

8. **Absence of a Reformatory School no ground for not passing adequate sentence.**—A Judge or Magistrate is not at liberty, in estimating the proper sentence to be passed on juvenile offenders to consider the fact that there is no reformatory. He is bound to pass a sentence of punishment adequate to the offence.—(64) 2 Weir 433

9. **Juvenile offenders on release to be made over to their friends.**—All juvenile offenders who have been detained in a Reformatory may be made over on release by the superintendent of the Jail to the District Superintendent of Police and shall be escorted to their homes by the Police and made over to the charge of their friends in the presence of the headman or headman of the Village.—N W P R & O p 288

10. **For Rules under the Reformatory Schools Act.**—See Cal. Govt. 1st March, 1899 (Pt. I p 226) N B P Govt. Gaz. 1899 p 511. C P Cr Cr pt 111 No 11 Pt 1 St G. Gaz. 1887 pt I p 580 Bomb Govt. Gaz. 1890 pt I p 758 See Govt. Pt 111 p 810 Bar Govt. 1897 Pt 1 p 391 1903 Punjab Rec Executive Pt II, pp 20 to 23

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Note.

i. When a warrant may be detained.—If the prisoner is sentenced both to imprisonment and whipping, a certificate of the execution of the sentence of whipping should be endorsed on the warrant but the warrant should not be returned

(except when the prisoner dies) until the sentence of imprisonment is also fully executed—See *Watkins* 120 [Cal. H. C. G. O. No. 31 of 1906-87: Cal. G. R. and G. O. p. 36].

CHAPTER XXIX.

OF SUSPENSION, REMISSION AND COMMUTATIONS OF SENTENCES.

401. (1) When any person has been sentenced to punishment for an offence, the Governor General in Council or the Local Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

(3) If any condition on which a sentence has been suspended or remitted is in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled, the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

(6) The Governor General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Proposed amendment to the section—In section 401 of the said Code—

(i) In sub-section (2), after the words "together with his reasons for such opinion," the following words shall be added, namely:—

"and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists."

(n) In sub-section (i) of the same section, after the words "Her Majesty" the words "or of the Governor General when such right is delegated to him" shall be inserted.

(nn) After sub-section (g), the following *Explanation* shall be added, namely :—

"*Explanation*—A person committed to or detained in prison in accordance with the provisions of section 123 is a person sentenced to punishment for an offence within the meaning of this section."

Notes.

1. **Application of the section.**—The special authority conferred by S. 401 relates to persons sentenced to punishment and does not apply to persons who have accepted the conditional pardon prescribed by S. 237 Cr. P. C.—See 11 A. 79 (59).

2. **When Court may refer the case to the consideration of the Local Government.**

—Where the accused appeared to have committed murder without any apparent sane motive and he seemed to be suffering from mental derangement of some sort not amounting to an insane impulse beyond the power of self-control within the meaning of S. 84 I. P. C., the High Court recommended the case to the Local Government under S. 401 Crim. Pro. Code to be dealt with in such manner as it thought fit.—23 C. 601. See 10 P. W. 1909 T. A. 672.

3. **[Note.]**—In 10 B. 512, the High Court in forwarding the proceeding to the Governor in Council observed, "there is good ground for classing the case with those of Greensmith and Buzey so as to which so high an authority as Dr. Taylor has observed that "they fairly establish the occasional existence of homicidal mania in

which the mental condition of the accused persons at the time of perpetrating the act of murder is such as to justify their acquittal on the ground of insanity. The case is one where future symptoms, may perhaps, throw light on the accused's state of mind, and possibly justify a commutation or reduction of sentence, if not pardon"]

4. **Procedure when Local Government calls for opinion of the Court (Subs 2).**—A Sessions Judge, required to state his opinion under this section, must forward his reply through the High Court, whether the requisition for the opinion has been received through the High Court or not.—*M. H. C. Cr. No. 3282* dated 15th Novr 1895.

5. **Reasons for such opinion.**—In case of murder for instance, the Judge may record the extenuating circumstances rendering it expedient that there should be a mitigation of the sentence required by law and submit the same to Government and the Government may, under this section, act in such manner as to it seems proper.—*W. B. (Gaj.) 27*

402. The Governor General in Council or the Local Government may, without the consent

Power to commute punishment of the person sentenced, commute any one of the following sentences for any other mentioned after it—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine

Proposed amendment to the section.—Section 402 of the said Code shall be re-enacted section 402 (1), and to the said section the following sub-section shall be added, namely—

"(2) Nothing in this section shall affect the provisions of the Indian Penal Code, section 54 or 55

CHAPTER XXX

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. (1) A person who has once been tried by a Court of competent jurisdiction

Person once convicted or acquitted and convicted or acquitted of such offence shall not be tried for same offence conviction or acquittal remains in force

again for the same offence, nor on the same facts for any other offence.

charge from the one made against him might have been made under

might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts, which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 25 of the General Clauses Acts, 1897, or section 188 of this Code.

Explanation.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purpose of this section.

Illustrations

(a) A is tried upon a charge of theft as servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or upon the same facts with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of theft of property from the person of B. A may be subsequently charged with and tried for, robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged, with and tried for, dacoity on the same facts.

ARRANGEMENTS OF NOTES

S. 403 = Ss. 469, 147 para 2, 193 exp : 215 exp 2 (1872) = S. 55 (1861).

I. The General Principles explained. -

- (1) General Remarks
- (2) General plea of S. 403 Cr. P. C.
- (3) The exceptions.

II. Object and Application of the Section.

- (1) Object of S. 403 Cr. P. C.
- (2) Name of offence
- (3)
- (4)
- (5)

III. Court of competent Jurisdiction.

- (1) Meaning of 'was not competent to try'
- (2) Incompetency due to defect in institution of proceeding.

(3) Want of Jurisdiction

(4) General Remarks on the rule.

IV. Powers of the Appellate Court.

V. When a person acquitted or convicted may be tried again.

VI. When person acquitted cannot be tried again.

VII. What amounts to acquittal.

VIII. What does not amount to acquittal.

IX. Previous conviction when a bar to second trial.

X. When acquittal bars or does not bar supplementary trial.

XI. Dismissal of complaint.

XII. Miscellaneous.

I. THE GENERAL PRINCIPLES EXPLAINED.

(1) General Remarks.

1. The doctrine explained by aid of English precedents.—The section is an amplification of the well known maxim of law "*nemo debet bis reus*," This principle does not rest on any doctrine of estoppel but embodies the well established rule of common law that a man may not be put twice in peril for the same offence, [29 M. 126 (F. B.); 2 Hawk. C. 35. See Archbold p. 176.] It is necessary for the stability of society that an acquittal by a Court of competent jurisdiction should be accepted as conclusive proof of the innocence of the accused. "I think," says *Bruce J* in *Re: Plummer*—[1902 2 K B 339 (348)] "it is a very dangerous principle to adopt to regard a verdict of 'not guilty' as not fully establishing the innocence of the person to whom it relates—[See 39 C. 569 (375) 37 B. 635] In England a person is said to have been 'in jeopardy' in the first trial, if (1) the Court was competent to try him for the offence, (2) the trial was upon a good indictment on which a valid judgment of conviction could be entered, (3) the acquittal was on the merits i.e. by verdict on the trial or in summary case by dismissal on the merits followed by a judgment or order of acquittal—[*Russell on Crimes* p. 1842 13 W. R. 42] It has been held that the rule applied even if the facts were not exactly but substantially the same [R. v. King (1497) 1 Q. B. 214-218] A summary conviction for common assault may be pleaded in bar of an indictment for wounding with intent to murder [R. v. Miles 24 Q. B. D. 423 R. v. Stanton (1851) 5 Cox 344 R. v. Lillingston 1 B. & S. 683] An acquittal by a foreign Court of competent jurisdiction of the same offence may be successfully pleaded in bar of a second trial before any tribunal in England [See *Russell on Crimes* p. 1854 R. v. Hutcheson 3 Keb. 785 R. v. Rochele Leach 135] The rule applies with equal force although the second indictment is against the accused alone while the first was against him jointly with others [R. v. Dunn 1 Mood 424] The plea however to be successful must be one of dismissal of the charge on the merits Where a Jury sworn and charged with, a prisoner is discharged without giving a verdict, such a discharge does not bar a fresh indictment [Hutcheson v. R. 1 Q. B. 289 R. v. Lewis 78 L. J. (K. B.) 722] Where the charge was explained to the accused but no formal charge in writing was drawn up, his order of release (S. 249) was held not to amount to an acquittal [See 4 B. L. (A. C.) 1] The true test by which the question whether such a plea is sufficient bar in any particular case, may be tried is whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first—[R. v. Clark 1 B. & W. 173 Archbold p. 177 Q. v. Bird 2 Den. C. C. 94 1 B. B. 15. 5 S. 10 7 W. R. 15]

(2) General plan of S. 403 Cr. P. C.

2. In section 403 Cr. P. C. we find in the first section, the general rule which affirms the validity

of the plea of *autrefois acquit* and *autrefois convict*. It is a rule prohibiting a second trial, not merely for the same offence but also upon the same facts, for any other offence; and special provision is made against any avoidance of this rule by any manipulation of Ss 236 or 237. Then follow the exceptions to the rule. The first exception is in favour of an omission from the first trial of what could and should have formed a distinct part of it under S. 235 Cr. P. C. The limitation of this exception to subs (1) necessarily involves the exclusion of cases, falling under the other subsections of S. 235, where the several offences are reparable for the purposes of charging but not distinct for the purposes of punishment. The Legislature recognises that even here a special case should be provided for, and therefore subs (1) of S. 403 makes an exception in respect of a case which eventually falls under subs (3) of S. 235. An illustration will make the matter clear. A causes hurt to B and as a consequence of the injury so inflicted, B dies. A is tried and convicted of the hurt. No death took place before the trial, and the fact was known to the Court which convicted A of hurt, then A could not again be tried for the homicide under this subsection, though he might under subs (4). But if the death occurred after the trial for hurt or having occurred before the conviction for hurt, was not known to the convicting Court, then another trial for the homicide could not be held under subs (3) of S. 403—*Per Staddon A. J. C. in 9 N. 26. See 40 B. 97 23 C. 174 1 B. R. 15 Russell on Crimes pp. 1985-87*

(3) The exceptions.

3. In order to apply section 403 (1) of the Crim. Pro. Code, it is necessary to see whether under S. 236 of the Code any charge in the previous trial could have been framed for the offences for which the accused is sought to be tried at the second trial. See 236 of the Code only applies when the act or a series of acts is of such a nature that it is doubtful which of the several offences the facts would constitute. Where the facts disclosed in the previous trial leave no manner of doubt as to the offences they constituted, see 236 has no application—4 Pat. W. 21
4. [Note.—The offence of murder (S. 302) and the offence of causing the disappearance of the evidence of the commission of the offence by burning the body (S. 201) can be joined in the alternative in the same trial under S. 236 Cr. P. C.; hence an acquittal on the charge under S. 302 I. P. C. would operate by reason of S. 403 Cr. P. C. as a bar to a second trial under S. 201 I. P. C.—4 S. 174]
5. Acquittal under S. 182 I. P. C. no bar to a second trial under S. 211 I. P. C.—Where the accused was tried and acquitted under S. 182 I. P. C. held that the acquittal did not operate as a bar to the subsequent trial of the accused under S. 211 I. P. C. since these offences are essentially distinct and Ss. 236 and 403 Cr. P. C. have no application because in this case

there has been no doubt as to which of the offences has been committed and there could not have been any charge under S 211 I P C in the alternative. 20 P R. 1910. 11 C N 839

6. **Subsequent discovery of fresh evidence converting the case into a graver one.**—The accused was challenged by a police constable when he dropped the spring which he had stolen from the house of one Mr Y and tried to escape. He was arrested, sent up and convicted under S 11 of the Hongkong Police Act of possession of things which might reasonably be suspected to be stolen. Subsequently on the machine being identified as the one stolen from Mr Y's house, the accused was tried again under S 457 I P C and convicted a second time. Held that S 403 would bar the second trial. 8 Bar T 123.

7. **Summons issued for only one offence, subsequent summons on the remaining charges.**—A petition of complaint alleged that the accused had committed offences under Ss 352 and 304 I P C. Process was issued under S 352 I P C only. The Magistrate acquitted the accused of the offence under S 352, but being of opinion that the evidence established a *puna hie* case of an offence punishable under S 304 I P C, issued process under that section. Held that S 403 (2) was applicable to the case, so that the accused could be legally tried again for the offence under S 304 I P C.—20 Cr 43(C)

8. **Acquittal of one set of accused no bar to trial of another set on same facts.**—Where some out of several persons charged with offences under Ss 148, 326 and 302 I P C were placed on trial and acquitted, and where subsequently five others implicated in the same transaction were captured and put upon their trial on the identical charges. Held that the acquittal of the accused who were tried previously was no bar to the trial of the persons subsequently arrested on the same charges.—37 C 680 10 ON 1031. But see 7 C N 493 711 4 C N 346

9. **Repetition of trial without accused being tried again.**—The accused was indicted on 5 charges.—302 34 I P C. 302 104 I P C. 302 104 I P C. 302 304 I P C. and the jury returned a unanimous verdict of not guilty on the 1st and 1th counts and discharged on the other 3 counts in the proportion of 5 to 1. The Judge took the verdict of acquittal on the 1st and 1th counts and discharged the jury under S 305 Cr. P. C and ordered a retrial on the remaining 3 counts under S 308 Cr. P. C. The retrial came up before another special jury, and the counsel for the accused took the preliminary plea of *autrefois acquit*. Held that for the purposes of S 107 Cr. P. C, the accused was not being tried again. He was being tried on the original indictment and on his first plea of not guilty. The duty of the Court was to continue the trial of the accused before another jury, and the process might continue until a verdict is passed on all the counts without the accused being "tried again" under S 103 Cr. P. C.—41 C 1072

10. **History of the section.**—The rule of a *autrefois acquit* or *convict* was embodied for the first time in the Criminal Procedure Code as S 35 of the Code of 1861 which ran as follows: "A person who has once been tried for an offence and convicted or acquitted of such offence shall not be liable to be tried again for that offence"—words which with certain explanations are still retained in S 403 of the present Code. Under that Code Public Prosecutors were directed by the Calcutta High Court not to withdraw the graver charge and proceed upon the lesser, because such a course would have the effect of depriving the accused of the benefit of acquittal on the graver charge. [5 W R (Cr. Lett) 4] This difficulty was removed by the Code of 1872. See 61 A Public Prosecutor, may with the consent of the Court, withdraw any charge against any person in any case of he is in charge; and upon such withdrawal, if it is made whilst the case is under enquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted."

II. OBJECT AND APPLICATION OF THE SECTION.

(1) Object of S. 403 Cr. P. C.

11. (1) Under S 403 Cr. P. C, an accused cannot be tried a second time on the same facts for an offence cognate to or involved in the offences with which he was previously charged.—45 C 727; 21 Cr 161 (1)
12. (1) Principle. When a person has been acquitted, he cannot be tried again for the same offence [See 2 Ag 3] But *Res Judicata* does not bar any proceedings by general principle but only by special enactment as contained in S. 13 of the Civil P. C. and S 403 of the Cr. P. C [1 L B, 377].
13. (3) When the plea of *autrefois acquit* prevails.—To render a formal acquittal or conviction a defence, on second trial, the offence must be the same offence.—7 W. R. 15; R. v. Touderscomb 1 Leach 712

14. **Moaning of a acquittal.**—The dismissal of a complaint after a charge has been framed amounts to acquittal.—3 C. L. 359

- 14A. **Difference between Indian and English Law.**—In English Courts the maxim *non debet bis reari* is given full scope. It has been repeatedly held in England that if an accused person has once been tried and acquitted upon the merits by a Court of competent jurisdiction, so as to have been put in peril of conviction, he cannot again be tried upon the same charge, and if he is charged he can successfully plead *autrefois acquit*. It is true that in *R. v. Scayfe* 5 Cox C. 243 a new trial was ordered in a case where one of the

(2) *Proof of previous acquittal and conviction.*

15. **Onus**—The burden of proof of previous acquittal or conviction is upon the party setting it up, i.e. the accused—(50) A. N. 8
16. **Proof of previous acquittal**—The onus of proving the plea, set up by a party, is on the accused. He may prove it by producing a certified copy of the record or proceedings of the alleged conviction or acquittal, and showing by such copy or other evidence, if necessary, that he has been convicted or acquitted of the offence on which he has been arraigned, or that he might have on his former trial been convicted of the offence on which he has been arraigned, or that his previous conviction or acquittal is by statute a bar to subsequent proceedings for the same cause.—*Halsbury's Laws of England* Vol. IX, p. 356. See S 511 post.
17. **In England the plea is tried by Jury**—In England the jury are sworn *instantly* to try the issue whether there has been a previous acquittal or conviction on the same facts. The counsel for the prisoner opens his case in support of the plea and calls his witnesses, the counsel for the Crown afterwards addresses the jury and calls witnesses, and the counsel for the prisoner replies.—See R 1 Sheen 2 C and P 634. *Russell on Crimes* pp 1993-1996. *Archbold* pp 179-180.

(3) *Principles Illustrated.*

18. **Immunity from further molestation**—The principle of *autrefois acquit* can have no application, as it must be assumed that the Code is exhaustive on the subject it deals with, and it is not permissible to add to its provisions—31 M 313
19. **Discharge not equivalent to acquittal**—There is no doubt nothing in law against the entertainment of a second complaint on the same facts, as a discharge however proper and legal is not equivalent to an acquittal [18 C 329 (W)]. An order of discharge by the High Court, in the exercise of its original Criminal Jurisdiction, is no bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a police report or under S 190 (4) Cr P C [16 C N 983 29 C 726] S 403 Cr P C applies only to cases of acquittal or conviction and has no application to a case in which the accused person has been discharged [17 A 1 507]. If the Magistrate erroneously acquits before the charge has been drawn up the acquittal amounts only to a discharge and does not bar a retrial [6 W R 13]
- 19A. **Acquittal under S. 494 Cr P C within the purview of the Section**—The statutory acquittal under S. 494 of the Criminal Procedure Code in a summons case operates as a bar to further proceedings on the same facts 49 M 176 9 N 26 12 M 35
20. **Operation of the bar**—A bar under S 403 Cr P C operates not only where a person has

been tried for an offence and convicted or acquitted of it, and is sought to be tried again for the same offence, but also where he is and might be tried on the same facts for any other offence for which a different charge might have been framed from the one made, on the same facts, under S. 246 or for which he might have been convicted under S 237 Cr P C—36 M. 308 See 2 C P. 66. *Russell on Crimes* pp. 1981-5 R 1 Sheen 2 C and P 634

[**Note**—Where a person has been tried for and acquitted of a charge under S 363 I P C he cannot be committed under S 366 and 368 I. P C on the same facts merely because the latter charges are triable exclusively by a Court of Session in as much as kidnapping is an essential element in the offences under S 366 and 368 I P C and the accused had already been tried for that offence and acquitted—20 Cr 526 (Pat); 21 Cr 699 (O)]

21. **Order of release under S. 249 Cr. P. C.**—An order under S 249 is specially excluded by the explanation to S 403 Cr P C—4 B L (ap) 1.
22. **Acquittal under S. 247 operates as bar**—An acquittal under S 247 Cr P C on account of the absence of the complainant and after the accused had appeared and answered to the charge will operate as a bar to his being tried again for the same offence, as he is a person "tried" by a Court within the meaning and for the purposes of S 403 Cr P C 26 M J. 160 40 M 176 2 Weir 457 34 M 253 4 C N. 346 M H C Pro 1886 Con 10 B R 628. See Notes No 15 and 16 under S 247 *Supra*
23. [**Note per contra**—A judgement of acquittal following an complainant's default of prosecution under S 247 Cr P C does not entitle the person acquitted to plead *autrefois acquit* on a fresh prosecution on the same facts and S 403 does not operate as bar to the Court taking cognizance of second complaint—40 M 977 (F N)]
24. **Withdrawal of a complaint**—The withdrawal of a complaint under any circumstances operates as an acquittal and bars fresh trial on the same facts—19 W R 55
25. **Particular set of facts once adjudicated upon**—Where a person has been tried and convicted or acquitted for an offence arising out of a particular set of facts, he cannot, while such conviction or acquittal remains in force, be again tried in respect of any offence based on the same facts, unless the case can be brought under one or other of the specific exceptions to the rule as provided by S 403 Cr P C—9 N 26

(4) *When acquitted is no bar to second trial.*

26. **Acquittal wholly without jurisdiction no bar**—A previous acquittal wholly without jurisdiction is no bar to the Magistrate's taking cognizance of a second complaint on the same facts. A Magistrate acts wholly without jurisdiction in acquitting the accused of a charge under S 426 I P C under S 247 Cr P C *where he knows that the complainant is dead*—15 C 1211 (50) A N 260 (55) A. N. 96.

28A. When the High Court quashed the Proceedings—as being altogether without jurisdiction and therefore illegal, their result cannot be pleaded as *autrefois acquit*, it being necessary to that plea that the first court should have had competent jurisdiction to try the case. 2 W. R. 101. C. W. R. 13.

28B. "Remains in force"—i. e. so long as the judgment of acquittal or conviction has not been set aside by a Court of appeal or revision.—T. W. R. 2

[Note—A sentence can only be said to be final when it cannot be set aside or interfered with by any Court or authority, whether on appeal or otherwise.—12 C 536]

27. Release owing to irregularity.—When the prisoner is released by the Appellate Court on account of illegality or irregularity in the procedure of the lower Court, the release will be no bar to the re-trial of the accused for the same offence. [13 W. R. 42]

28. Acquittal by a Magistrate not having jurisdiction.—The acquittal or conviction of an accused by a Court not having jurisdiction is no bar under this section to institution of fresh proceedings against the accused. C. W. R. 13. 1 W. R. 29 C 412 3 M 15 (9501) 1 L. R. (10) L. B. 411 70 8 H 307

29. Illegal and inoperative conviction.—Where no notification has been duly issued, as required by S. 1, a conviction under S. 21 of the Forest Act is illegal and inoperative. A second prosecution under the Penal Code on the same facts is therefore not barred by S. 403 Cr. P. C. 1 Weir 759

30. Repeated offences.—A was directed by the Municipal Committee under Burma Municipal Act (111 of 1895) to leave space in the building under construction for scavenging purposes. He disobeyed, was prosecuted and acquitted. He was prosecuted after the disobedience of a fresh notice for a second time and again acquitted. A third notice was issued requiring him to alter the building. He disobeyed again and was prosecuted for the third time, and convicted. A pleaded the two previous acquittals in bar. Held that the offence of which he was convicted at the third trial was not the same as those in the two previous trials. The third offence arose out of a disobedience to a separate notice, and it could not be said that the accused had been convicted on the same facts for another offence for which a different charge might have been made under S. 236 at the previous trials.—5 L. B. 12

31. Continuing offences.—A person who has been tried for building a house without the sanction of the Municipal Committee and acquitted, cannot be retried for the same offence, simply on the ground that the house continued to stand and the offence therefore amounted to a continuing offence. [14 P. W. 1917].

32. S. 403 applied to cases of embezzlement.—Where a person has been tried and convicted for the misappropriation of a gross sum of money, during a certain period, S. 403 Cr. P. C. will be bar to the second prosecution of the same for certain items of misappropriation committed

during the same period [17 Cr. 30 (M)]. But where the accused was tried for the offence of criminal breach of trust as a public servant in respect of Rs 12 odd, and was acquitted of the offence; and was again tried for the same offence in respect of another item of Rs 19 odd, misappropriated during the same period as to which the item of Rs 12 related. Held that the previous acquittal did not under the circumstances, operate as a bar to the accused's conviction at the second trial. [12 H. R. 231, Cr. R. 30 of 12-1-01]

33. Stage at which the plea of *autrefois acquit* may be pleaded.—On a charge of cheating and criminal breach of trust where the plea taken by the accused was that he had already been tried and acquitted by another Court on a charge involving the same set of facts. Held (1) that this was a matter to be ascertained after hearing the evidence, and ascertaining what the facts in both cases were. (2) that if it was found necessary to frame a charge, the accused would be able to set up his previous acquittal as plea in defence.—23 C. N. 379

33A. Acquittal under S. 498 as bar to second trial under S. 303.—The petitioner was sent up for enticing away a married woman with her two minor sons. He was tried and convicted under S. 303 I. P. C. but acquitted on appeal by the District Magistrate, who held that there was no evidence to show that he was present when the woman ran away with her infants. He was tried again under S. 303 I. P. C. with having kidnapped the infants. Held that the acquittal under S. 303 I. P. C. so long as it remained in force, was bar to the second trial under S. 303 Cr. P. C.—56 P. L. 1011.

(5) Application of the Section.

34. S. 403 does not apply to security proceedings.—The expression "discharged" in S. 119 Criminal Procedure Code, means merely discharged from custody and is not used in the technical sense of "discharged" (as opposed to acquitted) from an offence as used in S. 233 Cr. P. C. No charge has to be framed against the accused in security proceedings. Section 403 Cr. P. C. as well as S. 403 Cr. P. C. therefore do not apply to security proceedings.—36 M. 315

35.

exclusively by the Court of Session, but the Magistrate being of opinion that the facts pointed to a lesser charge tries the accused on the same and acquits him, is open to the Sessions Judge, if he disagrees, to set aside the order of acquittal, and direct under S. 436 Cr. P. C. a commitment on the graver charge. Sec. 401 14 no bar to such an order.—23 M. 126 (F. B.) 22 C. N. 117 Com 20 C 631, 23 M. 221

36. S. 403 does not apply when there was no offence.—Where a complaint was dismissed before an order could be made under S. 2 of the Workman's Breach of Contract Act, held as there could be no offence against the Act except the

failure to comply with the order, S 403 Cr. P. C. did apply. [7 L B 35] On the same principle, the dismissal of the first application for maintenance under S 488 Cr. P. C. is no bar to a second application on same facts, although the result of the first application should be considered in coming to a decision regarding the second [4 L B 337 5 A 224]

37. S. 403 does not apply, when there has been no judicial investigation.—Where there has been no judicial investigation by the Magistrate into the merits of the complaint, there is no judgment or adjudication within the meaning of ss 366 and 369 Cr P. C. S 403 Cr. P. C. is therefore no bar to subsequent revival of the proceedings—[17 O. C 273 (53) A. N. 86. 21 Cr. 379 (A) See 29 C 726 (F.B.) 29 M 126 (F.B.)]. Where a soldier from Burma sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for enticing away his wife but the case was dismissed and the accused was acquitted, as it appeared on the case coming on for hearing, that the brother had no such authority. Held that the previous acquittal was no bar to a fresh complaint, as the finding of the Magistrate amounted merely to this that there was no complaint before him [31 A 317]
38. [Note.—A Magistrate cannot entertain a fresh complaint, when a previous one on the same facts has been dismissed and the order of the dismissal has been upheld by the Sessions Judge. In such

a case the complainant's only remedy is to apply to the High Court for revision of the Lower Court's order.—11 F W 1910].

39. *Sanction for prosecution for offences arising from a bar to a second trial*—The Penal Code on the complaint of A. Subsequently on the complaint of B they were charged with offences under sections 147 and 323 of the Penal Code B's allegations was that the accused were assaulting A, when he interfered and tried to stop them and that thereupon the accused turned upon B, and beat him. Held that the second trial was not barred by S. 403 (1) Cr. P. C.—4 Pat W. 21
40. Duty of Magistrates.—When the Magistrate to whom an application is made knows or has reason to believe that a similar application on the same facts has been adjudicated on, he ought not to act on the application without considering the previous decision

4 L B 337

41. Meaning of the word "trial."—See Notes 4 and 5 under S 251 *Supra* See 29 M J 10 (F.B.)
- 41A. Omission to frame a charge in the previous trial.—The acquittal of the accused in a previous trial in which a charge has not been framed by oversight but which is otherwise regular cannot be constituted merely as a discharge. It will bar a second trial under this section 3 A 129 See 6 W R 13

III. COURT OF COMPETENT JURISDICTION.

(1) Meaning of "was not competent to try" in Subs (4).

42. (1) The words "was not competent to try" in subs 4 mean "had not jurisdiction, to try" [24 M 641 36 M 308] when therefore the accused has not been acquitted by a Court of competent jurisdiction, he may be tried again.—[Cr R 35 of 6-8-96]
43. (2) See 403 (4) refers to the character and status of the tribunal when it refers to the competency to try the offence as shown by illustrations (f) and (g)—36 M 304

(2) Incompetency due to defect in institution of proceedings.

44. Complaint under S. 498 I. P. C. without husband's authority.—The accused was tried under ss 366, 368 and 376 I P C but acquitted on the ground that the case was one of adultery. The husband thereafter had a complaint under S 498 I P C (on an objection being taken that the former acquittal operated as a bar,—*held*—that under S 199 Cr P C such complaint by the husband is a condition precedent to the Court's jurisdiction to try under S 198 I P C. There being no such complaint before the Court of Session, that Court not only did not in fact try but was in law incompetent to try the offence alleged under S. 498. Since, the earlier Court was then incompetent to try the accused under S 498, the later trial under that section upon the husband's complaint did not violate the provisions of S 403 Cr P C.—17 B R 678.

45. Where the later charge could not trial in the former trial for want of sanction.—Where the law requires a previous sanction to be given before a charge can be entertained by a Court, that Court is not a Court of competent jurisdiction until the sanction has been obtained. Therefore a person charged with abetment of the offence of forgery and of cheating the Sub-Registrar (by personation) and acquittal thereof, can be charged and tried under S 82 of the Registration Act, as he could not have been tried for the same in his former trial for want of sanction.—37 A 107 22 B 711

46. Want of sanction under S. 195 Cr. P. C.—A sanction under S 195 Cr P C is not a condition of the competency of the tribunal, it is only a condition precedent for the institution of a proceeding before the tribunal. The mere fact that sanction had not been obtained in the first trial but was obtained previous to the institution of the second cannot prevent the operation of S 403—36 M 304. *Est* See 40 B 97 22 B 711 37 A 107 24 M 317 3 M 48.

(3) Want of jurisdiction.

47. Where the case is found subsequently to be a sessions case.—S and B were tried under S 323 I P C for causing simple hurt to A. The case was compounded and S and B acquitted. Subsequently died and the post mortem revealed that death was due to the injury

inflicted by S and R. The police therefore sent up both the accused under S 304 I P. C. The Magistrate after enquiry committed R to the Sessions, but discharged S, being of opinion that S had at the most committed an offence under S 233 I. P. C. of which he had already been acquitted. S was subsequently directed by the Session Judge to be committed under S. 116 Cr P C *Held*—that there was no legal bar to the trial of S on a charge under S 304 I P. C.

36 A. J. See 5 B. R. 123

48.

ly tried for an offence under S. 106 I. P. C. by a second class Magistrate and acquitted and was subsequently charged under S 109 I P. C. upon the same facts before a first class Magistrate, *held* S. 403 sub. 4 Cr P. C. applied in as much as the same facts on which the accused had been previously acquitted of a minor offence disclosed an offence of a serious nature which could not be tried by the first Magistrate. The previous acquittal therefore was no bar to subsequent proceedings.

18 Cr 613 (N).

49. **Second class Bench.**—A second class Bench tried regularly a case under S 156 I P C which was transferred to them by the District Magistrate and acquitted the accused *Held* that the trial was not void under rule 4 of the Local Government Rules made under Ss 15 and 16 Cr P. C. A retrial therefore was barred by S 101 Cr. P. C (10) U B 111 70

50. **Acquittal by Honorary Magistrate of the second class, of charges under Ss. 409 and 477-A. I. P. C.**—A case under Ss. 108 and 477-A I. P. C. was made over for trial to a Honorary Magistrate of the second class, who proceeded to deal with the case as one under S. 408 I P C and acquitted the accused *Held* that on a further complaint on the same facts the District Magistrate was competent under the provisions of S 250 (b) and 103 (i) Cr. P. C. to take cognizance of and refer the case for disposal to a first class Magistrate.—23 C N 518 29 C. 412

51. **Conviction on a charge of assault by a Village Headman no bar to second trial for hurt by Magistrate.**—A person was tried and convicted on a charge of assault by a Village Headman *Held* that his conviction was no bar to a second trial upon the charge of voluntarily causing hurt on the same facts, as the Village Headman was not competent to try the latter offence.—(18) 3 U. B. 175

52. **Acquittal by Magistrate under Ss 325, 326 and 148 I. P. C. no bar to trial by a Court of Session under S. 302 I. P. C.**—

The subsequent trial of accused for the offence of murder under S. 302 I. P. C. is justifiable under S 104 (i) Cr P C. notwithstanding the fact that they had been acquitted by the Magistrate of offence under Ss 325, 326, 148 I. P. C. inasmuch as the subsequent offence though constituted by the same facts could not be tried by the Magistrate who acquitted the accused.—7 P. R. 1912

53. **Council of Elders.**—The Council of Elders established under the Punjab Regulation (IV. of 1857) is a Court of competent jurisdiction for the purposes of this section.—39 P. R. 1881

54. **Magistrate incompetent to try major charges.**—Where the Magistrate was not competent to try the offence which forms the subject of charge in the subsequent trial his order of acquittal under minor section will not bar the trial for the major offence.—[S c 103 (4)] 7 P. R. 1912

55. **Acquittal by a Magistrate having no jurisdiction.**—is simply void and is no bar to retrial by a competent Court, although it might not have been at aside.—8 B 307. See 2 N. 119 Contra, 11 B. 19

(4) *General Remarks, on the rule.*

56. **Scope of the expression, "has once been tried by a Court of competent jurisdiction."**—The phrase "has once been tried by a Court of competent jurisdiction" in S. 403 Sub. (1) of the Crim. P. Code, is not one which limits the application of the provision to reasons affecting the nature or the ordinary powers of the Tribunal. It is wide enough to cover a case where the first trial was abortive owing to the absence of a complaint.—19 Cr 796 (N). [39 A. 314 P. 30 N. 308 Diss]

57. **Effect of enticement away offence and of made to a Police-officer, he enquired into the offence of theft only, secretly noticing the allegation as to the enticement away of the woman, and reported to a Magistrate that no such offence was even prima facie made out. The Magistrate thereupon, directed him to strike off the offender complained of from the list of reported offences *Held* that this was no bar to the taking up of, and proceeding with a fresh complaint of enticement away a married woman inasmuch as there was no dismissal of complaint in respect of that offence.—5 B 105.**

58. **The General Rule.**—An order of acquittal passed by a Court which is on the face of it a Court of competent jurisdiction, cannot be impeached in any trial of the same person, until it has been set aside by a competent Court.—8 A J 1120

IV. POWERS OF THE APPELLATE COURT.

59. **Appeal is in effect a continuation of the trial.**—S 103 Cr. P. C. does not apply to an appeal from a conviction under a minor court, so as to bar the power of the High Court to alter

the finding and the conviction on the major counts at which the appellant was acquitted by the trying Court, as the appeal is not a second trial but only a continuation of the trial in the Sessions

Court—37 M. 119 23 C 975. 22 C 377 9A.
134. 11 P W. 1010

60. **Failure of Appellate Court to pass orders in explicit terms.**—When a conviction or acquittal is set aside the result will be that the previous trial is annulled. The prisoner may therefore be again put upon his trial [7 W R 2]. The fact that the Appellate Court is silent on the point is no ground for inferring that the Court has decided that no retrial should be held [6 C N. 610]

61. Powers of the Appellate Court.

- (1) Where out of two persons tried by a Magistrate one is acquitted and the other convicted, the Sessions Judge on appeal has no jurisdiction to pass any order affecting the acquittal of the other man—8 A J 1129
- (2) Where, the facts disclosed an offence of a more serious nature than could be tried by the Magistrate, but the latter has tried and convicted accused

for a minor offence, the Appellate Court can set aside the Magistrate's proceedings and order a fresh trial for the more aggravated offence 21 M 675

62. Effect of interference by Appellate Court.

- (1) Where it is doubtful which of the offences with which the accused was charged has been committed and the accused has been convicted of one of them, the whole case is in law thrown open on appeal and the Appellate Court can reserve the verdict and order a retrial without limiting the scope to all the charges. S. 403 is no bar to such a course—22 C 377 10 C 163 5 L B 211 12 P 1901
- (2) When a conviction is set aside and a retrial ordered, the whole case is re-opened, and the accused must be tried again on all the charges originally framed. Having regard to the provisions of S. 423 Cr P C, the provisions of S 403 in this respect, cannot apply—13 Cr 497 (C)

V. WHEN A PERSON ACQUITTED OR CONVICTED MAY BE TRIED AGAIN.

63. **Offence tried by a Court without jurisdiction.**—Where an offence is tried by a Court without jurisdiction the proceedings are void and the offender if acquitted is liable to be retried under S 403. It is not necessary for the High Court to upset the acquittal before the retrial can be had.—S B 307 See Notes no 26 and 28 above

64. Acquittal or conviction on minor offence no bar to trial for major offence.

- (a) The Deputy Magistrate upon a charge of dacoity split up the charge and convicted the accused of rioting, using criminal force and misappropriating the property of a deceased person. The Sessions Judge on appeal reversed the conviction and held that the offence committed if any amounted to dacoity, but the facts being more a criminal, the Sessions Judge was no same facts—

4 B 104

- (b) Acquittal on a charge of criminal breach of trust does not bar a conviction for dishonestly receiving stolen property—4 W, R 21

65.

although the two charges may substantially refer to the same occurrence—6 W R 51

66. **Person acquitted in a trial for forging one out of two documents.**—A person charged with forging two *potlas* was committed with respect to one of them only but was acquitted; *held*, that the acquittal was no bar to his being tried again for the remaining *potla*

7 W. R. 15 (F. B.)

67. **Where a new trial is ordered by the High Court.**—A Magistrate acquitted 3 out of 5 persons and convicted the remaining 2 of grievous hurt. The latter appealed but the Sessions Judge being of opinion that they were guilty of attempt at murder referred the case to the High Court. The High Court set aside the trial and ordered the 2 appellants to be retried, but proceedings were commenced *de novo* against all the 5 persons and they were all ultimately convicted. *Held*, the plea of *autrefois acquit* could not be urged by the 3 persons previously acquitted 7 N P 371

68. **Acquittal under S. 379 no bar to conviction under S. 411.**—The mere fact of a person having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen—

25 W R 47

69. **Acquittal under S. 182 P. C. does not bar trial under S. 500 I. P. C.**—Where a person in a petition made certain false and defamatory allegations against a Sub-Inspector and was at first tried under S 182 P C but acquitted on a technical ground—*held*—the acquittal was no bar to his being subsequently tried under S 500 I P C—14 C N 839

- 69A. **Acquittal of an offence under S 182 is no bar in the subsequent trial under S 211 since those offences are essentially distinct**

20 P R 1910

70. **Acquittal from two out of three charges based on the same transaction.**—Where two persons were charged with adultery, enticing away a married woman and theft, but acquitted of the two major charges, the acquittal would not entitle the accused to be discharged without trial on the charge of theft—5 M. 11 (np) 22.

71. **Acquittal on account of technical defect.**—Where a case of cutting away a married woman was dismissed and the accused acquitted because the husband had not given an authority to his brother (the complainant) to file a complaint—held that the previous acquittal was no bar to a second trial on the husband filing a fresh complaint personally.—31 A 317
72. **Conviction set aside for want of jurisdiction.**—Where the conviction by a Magistrate, is set aside in appeal on the ground of want of jurisdiction, such an order amounts to no order for discharge, and is no bar to fresh trial on the same charge
60 N 410
73. **Persons convicted under S. 452 P. C. tried again under S. 385 P. C.**—A previous conviction under S. 452 P. C. is no bar to the accused being tried again under S. 385 P. C. although they were not charged with the offence of abduction at the previous trial.—3 A. J. 2
74. **Person acquitted of making preparation for dacoity.**—Persons acquitted of the offence of making preparation for dacoity, may be subsequently tried for collecting men and arms to wage war against the King if no sanction had been granted for the latter offence at the previous trial.—1 L. R. 312
75. **Conviction under S. 243 I. P. C. is no bar to a second trial under S. 240. I. P. C.**—O gave 50 counterfeit coins to P to pass for him. Subsequently C was convicted under S. 243 I. P. C. for being in possession of other counterfeit coins. He was again tried jointly with P in respect of the 50 coins under S. 240 I. P. C. and convicted. Held that the delivery of the 50 coins by O to P with a view to its being changed was a distinct offence to that for which O was previously convicted, and that the second conviction of O was good.—31 C 1057.
76. **Trial of offences falling under the purview of two special Acts.**—Where the offences under the Excise Act with which the accused was previously charged (and convicted), were

distinct and separate from the offence under the Merchandise Marks Act with which he was charged in a second trial, or in other words did not include or include the latter, though committed in the same transaction a second trial, is not barred.—21 C. 171

[N. B.—The accused was charged in the first trial under S. 41 of the Bengal Excise Act and in the second under S. 146 and 147 P. C. and Ss. 6 and 7 of the Merchandise Marks Act.]

77. **Further proceedings against person acquitted by the Sessions Judge.**—A Sessions Judge when he has acquitted an accused person on a charge, he cannot take further proceedings in the case.—2 C. P. 66
78. **Acquittal under S. 403 no bar to trial under S. 305 I. P. C.**—Acquittal on a charge under S. 403 P. C. cannot operate under S. 403 Cr. P. C. as a bar to the accused's being again on a charge under S. 305 I. P. C.—1 B. R. 15
79. **Conviction for offence minor no bar to trial for a graver one.**
- (1) A person convicted under S. 323 for causing hurt can be retried for graver offence after the man had died from the effects of the injury.—3 P. R. 1001. 114 317.
 - (2) A person charged with an offence under S. 304 but convicted under S. 323 for a magistrate when the facts showed that an offence under S. 304 had been committed, could be tried again under S. 304 P. C. as the latter offence could not have been tried by the Magistrate.—5 B. R. 125.
80. ~ ~ ~ ~ ~

committed until the notice to remove was served.
1 B. R. 575

VI. WHEN PERSON ACQUITTED CANNOT BE TRIED AGAIN.

81. **Effect of acquittal by a competent Magistrate.**—Where a Magistrate of the second class, who has under S. 3 (5) and S. 56, Bombay Act V of 1878, jurisdiction to try an offence
82. **Mistake in the charge.**—when the prosecution does not give correct measurement of the timber cut by the accused at the previous trial, in excess of the licence, it cannot prosecute the accused subsequently on correct measurement being taken for the same offence.—3 L. R. 253.
83. **Acquittal on a major charge is bar to second trial in a minor charge.**
- (a) A person tried and acquitted on a charge of using criminal force, cannot be tried in respect

of the same criminal matter on a charge of hurt.—16 W. R. 3. 52 P. R. 1884

84. **Trial on same facts with the aid of jury instead of assessors.**—A person acquitted by a Sessions Court sitting with assessors cannot be tried again on the same facts on a different charge triable by a jury.—24 M. 641
85. **Where the whole occurrence had been the subject of a trial.**—The acquittal of the accused who were tried under S. 117 I. P. C. (the common object being to assault the complainant) bars a retrial under S. 323 I. P. C. and the Magistrate cannot order further enquiry under S. 437 in regard to an offence under S. 312 I. P. C. on the same facts.—5 C. N. 72.
86. **Acquittal on the case being compounded.**—An accused, charged under S. 324 P. C. cannot if the offence has been compounded with

the permission of the Court be again tried on the same facts, if the composition which has the effect of an acquittal, is still in force.—Cr. R. 4-9-90 : 17 C. N. 918

87. Same transaction.—Where a person being charged with mischief and theft in respect of branches and loppings of a tree was tried for mischief only and acquitted on a technical ground, held that he cannot be tried again on a charge of theft as it arose out of the same transaction and was barred by S. 103 S. M. 296

88. Dismissal of a summons *ex-officio* amounts to an acquittal no further proceedings in respect of the same act can be taken under a different charge.—25 W. R. 63

89. Order for retrial of a co-accused no justification for a second trial.—Of two persons N. K. and A. R., A. R. was convicted, and N. K. acquitted of a charge under S. 420 I. P. C. on appeal by Sessions Judge A. R. applied in revision to the High Court which set aside the conviction and ordered A. R. to be retried on a charge under S. 477. A. I. P. O. The Magistrate thereupon served notice on N. K. also requiring him to show cause why he should not be committed for trial. Held that the Crown not having taken any step whatsoever to impeach the validity of N. K.'s acquittal, so long as the acquittal under S. 420 I. P. C. stood, N. K. could not be properly tried again on the same facts.—20 Cr. 667 (Pat).

90. Person acquitted of theft cannot be convicted of mischief.—A person charged with the theft of an animal and acquitted cannot subsequently be charged for and convicted of mischief for subsequently killing it.—1 Weir 497

91. Conviction under S. 411 I. P. C. bars second trial under S. 414 I. P. C.—Where a person has been convicted under S. 411 I. P. C. in respect of certain property stolen on a particular occasion from a particular person, he could not subsequently be tried for an offence under S. 414 I. P. C. in respect of other property stolen on the same occasion from the same person.—23 A. 313

92. Composition of offence under S. 324 I. P. C. bars second trial under S. 323

I. P. C.—An accused person charged under S. 324 I. P. C. cannot, if the offence has been compounded with the permission of the Court be again tried on the same facts on a charge under S. 323 I. P. C. if the composition which has the effect of an acquittal is still in force.—Rat 519

93. Acquittal on a charge under S. 211 bars trial on the same facts under S. 182 P. C.

36 M. 308.

[Note—An acquittal of a charge under S. 182 is no bar to trial on same facts under S. 211 I. P. C.—20 P. R. 1910

94. Acquittal in a trial for 3 out of 8 documents alleged to have been fabricated—will not be a technical bar to a second trial for the remaining 3 documents, but as the fabrication of all the documents constituted one single transaction and had been treated as such in the former trial, no second trial should take place.

2 A. J. 673.

95. Acquittal of one out of several offences.

(1) Where the accused were summoned and tried for one out of several offences alleged against them and acquitted of that offence, no fresh process can be issued against them in respect of all the offences alleged including the one for which they were summoned and acquitted.—2 O. J. 622.

(2) Where the accused was tried under Ss. 201 and 202 P. C. by the Sessions Court and acquitted he cannot be tried again under S. 170 on the same facts by an inferior Criminal Court.—10 O. N. 618

(3) A Sub-Registrar was tried under S. 81 of Act III of 1877 for false endorsement and acquitted. It was held that he could not be tried again under S. 197 P. C. for the same offence.—6 O. C. 153

96. Offence under S. 52 of the Post Office Act (VI of 1808).—A person convicted of fraudulently secreting a post letter under Act XVII of 1857 cannot be subsequently tried with reference to the same section for fraudulently making away with the same letter on the same occasion.

2 Weir 434.

VII. WHAT AMOUNTS TO ACQUITTAL.

97. Discharge due to defective sanction.—where in the Sessions Court the public prosecutor withdrew the charge against the accused having found the sanction defective and the accused was discharged—held—the withdrawal amounted to acquittal and a second commitment for the same offence though on a new sanction is bad in law.—12 M. 35

98. Acquittal in a trial under Bombay Akbari Act by second class Magistrate.—A person tried for an offence under the Bombay Akbari Act by a second class magistrate and acquitted cannot be tried again for the same offence unless the acquittal has been set aside by the High Court.—10 B. 181.

99. Order of release as "Nirdosh"—order of

release of the accused as *nirdosh* (not guilty) amounts to acquittal and a second trial is illegal.—18 W. R. 10 21 W. R. 41

100. Dismissal of a summons case amounts to an acquittal.—25 W. R. 63.

101. Dismissal after trial.—Where the complainant had the advantage of having his witnesses heard, the dismissal of a complaint would amount to acquittal and render a second trial on the facts impossible.—21 W. R. 75 See however 20 P. R. 1910.

102. Withdrawal of the charge.—Where the prosecution is withdrawn after a charge has been framed and it results in an order of acquittal under S. 494 Cr. P. C. that is a valid acquittal to which S. 403 Cr. P. C. applies.—8 N. 26.

VIII. WHAT DOES NOT AMOUNT TO ACQUITTAL.

103. **Reversal of the verdict of the jury.**—Where a person tried on several charges is convicted on some and acquitted on others and the Appellate Court reversed the verdict of the jury and ordered a retrial—*Held*—that such retrial unless the Appellate Court has limited the scope must be to be one upon all the charges originally framed—22 C 377.
104. **Setting aside of a trial on the ground of want of jurisdiction etc.**—A former trial set aside on the ground of want of jurisdiction and illegality is not a bar to a second trial.—2 W. R. 9 See 8 H. 307; 6 C. N. 640.
105. **Discharge by Session Court.**—Discharge by the Court of Sessions on the ground that the proceedings were illegal and irregular is no bar to a subsequent trial and conviction for the same offence—13 W. R. 12
106. **Dismissal of complaint because complainant is absent.**—A summons case was

ordered to be struck off under S. 247 Cr. P. C. because the complainant was absent. A fresh complaint was then filed. *Held*—that the Magistrate was not entitled to acquit the accused without trial—10 H. R. 624; but see Note no 22 *photo*

107. **An acquittal by a Court not of competent jurisdiction.**—Cr. R. 34 of G-8-90.

See Notes No 47 to 52 *above*.

108. **Orders of discharge.**

- (1) An order of discharge under S. 259 Cr. P. C. is not an acquittal within S. 103.—29 M. 410 See *Re* 115.

(2) Order of discharge passed by a Magistrate in a warrant case—29 O. 726 (F. B.)

109. **Order passed simply on the basis of denial of the charge by the accused without calling any evidence at all.**—(12) U. B. 144

IX. PREVIOUS CONVICTION WHEN A BAR TO SECOND TRIAL AND WHEN NOT.

Second trial for act forming part of same transaction.

110. (a) A person who has been convicted under S. 50 of Act XVII of 1854 for fraudulently secreting a letter cannot be tried again for having fraudulently made away with the same letter.
1 M. H. 83
111. (b) When person has been convicted under S. 411 P. C. and the conviction is in force; the convict, cannot be tried and convicted under S. 393 or S. 412 in connection with the same property and the same theft—(95) A. N. 203

113. (c) A person convicted under S. 411 P. C. cannot be tried again under s. 414 in respect of the other property stolen on the same occasion from the same person.

28 A. 313

114. (d) A Magistrate convicting the accused under S. 457 P. C. cannot direct that a claim to certain ornaments alleged to have been stolen should be considered separately under Frontier Regulation IV of 1873.

38 P. R. 1684.

X. WHEN ACQUITTAL BARS OR DOES NOT BAR SUPPLEMENTARY TRIAL.

115. (a) **Acquittal of some of the accused.**—

could not be tried (in a supplementary trial) so long as the Magistrate's judgment was not set aside

7 C. N. 493, 7 C. N. 711, 4 C. N. 346 But see—10 C. N. 1031

116. (b) Where some out of several persons charged with offences under Ss. 148, 326 and 332 I. P. C. were placed on trial and acquitted, and where

subsequently five others implicated in the same transaction were captured and put on trial. *Held* that the acquittal under S. 403 Cr. P. C. of the accused who were previously tried does not bar the trial on the same charges of the persons subsequently arrested—37 C. 680

117. (c) Where only two out of three persons charged with theft were tried and acquitted, and the third man was tried subsequently, on the discovery of some of the stolen properties in his house, *held* that the subsequent trial was good as there were additional facts before the Court.

10 C. N. 1031.

XI. DISMISSAL OF COMPLAINT.

118. **Dismissal of complaint.**

competent authority—23 C. 993 24 C. 285, 2 C. N. 290 22 A. 106, 28 M. 255, 18 67.

Contra 29 M. 126 (F. B.) 28 C. 211 28 C. 102 1 N. 18, 2 L. B. 27 9 P. R. 1902, (95) A. N. 86, 21 Cr. 660 (Pat.); 2 Pat. J. 34.

119. **Note.**—Presidency Magistrates can revise complaints once dismissed by them: as Ss 426 and 437 do not apply to them—1 C N. 49: 28 C 652 (F. B.) 28 C 211: 29 C 726: 29 M. 126.
120. **Dismissal not on the merits.**—When the complaint is dismissed but there is nothing in the Magistrate's order to show that he saw reason to distrust the truth of the complaint or that he took any steps to ascertain the truth, the Magis-

trate can entertain a fresh complaint upon the same facts against the same persons—9 A. 55 (80) A N. 307: (81) A N 68

121. **Fresh complaint by husband after the complaint by the father has been dismissed.**—On a charge of taking away the latter's daughter and the former's wife can be entertained on the same facts—20 A. 7.

XII. MISCELLANEOUS.

122. **Acquittal under S. 403. Cr. P. C. is bar to order under S. 517 Cr. P. C.**—Where the accused is acquitted on the ground that the trial is barred under this section, the proceedings do not constitute a trial or enquiry so as to justify an order being passed under S 517 Cr. P. C, with reference to the property in respect

of which the offence is alleged to have been committed—4 L B 229.

123. **Finding of guilty before taking action under S. 348 Cr. P. C.**—If a Magistrate after finding the accused guilty, commits him to the sessions under S 348 Cr. P. C the conviction would, under S 403 Cr. P. C. bar the trial by the Court of Session.—38 M. 552.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI

OF APPEAL.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided Unless otherwise provided, no appeal for by this Code or by any other law for the time being in to lie. force

Notes.

(1) Meaning of terms etc.

1. **Criminal Court.**—means a Criminal Court established in British India or in territories outside British India to which the criminal laws in force in British India have been specially extended. Thus the High Court of Calcutta cannot in appeal or revision interfere with a sentence passed by the Superintendent of the Cutch Tributary Mehals when exercising jurisdiction over offences committed in Mawarbhun which is not situate in British India [See 9 C 285 (269) 8 C 985 (F. B.) 7 C 523] For a similar reason the High Court has no power of interference with sentence by Court exercising jurisdiction over offences committed in the Tributary Mehal of Kheouhar [16 C 667.] The District Magistrate of Simla was deputed by the Punjab Government to try certain Native Indian subjects of His Majesty for offence committed in a Native State

outside British India. *Held*, the Chief Court had no jurisdiction against sentences passed by him while on such deputation [14 P R 1910]

2. **Other law for the time being in force.**—
- (1) **Appeal under the Letters Patent.**—See clause 27 of the Calcutta, Madras and Bombay Letters Patent and clause 20 of the Allahabad Letters Patent which is as follows: "And We do further ordain that the said High Court of Judicature at * shall be a Court of appeal from the criminal Courts of the * and from all other Courts subject to its superintendence, and shall exercise appellate Jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force. See also cl 15 of the Letters Patent [The extraordinary jurisdiction in criminal matters is not to be exercised, unless all other remedies have been exhausted. [3 C 573]

- (2) Appeal to the Privy Council. See clause 41 of the Oileutta, Madras and Bombay Letters Patent and cl. 32 of the Allahabad Letters Patent. "It is in the power of the Judicial Committee of the Privy Council exercising the prerogative right on behalf of the Crown to entertain appeals even in matters of criminal jurisdiction—1 W. R. 13 (P. C.). See also 15 A. 310; 15 C. 608 (F. N.); 8 O. N. 131; 32 O. 1 25 M. 61 (P. C.)
3. High Court may exercise its appellate powers in revision.—See Notes under S. 430 *infra*.
- (3) Special provisions under the Cr. P. C.—See 195 (6) [which by the way gives no right of appeal as laid down in S. 404 Cr. P. C.—see 40 O. 239, 39 O. 774; 13 Cr. 296 (C)] S. 250(3); 456(1) 515 520 524(2) An order under Ss. 517 or 518 or 519 regarding the disposal of the property being the subject of a criminal case might be considered by a Court of appeal although no appeal had been presented in the case in which the order was passed [9 M. 419]; for it may frequently happen that the question of the propriety of the order may not concern the convicted person in any way [3 O. 370]
4. No appeal lies against the order of a single Judge of the High Court.—The powers of a single Judge in a matter in which he has jurisdiction to deal with, [for it is in the power of a single Judge of the High Court on the appellate side to hear and dispose of appeals in criminal cases [9 B. L. 6]] cannot in any way be controlled by a Division Bench of the Court—1 P. R. 1809

(2) Procedure.

5. Petition of appeal how to be presented.—A petition of appeal ought to be presented by the convicted person himself or by any person authorised by the appellant to present it [1 M. 304] "No petition of appeal, on behalf of a person convicted by a criminal court shall be admitted by a criminal Court unless it is either submitted through the district or jail authorities or is presented by a convicted person himself or by some person authorised by a power of attorney to present it on behalf of the convicted person. Petitions of appeal presented by post otherwise than through jail or district authorities shall if possible be returned "bearing"—*Punj Gu* p. 237
6. Appeals in which stamps are required.—Except where the petition of appeal requires a stamp it is not material whether the appeals of several convicted persons in the same case are made jointly or not. Where a stamp is required, the petitions must be separate and separately numbered, and be accompanied by separate copies of judgment or orders appealed against—*Bomb H C Cr. Jur.* p. 42; 2 Weir 457.
7. Appeal is a continuation of the trial.—A Criminal appeal is a continuation of the criminal case, and except so far as there is a provision to the contrary, the appellant has the privilege of the accused and cannot be punished for making a false statement. Where an appellant in his petition of appeal, stated falsely that the Magis-

trate had declined to summon the witnesses cited and the Appellate Court asked him to give a statement to that effect on solemn affirmation which he did accordingly, held that he could not be convicted under Ss. 181 and 182 P. C. [12 M. 151] The reasons for which the Legislature excluded an accused person from giving evidence in the original trial operate with equal force to preclude his competency as a witness in an appeal from that trial. [10 A. 200 (201)]

8. Venue of offence ceasing to be part of British India pending appeal.—An offence was committed at a place in British India and the appeal on conviction was duly filed before the Sessions Judge. Pending the disposal of the appeal, the place was constituted an independent State. Held that the offence having been committed in British India and the appeal having been presented to the proper Court the mere fact that the venue of the crime has ceased to be British India did not oust the jurisdiction of the Judge. 33 A. 578; See 9 A. J. 51.
9. Effect of an order of acquittal being passed by Sessions Judge not empowered to hear the appeal.—A Sessions Judge acquitted and discharged an accused person in an appeal which he had no jurisdiction to hear. Held that the proceedings were void and the accused was liable to be re-arrested to serve out the rest of the term even after the period of the original sentence had expired [Rat 17]. A Sessions Judge's order erroneously passed in an appeal from a second class Magistrate is *ultra vires*. [See Reference No 130 of 1906 (A)]
10. Proceedings of Magistrates not empowered.—If any Magistrate, not being empowered by law in this behalf decides an appeal, his proceedings shall be void.—See 530 (r) Cr. P. C.
11. As to disqualification of the Judge or Magistrate to hear appeals.—See Notes under S. 536 Cr. P. C. *post*.

(3) Limitation.

12. Limitation for presentation of Criminal appeals under the Limitation Act (IX of 1908):
- (a) To Courts other than the High Court.—30 days from the date of the sentence or order appealed against—Sch. II, Art 154.
- (b) To the High Court.—From a sentence of death passed by a Sessions Judge, 7 days [Sch. II, Art 150]; in other cases, 60 days [Sch. II, Art 155]. When the appeal is by a Local Government against an acquittal, six months from the date of acquittal [Sch. II, Art 157. 2 C. 436 (F. B.)].
13. Limitation to be strictly enforced.—The provisions of the Limitation Act are to be applied with as much strictness in criminal cases as they are in Civil cases. That the appellant did not know that he has a right of appeal or that he thought his relatives would prefer an appeal is not sufficient cause under S. 5 of Act XV of 1877 for not presenting his appeal in time—(90) 11 A. N. 10.

[Note.—Only such special circumstances, as fraud practised by the other side, a mistake in the office itself or some sudden accident may be treated as sufficient cause for excusing delay—See 13 M. 269 (Civ.) 9 B. R. 893 (Civ.).]

14. Computation of the period.—

(1) Under S. 12 of Act IX of 1908, the day on which the judgment was pronounced and the time requisite for obtaining a copy of the sentence or order shall be excluded. [See 10 C. 642].

(2) Meaning of "time requisite for obtaining copies."—The appellant will have the period of grace, when the delay is due to the neglect of officials who issue copies [12 A. 105], but not when the delay is due to the carelessness

[12 A. 105]

(3) When the appellant is in jail.—For the purpose of computing the period of limitation for an appeal from a sentence of a Criminal Court by a person in jail, the time taken in forwarding applications for copies and in transmission of such copies to the jail, as well as the time occupied in actual preparation of copies in the office of the Court, by which the judgment or order was passed, is to be included in the "time requisite for obtaining a copy within the meaning of S. 12 of the Limitation Act—9 M. 258

405. Any person whose application under section 89 for the delivery of property or the proceeds

of the sale thereof has been rejected by any Court may appeal from order rejecting application for restoration of attached property.

to the Court to which appeals ordinarily lie from the sentences of the former Court.

Note.

1. "Ordinarily lie".—Means "in the majority of cases [See 26 M. 699 (F. B.)]

406. Any person ordered by a Magistrate, other than the District Magistrate or a Presidency

Magistrate, to give security for good behaviour

may appeal to the District Magistrate.

Proposed amendment to the section.—(f) In section 406 of the said Code, after the word "security," the words "for keeping the peace or" shall be inserted

(2) To the same section the following proviso shall be added, namely—

"Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub section (2) of sub-section (3a) of section 123"

After section 406 of the said Code, the following section shall be inserted namely—

"406-A. Any person aggrieved by an order refusing to accept a surety under section 122 may appeal against such order—

(a) if made by a Presidency Magistrate, to the High Court.

(b) if made by the District Magistrate, to the Court of Session, or

(c) if made by a Magistrate other than the District Magistrate, to the District Magistrate"

Notes.

1. Scope of S. 406.—An appeal under S. 406 can relate to any fact of an order under S. 118 Cr. P. C. and is not necessarily confined to the question whether or not the appellant should be bound over—[8 S. 229]

2. Ss. 406 and 125 compared.—S. 406 gives an appeal to the District Magistrate from an order to furnish security for good behaviour while S. 123 Cr. P. C. relates to an order for keeping the peace as well as to those from which S. 406 allows an appeal—[11 N. 98 See 21 Cr. 591 (N)]

3. Sec 406 does not apply to appeals from orders under S. 107 Cr. P. C.—S. 406 Cr. P. C. gives no right whatever to an appeal in proceedings under S. 107 read with S. 118 Cr. P. C.—[14 A. J. 268. 27 A. 623 35 A. 103 11 B. R. 740; See 3 L. B. 21.]

4. Orders under S. 108 Cr. P. C.—An order to furnish security under S. 108 Cr. P. C. is a separate order and not a part of the sentence.—2 Weir 460

5. The section does apply to orders under S. 123 Cr. P. C.—No appeal lies when the order of a Magistrate under S. 118 which has been confirmed under S. 123 *Sajna*—[15 P. R. 1900. 23 P. R. 1856. 9 C. 678 See (93/61) L. B. 381 (382)]

6. Orders under S. 118 by District Magistrate.—No appeal lies from the order of a District Magistrate under S. 110 Cr. P. C. requiring security for good behaviour—[94 A. N. 127.]

7. When the appeal to the High Court is barred.—Where the petitioner has not approached the District Magistrate, the High Court

is precluded by S. 139 (5) from entertaining an application for revision—S 8, 229. [7 S. 239 F]

8. ...

S 556 Cr. P. C. debarred him from entertaining an appeal under S 406 Cr. P. C. without the permission of the Sessions Court.—1 S 99; See (96) A. N. 73

9. **Judgments under S. 406 Cr. P. C. should not be sketchy.**—The High Court will not ordinarily interfere on merits with proceedings under S 110 provided that the Court hearing the appeal under S 406 shows in its judgment that it has really, and not merely nominally considered the evidence on the record. Where the judgment

is sketchy and does show that the evidence was carefully examined and weighed, the High Court will interfere.—13 Cr. 9 (A); C. A. J. 457.

10. **Appeals from orders under analogous law.**—

(1) **S. 31-A of the Rangoon Police Act**—an order to give security for good behaviour under S. 31-A of the Rangoon Police Act 1899 in addition to three months' l. l. would make the order appealable under this section.—4 L. B. 339

(2) **Gambling Act.**—A Magistrate in demanding security for good behaviour with reference to S 17 of the Burma Gambling Act is bound to make an order under S. 115 Cr. P. C. Against an order so made by any Magistrate other than a District Magistrate, an appeal lies under this section.—(97-01) U. B. 1 247.

407. (1) Any person convicted on a trial held by any Magistrate of the second or third class.

Appeal from sentence of Magistrate of the second or third class or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate

(2) The District Magistrate may direct that any appeal under this section, or any class

Transfer of appeals to first class Magistrate of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Proposed amendment to the section.—In sub section (1) of section 407 of the said Code, after the figures "349", the words and figures "or in respect of whom an order has been made on a sentence passed under section 380" shall be inserted

Notes.

1. **Magistrate invested with first class powers before disposal.**—Where a trial was held by a Magistrate holding second class powers, the fact that he was appointed a Magistrate of the first class, before the conclusion of the trial, was held to make no difference, with reference to the question of appeal, which therefore was held to lie to the District Magistrate.—4 L. B. 239.

2. **Bench Magistrates.**—Under S. 407 an appeal lies from a conviction by a Bench of Magistrates exercising second or third class powers and the Bench is bound to record a judgment under S 264 [9 M 36]. But no appeal lies to a District Magistrate, in a case tried under Chap XVIII of the Crim. Pro. Code, from the decision of a Bench of

may be made, under S 20 of the Cattle Trespass Act. It follows that a person against whom an order under S. 22 of the Cattle Trespass Act is made, as a "person convicted on a trial" and an appeal against such conviction therefore lies under S 407 of the Code.—29 M. 517. (70) 1 Weir 712

[Note.—The rulings in (35) 10 B. 230. (58) 15 C. 712. (90) Rat 520 (521). (96) 19 M. 238 (239) to the contrary have been superseded.]

4. **The terms "ordinary lie" in S. 195(7) does not include a Court specially authorised to hear appeals under S. 407(2) Cr. P. C.**—The Court of a first class Magistrate specially authorised under S 407(2) Cr. P. C. to hear appeals from the sentence of a Magistrate of the second or third class is not the Court to which appeals from such subordinate Court "ordinarily lie" within the meaning of S. 195(6) and (7) Cr. P. C.—26 M. 636 (F.B.); 30 C. 394; 27 M. 124 (126); 34 A. 244. 3 N. 50. Con 18 M. 487 (Od)

[Note.—The case reported in 18 M. 187 was decided under the Code of 1852 in which the

3. **Appeal against order for compensation under the Cattle Trespass Act.**—By S 4(0) of the Crim. Pro. Code of 1898, the word "offence" includes an act in respect of which a complaint

section ran "such appeal or class of appeals shall (not as in the Code of 1894, may) be presented to such Subordinate Magistrate—26 M 656 [F. B.]

5. **Wholesale delegation of powers by District Magistrate.**—A District Magistrate directed that the Assistant Collector under him should perform the "routine work of the Collector's office, including the criminal appellate and revisional work." *Hill* that though the order was *ultra vires* as regards the delegation of revisional work, it was good so far as the appellate work was concerned, within the meaning of S. 407(2) Cr. P. C.—2 B R 536.

6. **Withdrawal of part-heard appeal.**—A District Magistrate has jurisdiction to withdraw a part-heard appeal to his own file from the file of a Sub-Divisional Magistrate by whom it has been heard in part. On withdrawal the District

Magistrate may transfer the appeal to his own file or to the file of another Magistrate. *See* *decisions* as to the effect of a transfer of an appeal to another Magistrate.

decision of the appeal—31 M 277.

7. Empowered by Local Government—

(a) **N. W. P.**—Joint and Assistant Commissioners in the North West Provinces are empowered under this Section to hear appeals in the absence of Magistrates of the District from the head quarters, they themselves holding their Courts in the headquarters of the District—*N. W. P. Gaz* 1873 p 893.

(b) **Sindh.**—First Class Magistrates having charge of the subdivisions of a District in Sindh are invested with powers under S. 407 (2)—*See Bomb. Govt Gaz* 1873, p 255.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District

Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class

Provided as follows—

(a) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session ;

(b) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal shall lie to the High Court ;

(c) when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code, the appeal shall lie to the High Court

Proposed amendment to the section.—In section 408 of the said Code—

(i) After the figures "349" the following words shall be inserted, namely, "or in respect of whom an order has been made or a sentence passed under section 350"

(ii) For clause (i) of the proviso the following shall be substituted, namely—

(i) Any European British subject so convicted may, in lieu of appealing to the Court of Session, appeal to the High Court, and if he so appeals, the appeal of any other person tried jointly and convicted with him shall also be heard by the High Court"

(iii) In clause (b) of the proviso after the word "appeal," the following words shall be inserted, namely—
"of all or any of the accused sentenced at such trial"

Notes.

1. **Provisions of S. 408 to 415 analysed.**—S. 408 Cr. P. C. distinctly lays down that any person convicted on a trial held by a Magistrate of the first class may appeal to the Court of Session. S. 413 is an exception to the general rule laid down in S. 408. S. 415 is explanatory and apparently was entered in the Code to remove all possible doubts which might arise in cases considered therein—33 A 510.

1A. **When there is no sentence.**—S. 409 gives a right of appeal to any person convicted by a Magistrate of the first class and there is no law which precludes an appeal from a conviction

without a sentence [23 P R 1904] Subject to the law of the District—

2. **Case submitted under Ss. 562 and 380 Cr. P. C.**—It seems to me clear under the provisions of S. 380 that when a case is submitted to a Magistrate of the First class or a Sub-Divisional Magistrate, as provided by S. 562, that for the purposes of appeal, ultimately the conviction recorded is a conviction by the First

class Magistrate or Subdivisional Magistrate * *. The appeal therefore lies under S 408 Cr. P. C. to the Court of Session. *Per Shah J.* in 17 B. R. 895

3. **Scope of Proviso (a)—Effect of waiver.**—Where the District Magistrate has explained to the accused the procedure which would be followed if the accused claimed to be tried as a European British Subject and the accused preferred to be tried by a Magistrate, the result of the waiver was to render Ss 446 and 408 Cr. P. C. inapplicable, with the result that the accused would have no right of appeal to the High Court. He should appeal to the Court of Session.—2 Pat W. 79

4. **Exceptions to proviso (a).—Sentences of**

5. **Person jointly tried with a European British Subject**—cannot claim under S. 432 *infra*, the right to appeal to the High Court. Such right is not given by proviso (a) nor is it implied.—14 B. 191.

6. **Application of proviso (b)**—when a Sessions Judge has confirmed the sentences passed by the Assistant Sessions Judge on some of the accused persons, he has no jurisdiction to hear the appeals preferred by any of the prisoners in the same case, as such appeals lie to the High Court under S 408 proviso (a) of the Cr. P. C. [Rat 635].

7. **Object of proviso (b)**—the reason for proviso (b) of S 408 obviously is that, when a long term of imprisonment has to be undergone, the question whether the offence is proved, should be tried, in appeal by a court of higher grade than it would be tried by, if the sentence were less.—*Per Inam J.* in 4 L. B. 53 (54)

8. **Appeal under proviso (b).**—When an Assistant Sessions Judge sentences some of the accused to less than 4 years R. I. but the remaining to more than 4 years, the appeal by the former would in view of the language of cl. (b) "the rule chosen"

9. **Concurrent Sentences of 4 years.**—Where an Assistant Sessions Judge passes sentences upon an accused, each of which is 4 years or under and they are ordered to run concurrently the appeal from the conviction and sentence lies to the Sessions Court and not to the High Court.—23 C. J. 595; 11 B. R. 544; 25 P. R. 1901. 11 A. J. 111 17 C. N. 825; 17 C. N. 72. 17 C. J. 392

10. **Appeal from Sentence by Special Magistrate.**—Where a Magistrate exercising powers under S 30 Cr. P. C. sentenced one of the two prisoners to 2 years R. I. and the other accused to 5 years R. I. Held that the appeal by the former (even when the latter has no appeal)

would lie to the Chief Court.—[5 P. R. 1916; 12 P. R. 1900; 17 M. J. 219; See 4 L. B. 53] A District Magistrate acting under S 349 Cr. P. C. is not a Special Magistrate. An appeal from any sentence passed by him would therefore lie to the Court of Session. [4 L. B. 53].

11. **Sentences exceeding 4 years in the aggregate**—where out of the appellants five in number, two had been sentenced to 6 years R. I. in the aggregate, one to 5½ years and the remaining two to 3 years R. I. in the aggregate. Held that the appeal lay to the Chief Court and not to the Court of Session in all cases.—101 P. L. 1911. See 12 P. R. 1900 [See 171. Computation of sentences in appeal, under S 33 *Supra*; p. 60].

12. **Appeal under proviso (c)**—See Note no 109 under *Sec 35 Supra*.

13. **Principles governing the right of appeal under special Acts**—where a special enactment does not lay down the procedure applicable to trials held under it, the Criminal Procedure Code must be followed; and where the trial is held under the provisions of the Criminal Procedure Code, an appeal will lie under S. 408

10 P. R. 1916.

14. **Appeals on fact as well as on law**—See Rat 954; 826.

15. **Where there are two Sessions Divisions in one district**—Under S 433, the Sessions Judge may call for and examine the records of any inferior Criminal Court "situate" within the local limits of his jurisdiction. The word "Situate" means fixed or located, and when applied to a Court, it must be taken to refer to the place where the Court, ordinarily, sits. In the absence of any indication to the contrary in the Code, the principle thus laid down in regard to the analogous powers of revision under S 435, should be followed in the case of the appeals under S 408. So where a Magistrate, against whose decision appeal is preferred has his headquarters in a place within the limits of one of the two Sessions Divisions in a District (Malabar), though he is authorised to try offences throughout the whole District, including cases arising within the other Sessions Division, the appeal lies to the Sessions Court of the place where the offence was committed.—30 M. 136.

16. **Note**—An offence was committed within the limits of the Ganjam Agency Tracts. The case was transferred by the Agent to the first class Magistrate who had jurisdiction over the Agency as well as the Non-agency Tracts. The Sessions Judge of the Non-agency Sessions Division set aside the conviction. Held that the proper forum of the appeal was the Agent and not the Sessions Judge as the case had been tried by the Magistrate as an Agency Magistrate.—21 M. J. 670.

17. **Special provisions in Regulation.**—As to appeals from sentences of District Magistrates in Upper Burma in cases other than those affecting European British subjects—See the *Upper Burma Criminal Justice Regulation* (V of 1902) sect. Ss X and XVII. As to similar appeals in

British Beluchistan See S 13 of the *British Beluchistan Criminal Justice Regulation* VII of 1896, for appeals from decisions under the *Punjab Frontier Crimes Regulation* III of 1901. See Chap LII of that Regulation.

Appeals to Court of Session how heard

Judge.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions

Note.

1. **Additional Sessions Judge competent to grant sanction.**—An additional Sessions Judge is competent to grant sanction to prosecute in a matter arising out of a trial before a Magistrate having first class powers inasmuch as an appeal would ordinarily lie from the Court of the latter to the former—[1 Pat J 374] See 493 Cr P C makes sentences appealable to the Court

of Session and under S 409, read with S 9 of the Code, an Additional Sessions Judge has jurisdiction to hear such appeals. For the purposes of S 193 Subs (7), therefore a Magistrate is subordinate to an Additional Sessions Judge and consequently an Additional Sessions Judge has jurisdiction to grant sanction refused by a Magistrate. [14 Cr 193 (O)]

Appeal from sentence of Court of Session

High Court.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the

Notes.

1. **May appeal.**—This section gives a right of appeal, as distinguished from an indulgence to be heard or not to be heard. (91) A N 48 (F.B.).
2. **European British Subject in Oudh.**—The appellant, whose claim to be dealt with as a European British Subject was admitted both by the committing Magistrate and the Court of Session, was convicted under Ss 417 and 474 I P C. He filed an appeal against his conviction in the Court of the Judicial Commissioner of Oudh. Held (1) that the appeal in the case, under S 410 Cr P C lay to the High Court (2) that the word "High Court" in reference to proceedings against European British Subjects in Oudh means the High Court of Judicature for the North-Western Provinces [13 O C 335]
3. **Taking of additional evidence by Appellate Court does not make the appellate judgment appealable.**—Under the Code of 1861 it was held that where the Magistrate decided the case without taking evidence for the defence and the Sessions Judge on appeal, had the defence evidence taken by the Magistrate before disposing of the appeal, held that the judgment of the Sessions Judge confirming the Magistrate's judgment and sentence was in substance an original judgment and appeal lay to the

High Court on the merits [2 W R. 13 S W R 59] These rulings were held to have been overruled by the amendments in the subsequent Codes in 22 C 372 where it was laid down that "an appellant whose appeal is dismissed by an Appellate Court, after it has taken additional evidence and r S 423, has no right of appeal to the High Court."

4. **Conviction under S. 2'S by the Judge amounts to a trial under this Section.**—An order by a Sessions Judge under S 229 Penal Code, imposing a fine on a person for intentional insult to a Judge, when sitting in a stage of a judicial proceeding, amounts to a trial, although by a summary mode, and is therefore appealable. 4 M H. 146
5. **S. 410 does not apply to appeals from convictions of offences within Chittagong Hill Tracts.**—By Act XXIII of 1860, S I the tracts of country described in the Schedule to the Act and known as the Chittagong Hill Tracts, are removed from the jurisdiction of the existing Civil and Criminal Courts. Consequently, the High Court has no jurisdiction to hear appeals in respect of sentences passed on conviction of offences committed in those districts.—27 C 651

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High

Appeal from sentence of Presidency Magistrate

Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees

Notes.

1. **Meaning of the term "exceeding."**—The expression "a term exceeding six months" means a

term of substantial imprisonment exceeding six months. It does not refer either to a sentence

which awards imprisonment *and* fine or to any alternative imprisonment in default of fine. The words of the section are confined in the meaning to substantive sentences and cannot be extended to include an award of imprisonment in default of fine. So an appeal does not for instance, lie from the sentence passed by a Presidency Magistrate, of six months R 1 and a fine of Rs 200 [2 M, 30 10 C 799 (501) 20 B 145 10 Cr 275 (11); See 33 C 1096]

2. **Concurrent sentences of six months R. 1**—Where the accused is convicted of two offences and two separate sentences of six months' R 1 are passed one on each count and both are directed to run concurrently, the sentence, will be considered a single sentence of six months and will not be appealable under S. 411 I. P. C.—17 C J, 382. See 8 C. 575.
3. **Conviction by Presidency Magistrate on plea of guilty.**—See Notes No 2 under S. 412 *infra*

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded

No appeal in certain cases when **guilty and has been convicted by a Court of Session or any accused pleads guilty Presidency Magistrate or Magistrate of the first class on such plea there shall be no appeal except as to the extent or legality of the sentence**

Notes.

1. **Object of the section.**—The object of this section (as construed) in its plain and obvious sense, is to limit the right of appeal. When the accused has pleaded guilty to such matter as may be a special ground of complaint with respect to the sentence as distinguished from the conviction itself, whether on the ground that the extent of the sentence is beyond what the circumstances of the case required or that the sentence is illegal as not authorized by law—5 B 85. See Rat 826

2. **S. 411 is subject to the provisions of S. 412 Cr. P. C.**—When an accused person has been convicted on his own plea by a Presidency Magistrate, no appeal shall lie except as to the extent or legality of the sentence although he is sentenced for a term exceeding six months or fine exceeding Rs 200.—[*ibid*]

3. **No appeal after conviction on plea of guilty.**—

(a) Although there is nothing in law to prevent an appeal even after the expiration of the term of the sentence, S. 412 bars an appeal in such a case, where the accused was convicted on his plea of guilty—20 P R 1917

(b) **Effect of a plea of guilty to a charge of previous conviction.**—Where a charge has been framed against an accused under S. 221(7) Cr P C and such person has pleaded guilty to the charge, that he is a previous convict, the Appellate Court under S. 412 of the Code, is precluded from opening the question whether the accused is a previous convict—1 N. 163

4. **Change in the section.**—The words "or Magistrate of the first class" have considerably enlarged the scope of the section. These words have the effect of superseding the rulings in 22 B 739 Rat 953

413 Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted

No appeal in petty cases **person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only or of fine not exceeding fifty rupees only or of whipping only**

Explanation—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

Notes.

Appealable sentence passed on some of the accused.

1. (i) where of the two accused one is sentenced to 4 months' R 1 and fine and the other to a fine of Rs 50 only. Held that the latter had a right of appeal to the Sessions Court and that right is not taken away by S. 413 Cr P C for that section withholds right of appeal only in cases i. e. trials in which the only sentence passed is imprisonment of one month or less or a fine of Rs. 50 or

less or whipping—4 L. R. 354 (F. B.). 30 P R. 1915 16 P R 1916. Con 5 B R. (C O) 24. 7 B. R (C O) 35. 7 M. H (Appr) r. 9 M T 322.

2. (2) If an assistant Sessions Judge trying two or more persons jointly passes in respect of any one of those persons a sentence of imprisonment for a term exceeding 4 years, the appeal of all the persons convicted at the same trial will lie to the High Court, even though the sentence passed upon some of these persons is far below the

limit laid down by S. 408, proviso (b)—38 A 345
17 M. J. 248 *Con* 16 M. T. 33.

3. **Note per contra.**—The words "notwithstanding anything herein before contained" in the opening words of S. 113 seem to me to be very important words and they set aside any right of appeal which might be held to have been created by S. 407 to S. 410 Cr. P. C. [An accused person who has been convicted and sentenced to a fine of Rs. 50 has no right of appeal merely because a co accused has been sentenced to one year's R. I. and a fine of Rs. 100. *Per Knox J* in 39 A 203.]

Pro—5 B H. (C. C.) 24, 7 B H. (C. C.) 35, 40 M. 591; 9 M. T. 322, 31 M. J. 837, 10 S. 156, 39 A. 549, 4 Pat J. 435; [*Per Atkinson J.*]

Con.—38 A. 395, 13 A. J. 272, 15 O. C. 356, 17 M. J. 248, 4 Pat J. 435 [*Per Juala P. J.*]
161 P. L. 1911, 42 C. 374

4. **Magistrate making sentence appealable at the request of the accused.**—A magistrate trying a case passed at first an unappealable sentence on the accused, but shortly afterwards, at the request of the accused, added to the

sentence to one day's imprisonment and a fine of Rs. 50, but the accused were neither sent to jail nor actually imprisoned, an appeal lay to the Sessions Court under S. 413 [33 A. 510]. But the addition of an order of confinement to a sentence passed under S. 51 Excise Act, does not render the sentence appealable as the order of confinement is not part of the sentence [3 L. B. 1902].

6. **Aggregation of concurrent sentences.**—Where the accused persons were convicted on two separate charges and sentenced to one month's R. I. on each count, by a first class Magistrate, the sentences to run concurrently *Held*—that an appeal lay to the Court of Session—15 C. N. 734, 17 C. N. 72

7. **Further restrictions in Upper Burma.**—In Upper Burma (except the Shan States), the Upper Burma Criminal Justice Regulation V of 1892 Sch. XI, provides that no appeal shall lie in any case in which a District Magistrate or Court of Sessions passes a sentence for a term not exceeding six months or of fine not exceeding Rs. 500 or of whipping or of all or any of these punishments combined.

8. **Aggregation of separate sentences.**—Where a person is charged with two separate offences in one trial, the amount of the whole punishment awarded for the two offences must be regarded as one sentence for the purpose of determining whether an appeal lies or not—3 C. L. 511, 1 B. 233

9. **Order under S. 31 Court Fees Act.**—An order under S. 31 of the Court Fees Act directing the accused to pay the complainant the Court-fee paid on his petition, is no part of the sentence so as to make it a sentence of fine within the terms of this section—20 C. 687, 1 W. 734, 29 M. 185

13 B. R. 503

5. **Combined Sentence.**—When the accused were convicted by a first class Magistrate and

414. Notwithstanding anything hereinbefore contained there shall be no appeal by a convicted

person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only or of whipping only.

415. An appeal may be brought against any sentence referred to in section 413 or section 414

by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace

Explanation—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Proposed amendment to the section.—After section 415 of the said Code the following section shall be inserted, namely:—

"415. Notwithstanding anything contained in the Chapter-Act in force persons then or hereafter convicted in any

trial, and any of such persons in respect of whom an appealable judgment or order has been passed, appeals, all or any of the persons convicted at such trial shall have a right of appeal."

Notes.

1. **Ss. 414 and 415 do not apply to orders under the Rangoon Police Act**—When two persons are jointly tried at a summary trial under S. 30 of the Rangoon Police Act, and one of them was sentenced to three months' R. I. and was further ordered under S. 31-A to give security for good behaviour, held, the addition of such order to give security for good behaviour did not render the sentence appealable and that the provision in S. 415 Cr. P. O. will

not apply to an order under the Rangoon Police Act, S. 31-A.—4 L. B. 359.

2. **Object of S. 415.**—S. 408 Cr. P. C. distinctly lays down that any person convicted on a trial held by a Magistrate of the first class may appeal to the Court of Session S. 413 is an exception to the general rule laid down in S. 408, S. 415 is explanatory and apparently was entered in the Code to remove all possible doubts which might arise in all cases considered therein.—33 A. 310.

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII. on European British subjects.

Note.

1. **Right of appeal of an accused person jointly tried with a European British Subject**—This Section does not give a right

of appeal to the High Court to an accused person jointly tried with European British Subject, on whom only such right is conferred.—14 B. 160.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

Notes

I. GENERAL PRINCIPLES.

1. **Object of S. 417.**—The law, by limiting the right of appeal against judgments of acquittal to the Local Government, prevents personal vindictiveness from seeking to call in question judgments of acquittal by way of appeal and evidently intends that such interference shall take place only in cases where there has been a miscarriage of justice so grave as would induce the Local Government to move in the matter, [22 C. 164: See 33 P. R. 1915, 15 P. B. 1693, 10 P. R. 1697, 29 P. R. 1883, 26 M. J.] An appeal is to be allowed in the interests of public safety, peace and order [15 P. R. 1809].

if the High Court thinks that the lower Court has taken an erroneous view of the evidence, it has no jurisdiction to refuse to convict. The power of appeal under S. 417 Cr. P. C. is one that should be exercised sparingly by Government. But the discretion to exercise that right of appeal appertains to Government and is not subject to the control of the Court.—9 S. 17, 17 C. P. 73, 43 P. R. 1017. See 26 M. J. 160, 2 C. 273, 9 C. J. 378, 21 Cr. 17 (D).

4. **No distinction in procedure between right of appeal against acquittal and appeal against conviction**—The Government has the same right of appeal against an acquittal as a convicted person has against his conviction. The Code makes no distinction as to the procedure to be adopted, or as to the principles upon which such appeals are to be decided [2 Weir 402]. Both appeals are governed by the same rules and subject to the same limitations [17 C. 485, 20 C. N. 128, 17 C. P. 75, 7 P. R. 1804, 20 P. R. 1885, 20 A. 459, 36 A. 168, 26 M. J. 160]. Any rule of Court which differentiates their position in this respect would be tantamount to an usurpation of legislative functions by the Court [7 P. R. 1904, See 17 C. 485].

5.

benefit is in favour of the appellant 10 J. 1100.

6. **Procedure.**—Where the Government appeals and asks for a conviction, it is for it to begin and to satisfy by the Court that there is a case calling upon the prisoner for an answer [20 W. R. 33].

reception of evidence, misdirection or that the verdict is against the evidence and the same principle has been extended to misdemeanours [R v. Duncan, 7 Q. B. D. 198; See R v. Gaulay Justices 2 Ir. R. 449, R v. Antrim Justices 2 Ir. R. 603, R v. Simpson 30 T. L. R. 31]. In India however matters stand on a different footing. Here appeals against orders of acquittal are allowed by S. 417 Cr. P. C., a provision of law which is quite alien to the principles upon which English Courts administer the law against criminals. See Spencer J. in 26 M. J. 160, See 11 W. E. 29.

3. **Scope of the Section**—The Criminal Procedure Code makes no distinction between an appeal from a conviction and an appeal from an acquittal. In the appeal from an acquittal,

Interference justified only when the judgment of lower Court is manifestly perverse.

7. (1) In ordinary cases.—The High Court ought not to interfere with an acquittal by a Magistrate who had the witnesses before him and arrived at conclusions of fact with this great advantage in his favour, unless the Judge was clearly wrong and the judgment perverse or based on obvious errors of procedure. [16 Cr 529 (M) C. A. No. 317 of 1914 (M) - 70 P L 1918, 25 P R 1918, 125 P. L 1914, 328 P. L 1913, 14 P R 1909, 11 P. R 1903 - 17 C 455, 18 C. N. 366] The doing so should be limited to those instances in which the lower court has so *obstinately blundered* and gone wrong as to produce a result mischievous at once to the administration of justice and the interest of the public [4 A 143, 26 M 1 - 10 P R 1897]
8. (2) The general rule.—Sound principles of criminal jurisprudence require that the indications of error in the judgment of acquittal ought to be *clearer and more palpable* and the evidence more cogent and convincing to justify its being set aside than would be necessary in the case of a conviction [7 P R 1904, 30 P W 1918, 12 P R 1919, 21 Cr 349 (P) See 11 C L 25, 23 C 347] The indications of mistake must be obvious or the evidence *too strong* to be rejected, before the Court should interfere. The consideration that the Court of Appeal itself would have arrived at a different conclusion had it tried the accused person as a Court of original jurisdiction, is immaterial [125 P L 1914, 7 P W 1916, 70 P L 1918, 18 C N 366, 30 J 477]
9. (3) Cases tried with the aid of assessors.—In all cases of appeals, the Judges of the Court of appeal are naturally *very cautious* in interfering with the judgment of a Judge and assessors before whom the witnesses were examined,

ground that in all criminal cases the accused is entitled to have the advantage of any doubt that may arise in the case, but after giving the accused every benefit which he can derive from such a decision in his favour, if the High Court is still of opinion, that he is guilty of the offence with which he has been charged, there

is no discretion left to the Court as to whether to find him guilty or not [17 C. 485 Rat 756 (757) (1910) L B 42 (46) : 2 L B 303, 21 A. 122].

10. (4) Misappreciation of evidence.—When a Sessions Judge has overlooked the main and crucial circumstance which goes to corroborate the evidence of an accomplice and has acquitted the accused, the High Court will not be departing from its doing violence to the principle laid down in 4 A 145 by entertaining the appeal by the Government, and determining one way or the other the guilt of the accused—*Per Straight J.* in 9 A 528 (F. B.) See 10 A 212, 13 P W. 1912
11. (5) Acquittal without taking evidence.—Where the accused were acquitted by the Magistrate upon the result of a local enquiry without taking any oral evidence. *Held* that the order of acquittal was without jurisdiction and should be set aside—39 C 931 See Rat 83

When an appeal does not lie.

12. (1) Acquittal by Jury on facts.—Where the Local Government appealed against an order of acquittal in a case tried by jury, the High Court rejected the application, as the grounds on which it was preferred were all questions of fact—10 C. 1029 See 8 A 418 *infra* The only ground on which the High Court can interfere is that the verdict is erroneous owing to a misdirection by the Judge or to misunderstanding on the part of the jury as to the law laid down by him [26 M 1]
13. (2) Discovery of fresh evidence after acquittal.—In an appeal against acquittal, the fact that fresh evidence against the accused has been discovered subsequent to the acquittal is not a sufficient reason for sitting aside the acquittal and ordering a new trial—3 L B 111 See (1903) U B 9, 26 M J 100 [Per *Miller J.*]
14. (3) At an interlocutory stage.—It is not open to the Government under S 417 to appeal to the High Court on an interlocutory order *ex* on the ground of the Sessions Judge's refusal to add new charges—16 B 411
15. (4) Acquittal under S. 494 (b).—Where an acquittal follows a withdrawal by the public Prosecutor under the provisions of S 414 Cr P C there is no appeal against it under this section.—18 M 1 (S. N.) 77

II. PRACTICE AND PROCEDURE.

16. Who may appeal.—The rule that an acquittal cannot be interfered with by the High Court except upon an appeal being preferred by the Local Government under S 417 [See 1 A 139 (F. B.) 14 M 363 G C L 245, 19 W R 55, 3 B 150, Con G N P 367, 2 A 44] has been consistently relaxed in the later rulings. It is now well established that the High Court can revise an order of acquittal under S 434 Cr P C though the practice will ordinarily be discouraged. See Notes under S 423 *infra*

Who may present appeal on behalf of Government.

17. (1) Where the Legal Remembrancer of Bengal was requested by the Government of Bihar and Orissa to file an appeal against acquittal but the latter did not appoint him a public prosecutor within the meaning of S 432 Cr P C. *Held* that the mere fact that a person has been directed to present an appeal to the High Court does not involve his appointment

as a public prosecutor for the purposes of the case. The appeal was therefore incompetent. [18 C J 519.]

18. (2) **Legal Remembrancer Bengal.**—Although the office of Legal Remembrancer of Bengal which received legislative sanction in Regulation VIII of 1816 was abolished by the Reg. III of 1829, it was revived in 1844 or 1845, and the fact that the office is now the creation of executive or administrative order in no way obscures the identity of the officer. Therefore an appeal against acquittal presented in the High Court by the Superintendent and Remembrancer of Legal Affairs Bengal, (who by notification dated 19th May 1915 has been appointed by the Local Government to be, by virtue of his office, Public Prosecutor in all cases heard by the High Court of Bengal in the exercise of its Appellate jurisdiction,) is not incompetent.—16 C 344

19. **What amounts to an order of acquittal.**—Where in case tried by a Jury, an accused person charged with murder is acquitted of that charge, but convicted of culpable homicide not amounting to murder, and an appeal is preferred by the Government Pleader at the instance of the Legal Remembrancer, held that an appeal did lie by Government so far as the charge of murder was concerned [2 C 273]. The words "Appellate judgment of acquittal" in S 272 (S 417) were held to include all judgments of an Appellate Court by which a conviction is set aside.—[24 W. R. 11]

20. **When an appeal should be filed and when not.**—The Local Government will not direct an appeal (1) where the case is trifling in itself and the acquittal involves no erroneous principle of law, the correction of which is of public importance, (2) where, however serious or otherwise important the case, the legal guilt of the accused is fairly questionable or the evidence admits of any reasonable doubt and the Court has considered and weighed it with impartiality, intelligence and care, (3) merely on account of the production of fresh evidence after the acquittal, (4) when there is no distinct probability that the appeal will result in an order for retrial at the least. *Punj R & O p 377*. *Punj Cr Ch LXXVIII (A)*

21. **Limitation.**—An appeal against acquittal presented six months after the date of the judgment complained of is barred by lapse of time. [11 B R 1174 See Sch II, Act 157. Act IX of 1905] The sixty days rule does not apply to appeals under S 417 [See 2 C 436 (F. B.) 6 B 26]. But it is desirable that an appeal should be preferred as expeditiously as possible. [5 A 253 (255)] The six months' rule is however subject to the provisions of the section which allows an extension on sufficient cause being shown for the delay [1 Weir 791].

22. **Re-arrest of persons acquitted.**—The High Court has power on the admission of an appeal under this section to order the re-arrest of the person or persons acquitted. [2 A 31a (F. B.) 1 C 231] In capital cases, when the Local Government appeals under S 417 Cr. P. C., it is undesirable that the prisoner's tale should be

discussed while he remains at large, the Government should in such cases apply for his arrest under S 127 Cr. P. C. [9 A 528 (F. B.).]

23. **Arrest pending an appeal.**—Where a person accused of an offence was discharged by the Sessions Judge and he was rearrested by the Magistrate pending an appeal from the acquittal to the High Court, and before the appeal was admitted, held that the rearrest was lawful and absolutely necessary in the interests of justice.—*Per Stuart C. J.* in 2 A. 346.

[Note.—Where the accused so arrested is convicted, the sentence passed will run not from the date of arrest but from the actual date of commitment to jail.—6 C L 340.]

24. **Appeal should be confined to the grounds taken to the application.**—The High Court exercising its jurisdiction in the matter of appeals against acquittal should confine its exercise to the particular acquittal complained of by Government. At the same time it would not be proper for the High Court to consider the appeal on grounds not contained in the objection urged on behalf of the Government.—*Per Banerjee J.* in 19 B 51 (64) 17 C P. 75

Note.—In an appeal against acquittal of a specific offence the High Court will not convict the accused person of an offence entirely different from that charged against him and not even suggested in the grounds of appeal.—[63 P. L. 1915] A new objection however will not necessarily be thrown out, when the accused cannot be said to be taken by surprise. [See 12 B R 1]

Powers of the High Court.

25. (i) **Evidence.**—In an appeal by the Local Government under S. 417 Criminal Procedure Code, the High Court is a Court of Appeal on matters of fact, as well as of law and must decide questions of fact from the whole of the evidence on record.—4 C 378
26. (b) **Powers.**—The Appellate Court may "in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made or that the accused be tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law."—See 123 (1) (a) post. 13 B 506. 11 P. L. 1913.
27. **Procedure when the District Magistrate is of opinion that an appeal should be filed.**—(1) He should prepare a brief narrative of the facts of the case and a statement of the reasons why he considers an appeal advisable and will forward them with the original record to the Commissioner. That officer will forward the case to Government (with whom the ultimate decision rests) whatever may be his opinion as to its worth.—N. W. P. R & R s 10, para 33, p 223
28. **Appeal in Police Cases.**—If it is considered advisable to appeal against an order of acquittal in a case where a Police officer prosecutes in his capacity of general prosecutor on behalf of or at the instance of his own department, the proposal

to appeal should be submitted to Government through the Inspector General or his Deputy, in

other cases through the head of the department concerned—*Punj R. & O. G.*, XXIV, p. 377.

- 418 An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only

Appeal on what matters admissible.

Explanation.—The alleged severity of a sentence shall for the purposes of this section, be deemed to be a matter of law

Proposed amendment to the section.—Section 418 of the said Code shall be re-numbered section 415 (1), and to the said section the following subsection shall be added, namely—

“(2) Notwithstanding anything contained in sub-section (1), or in section 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced, may appeal on a matter of fact as well as a matter of law.”

Notes.

1. **Scops of the Section.**—The provisions of S. 418 show that the section is applicable to appeals by Local Government against orders of acquittal as well as by convicted persons against conviction and sentence—10 C. 1029 17 C P. 75

2. **Principles of the Section.**—This Section gives finality to the verdict of a jury, where there has been no error of law or misdirection, and when the Judge has concurred with the majority of the jury. [Rat 730] The provisions of S. 423 clearly show that an appeal against an order of acquittal in a case tried by jury must be supported on a ground, which is covered by S. 418 of the Code, which provides, in case of trial by jury, for an appeal on a matter of law only. When the Local Government applied to the High Court under S. 417, against an order of acquittal, upon grounds all of which raised questions of facts, the High Court rejected the application [10 C 1029]

3. **Reason of the rule.**—If the High Court were to go into the evidence in the case and decide the question whether the conviction is right, it would be substituting its own decision for the verdict of the jury who have an opportunity of watching the demeanour of the witnesses and weighing their evidence with the assistance which this affords.—21 C 935

4. **S. 418 does not limit powers under S. 307.**—The clear provisions of S. 307 are not in any way curtailed or cut down by this section and it is open to the High Court to go into the facts in a case referred under S. 307 *Supra*—9 A 470

5. **Appeal heard in conjunction with a reference under S. 374 Cr. P. C.**—It is not open to the High Court in an appeal against a conviction in a trial by jury to go into facts and the appeal must be limited, as pointed out in Ss. 415 and 423(d) to points of law, not withstanding that the appeal is heard along with a reference under S. 374 in the case of a co-accused [2 C. N. 49 But see 14 W. R. 57]

6. **Meaning of the expression “where the trial was by jury.”**—The words “where the

trial was by a jury” in S. 418 Cr. P. C. mean “where the trial in fact was by jury” and not where the trial should have been by jury—*Per Jenkins CJ* in 25 B 680 (F. B.); See 23 B 698 23 C 365 3 C 765 [Per Mitter J.].

[*Note.*—The above view is by no means the generally accepted view. The effect of trying a case which by law should have been tried with the aid of assessors, by a jury is according to Chief Justice Jenkins, to invest the trial with finality so far as pure questions of fact are concerned. The opposite standpoint may be thus enunciated in the words of *Glover J.* “In a case tried by a jury which ought to have been tried with the aid of assessors the High Court can dispose of the appeal on the evidence and need not restrict itself, as it would have done had the trial been held with a jury to questions of law” [18 W. R. 59; See also 24 W. R. 30 3 C 765 Rat 961 O M J 14]

7. **Where the jury convict the accused of a charge triable with assessors.**—The effect of S. 238 (*supra*) is to invest a jury trying an offence triable by jury with authority to find, as an incident to such trial, that certain facts only are proved in the trial, which facts constitute a minor offence, and return a verdict of guilty of such offence, though it may not be triable by a jury. The Session Judge may thereupon record a judgment convicting the accused of such minor offence although he is not charged with it. • • • Therefore an appeal will lie from such judgment only on a point of law. *Per Bhaskaran Ayyangar J.* [Benon J. *Contra*] 25 M 211 1 C L 407; But See 26 M 213(N)

[*Note.*—But where some of the charges tried, are triable by assessors, the opinion of the jury as regards those charges should be recorded as the opinion of assessors and the appeal will lie on matters of fact as well, so far as those charges are concerned—See Rat 600]

Powers of the Appellate Court.

8. (1) **Power to go into evidence.**—In an appeal by Government from an acquittal by a verdict of jury, the High Court can alter such

verdict only if it is of opinion that it is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury as to the law laid down by him. In that case it is to proceed under S. 123 *infra*. In order to act under that section and to determine if the verdict is erroneous and if so which of the powers given under S. 123 the High Court should exercise, it is absolutely necessary for it to go into the facts and to consider the evidence in the case before passing orders in it.—*Per Davis J* in 20 M 1.

9. (2) **Why the evidence may be looked into.**—An appellate Court, say, in the case of a trial by jury, undoubtedly look at the evidence to see whether the misdirection complained of has caused a miscarriage of justice in this sense, i.e., whether in spite of the misdirection the conviction and the verdict are or are not justified in law as they stand, and if they are, then the Appellate Court will refuse to interfere. * * But it is not for the Appellate Court to look at the evidence with a view to see whether another jury might not have arrived at a verdict of guilty on another charge—that is to usurp the function of the jury and to substitute the Appellate Court's opinion for the verdict of the jury.—39 A 343 See 21 C 951.

10. (3) **Where the Sessions Judge has refused to refer under S. 307 Cr. P. C.**—The High Court cannot interfere with the verdict of the jury, when the Sessions Judge has refused to refer the case under S. 307 Cr. P. C. [4 M 483 14 N 36 See 13 M 343]

11. (4) **In considering admissibility of rejected evidence.**—The words "in any case" in S. 167 of the Evidence Act are wide enough and include criminal trials by jury. [2 B, 61 19 B 749 22 B 111 (*Per Russell A C J*) 9 B H 358 (F. B.)] In 2 B 61 and 1 C 207 it was held that the High Court on a point of law as to the admissibility of evidence, reserved under cl 25 of the Letters Patent, can review the whole case and determine whether the rejected evidence would have affected the result of the trial. The principles underlying the above rulings are apparently not in conflict with the provisions of S. 418. See 25 W R 26 19 B 749, 9 B H 358 (F. B.) 10 B H 497 10 M J. 147 (F. B.)]

12. (5) **Where part of the evidence which has been allowed to go to the jury is held**

inadmissible, it is open to the High Court, in appeal either to uphold the verdict upon the remaining evidence on the record, or to quash the verdict and order a new trial.—19 B 749; 10 B H. 497.

13. **Procedure.**—Every petition of appeal in cases tried by jury should state clearly in what respect the law has been contravened. The Court will not hunt through the records and find out the illegality if any. The practice must point out in their appeal, wherein there has been a departure from the law. Unless the exact contravention of law is stated, the petition is liable to be rejected.—1 W. N. 21.

What are "matters of law" within the meaning of S. 418 Cr. P. C.

14. (a) **Misdirection.**—The expression "misdirection" as used in the Criminal Procedure Code

of S. 297 Cr. P. C. and is therefore a mistake of law [3 S 102, 25 C. 230. (31) A. N. 170]

15. (b) **Misjoinder of charges.**—See 25 M. 61 (P. C.) 17 C P. 159, 15 C P. 53; 11 L. B. 301; 16 P. R. 1902, 26 M. 125, 4 B. R. 440, 6 B. R. 725 1 C. J. 475 2 C. J. 618

16. (c) **Misjoinder of accused.**—B. R. 53 6 C N 469, 4 P. L. 1903

17. (d) **Conviction based on no evidence.**—15 W R 46 16 W. R. 19

18. (e) **Omission to consider material evidence or a wrong reasoning for disbelieving it.**—7 C. 201.

19. (f) **Admission of evidence in contravention of the provisions of the Evidence Act.**—See 6 O 247.

20. (g) **Where material evidence which ought not to be admitted is admitted and the jury are placed in possession of it, there is an error of law in the trial within the meaning of S. 418 Cr. P. C.**—27 B. 626

21. (h) **The omission of the Judge to point out to and call the attention of the jury to matters of prime importance, especially if they favour the accused.**—27 B 644

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 397.

Notes.

1. **Contents of the petition of appeal.**—See Note No. 13, above under S. 418 Cr. P. C. A Criminal appeal need not be verified. [See 12 M. 451] When a petition of appeal contains objec-

tionable matters the Judge should return it and refuse to receive it till the scandalous allegations made therein are expunged. [22 M. 165, 15 B. 488].

Mode of Presentation.

2. (1) **Transmission by post.**—The transmission of a petition of appeal by post is not a sufficient compliance with S. 419. The practice of accepting appeals transmitted by post, otherwise than under S. 420 is irregular. 2 Weir 467; 15 M. 137; Rat 467.
3. (3) **Putting a petition in a petition box.**—The word "presented" in S. 419 of the Code means that such petition shall be delivered to the proper officer of the Court either by the appellant or by his pleader. In order to secure this, it is necessary that the presentation be made in person. *Held*, that a petition of appeal found in a petition box was rightly returned for legal presentation inasmuch as the petition might have been deposited there by a third person who could not have legally presented it.—19 M. 354. See C. P. 93.

(3) Who may present.

4. (a) **The appellant in a Criminal case has a right to appear and be heard by a Mukhtear.**—6 B. 14; But See 4 S. 195.
5. (b) **Presentation by person authorised by appellant.**—A petition of Criminal appeal may be presented by any person authorised by the appellant to present it.—1 M. 304; 6 B. 14; Rat 29.
6. (c) **Pleaders Gumastah.**—Where a Vakil had signed a petition of appeal, having been duly authorised by a Vakalatnamah, the presentation by his *Gumasta* was held to be sufficient.—(91) 2 Weir 469]. Presentation by *Pleader's clerk* is presentation by the pleader himself, if the petition has been signed by the pleader and he is duly authorised. [20 M. 87; 20 M. 111; 2 Weir 470.—Cr. R. case No 50 of '91. 2 Weir 470.—Cr. R. case No 652 of 1903].
7. (d) **Presentation by a person who is not the pleader's clerk.**—A pleader is not competent to present an appeal through a person who

is not his clerk and over whose conduct and action he has no control.—21 M. 111.

8. (e) **Presentation by a pleader for one of the three appellants.**—Where a memorandum of appeal was prepared on behalf of the three accused and signed by their pleader, its presentation by another pleader who held Vakalatnamah for one of the three accused only, was considered a proper presentation.—(95) 2 Weir 470.
9. (f) **Relatives of the accused.**—When a prisoner is in jail, his petition of appeal, if not forwarded by the officer in charge of the jail under S. 420, can be presented under this section only by his pleader, whose appointment must be in writing signed by the prisoner where signature must be attested by the Superintendent of the jail. If this attestation is wanting, the document should be sent to the Superintendent of the jail for verification. Unauthorised petitions of appeal presented on behalf of the prisoners in jail by the relatives or friends cannot legally be recognised.—C. P. Cr. pt 11 No 44.
10. (g) **When the same pleader cannot act for both accused.**—Two persons each of whom made confessions exonerating himself and incriminating the other were both convicted, and appealed from such conviction through of one and the same pleader. *Held* that in this case it was improper for a single pleader to present appeals for both the prisoners and to represent conflicting interests.—13 P. R. 1890.
11. **Copy of Judgment.**—It is in the discretion of the Appellate Court to admit an appeal accompanied by a copy of the judgment or order appealed against, where injustice may result from a too strict insistence on compliance with law. [5 B. R. 704]. A copy of judgment supplied to the prisoner in his own language under S. 371 (1) is sufficient [Rat 82]. In cases tried by jury, the copy of the heads of the charge to the jury given under S. 371 (2) *supra* is equivalent to judgment [13 W. R. 50].

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper

Procedure when appellant in jail
Appellate Court.

Notes.

1. **Scope of S. 420.**—S. 420 is not derogatory to the rule laid down in S. 419. The latter section applies as much to a prisoner in jail, as to any other appellant, and requires that the petition shall be prepared in a certain form, while S. 420 is only concerned with the question of presentation of appeal from jail.—*Per Mahmood J.* in 13 A. 171 (F.B.).
2. **Facilities should be provided to prisoners for making appeals.**—Every facility should be allowed to prisoners to enable them to prepare their petition of appeal, (such as pen, ink, paper and even a writer) [13 W. R. 69]. The fullest opportunity should be given to prisoners to execute Vakalatnamas to whomsoever they

please, and without reference to the mode in or be influenced by rules framed by the Government of India in 1894, appeals and petitions from prisoners and their communications with their friends." See Court of Bengal Not. No. 2031 dated 16.6.70.

3. **Limitation.**—Under the provisions of S. 420 Cr. P. C. the presentation of the petition of appeal by the appellant in jail, to the officer in charge of the jail is equivalent to presentation to the Court, so far as the requirements of the Limitation Act are concerned.—9 M. 254; 29 P. R. 1590.

be disposed of under this section—19 Cr. 228 (C).
10 C N. EXXV. Rat. 116

What is meant by "reasonable opportunity of being heard in support of the petition.—S. 421 requires that no appeal presented under S. 419 shall be dismissed unless the appellant or his pleader has had a reasonable

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reason
Advocate
appeal on
C 385

13 A. 88] where the very moment that a petition of appeal was filed, the Sessions Judge called upon the pleader to support the appeal, and summarily rejected it under S. 421, without hearing the pleader, *where he said he was not prepared*. Held that the pleader had no reasonable opportunity of being heard—[36 C. 385 See 6 M. T. 109]

Note.—Before an appeal presented under S. 419 Cr. P. C. can be summarily dismissed the appellant is entitled to a reasonable opportunity of being heard in support of his petition. Therefore when a petition of appeal is adjourned to another date, notice of the adjournment should be given to the appellant 20 Cr. 271 (Pat).
9 C 385. Rat 703 3 Weir 472 6 M. T. 309
100) A. N. 303

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the applicants' pleader a second time. Held it as the case was never fixed for hearing under 423, the Magistrate was not under any obligation to give the pleader a second hearing—239.

7. Right of reply.—S. 421 of the Crim. Pro. Code states that the appellant in a Criminal appeal is entitled to have a reasonable opportunity of being heard in support of the appeal. It must be taken to include the possible right of reply, if necessary—38 C. 307 Cr. Rev. No. of 1906

Procedure under
Appellate Court
1. Scope of the rule is that an application under S. 195 (6) Cr. P. C.—application under S. 195 (6) Cr. P. C. for the grant of a sanction for prosecution, is made by way of appeal, and under S. 421 Cr. P. Code an application ought not to be summarily refused, without giving the applicant a reasonable opportunity of being heard in support of the same C. N. 218

Right of Counsel to refer to certified

12. Right to be represented by mukhtear.—A Mukhtear can only plead with the permission of the presiding officer of a Criminal Court—4 S. 115

13. Appeal disposed of in Chambers.—A

14. An appeal cannot be dismissed for default.—An appellate Court, can dispose of an appeal if the appellant is not present either in person or by pleader. [See 13 A. 171 (F. B.). *Mahmood J. dissenting*] But it cannot be

question of admission or rejection to be determined by the Court on the papers, and the Appellate Court is bound by S. 421 to peruse the papers, the appellant is not bound to appear a second time either by counsel or in person. Rat 709 593
12 Cr. 481 5 N. 76 21 P. R. 1806 12 C. N. 215

14A. Distinction between an appellant and a prisoner under trial.—An appellant is not precisely in the same position before an Appellate Court as he is before the Court trying him, but must satisfy the Court that there is sufficient ground for interfering with the order of conviction. If no sufficient ground is shown, it is the duty of the Appellate Court not to interfere.—5 A. 356 But See 11 O. L. 23 23 C. 317

15. Difference between appeals presented under S. 419 and Jail appeals.—The proviso to S. 421 is limited to appeals which have not been presented from jail. Therefore a man in jail, whilst on the one hand, he has the privilege of sending his appeal in the manner which S. 420 prescribes has not on the other hand the privilege of insisting that he should be heard or even his pleader, if he retains one, after sending up an appeal from jail.—Per *Mahmood J.* in 13 A. 171 (F. B.) Con 2 Weir 472

16. Appellate Court can direct appellant to be present in person.—If an Appellate Court thinks it necessary, for the purpose of disposing of an appeal, to have a prisoner before it, it has the same power to direct that he should be brought before it, as a Court of first instance has when in pursuance of the direction of an Appellate Court, it takes further evidence in the presence of the prisoner—2 Weir 473 13 A. 171 (17b). But see Rat 22

17. General notice insufficient.—A general notice posted in a Sessions Court that appeals will be heard for admission only on the first Court day next after presentation, is not in compliance with the provisions of this section. The Sessions Judge should fix a time as directed by

under S. 421 before admitting an appeal, they should have a *rule nisi*. [11 C. 385]

proposed at the hearing of an appeal under S. 421, counsel for the appellant was entitled to refer to certified copies of the evidence—11 C. 385

18. When notice to appellant in Jail may be dispensed with.—The practice of sending notice to persons who have transmitted criminal appeals from jail may be discontinued, when the Appellate Court considers after perusal of the petition of appeal and judgment, that there is not sufficient ground for interfering, and resolves to reject the appeal summarily.—M H C Pro 11th and 27th Novr 1884, Nos 3327 and 3465
19. Effect of summary rejection of appeal.—An order of rejection of an appeal made under S 278 (=S. 421) is final and therefore, not open to review. It is clearly an order made by an Appellate Court in appeal, and it seems immaterial whether such order is made before or after the papers are called for [1 B 101 : 24 P. M. 1887]. But an order of summary rejection of a Criminal appeal does not amount to a judgment, within the meaning of Ss. 367 and 424 Cr P. C [6 C P 24] It is not open to the Appellate Court while summarily disposing of an appeal under S. 421, to alter the conviction [2 Weir 475 : 2 Weir 471 Rat 304 384] It cannot enhance the sentence after summarily disposing of the appeal.—[Rat 74]
20. Summarily dismissal by a High Court.—A judgment by a single Judge of the High Court dismissing an appeal under S 421 Cr. P. C. is an order made in a criminal trial and therefore no appeal lies from such order under S. 15 of the Letters Patent.—1 Weir 753 a
21. Power to rehear appeal wrongly dismissed in default.—When an appeal has been rejected without hearing the appellant's pleader because of his default, and it is afterwards proved to the satisfaction of the Appellate Court that an adequate excuse has been made out for the pleader's non-appearance, it is open to that Court to rehear the appeal on its merits.—7 M H (Appr) xxiv 5 N 76 10 C J 80. But see 4 B 101, 24 P M 1887 : 19 B 712. [Note No 14 above]

22. Order under this section subject to revision under S. 439.—Where the Sessions Judge summarily disposed of the appeal, the High Court finding that the evidence on which the conviction was based was insufficient, set aside the conviction and acquitted the accused, instead of remanding the appeal for a rehearing on the merits.—10 C N. 446 : See 10 C. 309
23. Admission of appeal of one accused no bar to action under S. 421 with respect to appeal of co-accused.—The law gives to the Appellate Court the power of summarily dismissing an appeal upon going through the judgment, if the Court is satisfied that there is no sufficient reason shown for its interference. The fact that the Court admitted an appellant's appeal does not affect his order dismissing summarily a co-appellant's appeal.—5 C. N. 332.
24. Record of reasons for summary dismissal.—See Notes under Ss. 367-370, VI Summary dismissal of appeals (S 421 Cr P. C) Notes No. 67-89 (p 658 above)
25. Appeal barred by limitation.—An appeal presented out of time, without sufficient cause being shown for the delay, may be rejected as time-barred without hearing the appellant S 278 (=421) does not apply to such appeals.—(73) Rat 90.
26. Withdrawal of appeal.—A petition of appeal may be withdrawn after presentation. A Judge acts wrongly in rejecting the petition of withdrawal and confirming the sentence. [5 C L. 372]

[Note.—This case was distinguished in 6 C L. 427 (428) In the latter case, the petition was presented at the last moment after the Court had already perused the record and had the evidence read to it. It was held that the petition did not preclude the Appellate Court from dealing with the appeal on the merits.]

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be

Notice of appeal

given to the appellant or his pleader, and to such officer as the

Local Government may appoint in this behalf, of the time and place at which such appeal will be heard and shall, on the application of such officer, furnish him with a copy of the grounds of appeal.

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused

Notes.

1. Meaning of "Notice."—Notice is a warning to a party to a lit to enable him to resist a possible result, that is to say, not mere information that that which is threatened will or may possibly happen in a matter, in which he is concerned, but also that he can avoid such result if he takes proper measures to do so.—13 A 171 (F. B.)
2. Failure to serve notice—a material error. Where an appeal is disposed of under Ss. 422 and

423 of the Code, notice to the appellant is obligatory under S 422 [(97) 2 Weir 475 : See Rat 869] Where a Magistrate disposed of an appeal before the day fixed for an adjourned hearing and without giving notice to the appellant or his pleader held that it was a material error in procedure [(82) 2 Weir 475]

3. Notice must be served.—Ss 122 and 423 Cr. P. C make it imperative on a criminal Appellate Court to hear the appeal at the time and

place named in the notice of appeal issued by it; and a hearing of which no notice has been given is illegal—5 N. 76. Bat 869

S. 422 applicable to appeals under S. 250(3) Cr. P. C.—In case of appeals under S. 250(3) Cr. P. C. which provides that there shall be an appeal from an order under that section, it is necessary to give notice of the appeal to the accused, as he is the party prejudiced if the appeal be allowed, and the order for compensation rescinded.—19 M. J. 130.

Complainant not entitled to notice.—Where an appeal by an accused is not summarily dismissed, See 422 of the Cr. P. C. does not require that notice of the appeal should be given to the complainant. It is however, the practice to give notice to the complainant as well to the District Magistrate in a case instituted upon a complaint, but failure to give notice to the complainant does not furnish a ground for interference in revision.—14 N. 131 [33 M. 89 E.]

Notice of hearing to appellant in Jail.—If the appellate Court decides to proceed under S. 421, it is not legally bound to give notice to the appellant nor is it generally necessary to do so. When the Court means to proceed under S. 422, the law requires that notice shall be issued to the appellant, and the intimation given by the officer of the jail when forwarding the appeal petition is not sufficient for this purpose.—Mad Cr. Rules of Practice Nos. 264-265

Notice to Railway authorities.—In all appeals from sentences passed on railway servants, notice should be given of the time and place of hearing the appeal, to the Head of the Railway administration concerned as well as to the District Magistrate.—Punjab Cr. No. 17 of 1894 [Oudh Cr. Dig. p. 27. C. P. Cr. Cu. pt. II No. 45]

Notice to pleader.—The section makes provision for notice to the pleader. Under the older Codes—[See e.g. (81) 10 C. L. 37. 7 P. R. 1883] it was held that the fact that the appellant's pleader is present in Court, when an order annulling an appeal is passed will not save the giving of separate notice to the appellant. Since S. 279 (=422) lays down that the notice is to be given to the appellant, a substituted notice to the appellant's pleader or mukhtar is sufficient [Con. 4 S. 195. 6 B. 14]

9. * * *

travention of the provisions of Ss. 422-423, that the acquittal should be set aside and that it should be reheard.—2 Weir 474

O. To such officer as the Local Government may appoint in this behalf.—Notice should be given to the officer, if any, appointed by Local Government in this behalf as laid down in this Section.—[29 M. 187] In Madras the officer is the Public Prosecutor in case of appeals to the Sessions Court and the High Court [Pt. II St. G. Gaz. 1887 Pt. I p. 30]. The District

Magistrate is the proper person to direct whether there should be a formal appearance in support of the conviction [G. O. No. 653 J dated 24.3.87]. In Bengal, the Legal Remembrancer is the Public Prosecutor so far as the High Court is concerned [Cal. Gaz. 30.6.86 p. 783]. In all other cases the notice should be given to the District Magistrate.—[See 7 C. N. 50. Cal. Gaz. 1883 Pt. I, p. 1200]. In Bombay, District Magistrates should be served with notice [See Domb. Cr. Gaz. 1883 Pt. I, p. 182]. The same also is the rule in the Punjab [See Punjab Gaz. 1883 Pt. I 53], in Oudh [Oudh Cr. Dig. p. 27] in the Central Provinces [C. P. Gaz. 1883 Pt. II p. 101].

Note.—In Madras In Railway cases notice should be given to Agents of Railway companies [G. O. No. 1807 Judd 7.9.91] in Forest cases to the District Forest officer [G. O. No. 433 dated 2nd March 1896] in the Nilgiri District in cognisable cases notice should be given to the Prosecuting Public Inspector and the Assistant Superintendent of Police—G. O. No. 1614 dated 7.8.95

11. Contents of the notice.—In every case in which a day is fixed for the hearing of an appeal, an order fixing the date should distinctly state whether or not the hearing is to be under S. 423 *infra*, to distinguish it from similar orders under S. 421 *supra* [See Punjab Cr. Ch. XVIII, p. 259]. Ss. 422 and 423 Cr. P. C. make it imperative on a Criminal Appellate Court to hear the Appeal at the time and place named in the notices of appeal issued by it and a hearing of which no notice has been given is therefore illegal [3 N. 76]. It is not enough that the District Magistrate has directed that an appeal to him will be heard in the month of January, the particular date of hearing being omitted. The appellant ought to be intimated of the precise date on which his appeal will be heard and the Judge is bound to hear it on the date so fixed ('61) A. N. 46. See 5 M. 11. 21 W. R. 60]

12. Mode of service.—where the appellant in a criminal appeal cannot be found at the address given by him, the notice of hearing of the appeal should be left at such address [Bat 561]

13. Notice should be posted at least two days before the date fixed for hearing.—In the case of an appeal presented under S. 419 *supra* there shall be posted up in the Appellate Court in a place accessible to the public, notice of the day appointed for considering the petition of appeal * * * two days at least before the days so appointed unless the appellant or his pleader consents to a shorter notice or to dispense with a notice.—Domb. H. C. Cr. Cir. p. 42

14. Fresh notice must be given if the place of hearing is changed.—Where a Court issues notice to the agent of the accused, it ought not to hear the appeal at a different place without giving notice of the same to such agent [7 P. R. 1881] where the notice directed the appellant to appear at the headquarters, and on date fixed, the officer before whom he was directed to appear was absent, held—[1] at a general order issued directing the appellants to

follow him (the officer) into camp was improper. A fresh notice fixing a fresh date should have been issued.—[11 P. R. 1905; 21 P. R. 1595]

15. **Appeal cannot be admitted only for a limited purpose.**—A restricted order for admission of a criminal appeal is not contemplated by S. 422 of the Criminal Procedure Code and must be deemed *ultra vires*. Therefore where an appeal was admitted for the consideration of the

321 (Cr)] Except when there are express words as in Ss. 412, 418, the Cr. P. Code does not provide for an appeal for the limited purpose of reviewing only a part of the sentence. The appellant has a right to be heard fully on the merits.—[Rat. 526]

423. (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the Power of Appellate Courts in dis- appellant or his pleader, if he appears, and the Public Prosecutor, posing of appeal if he appears, and, in case of an appeal under section 417 the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made in that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial or (2) alter the finding, maintaining the sentence, or with or without altering the finding reduce the sentence, or (3), with or without such reduction and with or without altering the finding alter the nature of the sentence, but, subject to the provisions of section 106 sub-section (3), not so as to enhance the same;

(c) in an appeal from any other order, alter or reverse such order.

(d) make any amendment or any consequential or incidental order that may be just or proper

(2) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by him

ARRANGEMENT OF NOTES.

S 423 Ss 271, 272 para 2, 280, 284, 293 para 3 (1872) S 419 (1861)

I. The Appellate Court, its powers functions and limitations.

- (1) Powers
- (2) Functions
- (3) Limitations

II. Duties of the Appellate Court.

- (1) Appellate Court bound to peruse record. It cannot dismiss for default
- (2) Duty to consider evidence
- (3) Court bound to comply with Ss. 424 and 367 Cr. P. C.
- (4) Sessions Court should not refer appeal to the High Court
- (5) k. mere
- (6)
- (7)

III. Procedure.

- (1) Right of appeal
- (2) Duty of Appellant to make out his case.
- (3) Procedure in the Court of Appeal

IV. Procedure in appeals against acquittal.

- (1) General Rules of Practice
- (2) Orders which may be passed under sub cl (b)
- (3) Procedure in appeal from acquittal in jury trials
- (4) Procedure in appeal from acquittal in trials by assessors
- (5) When the High Court should not interfere

V. Orders in appeals against Conviction.

- (1) Alteration of finding
- (2) Retrial
- (3) Commitment for trial
- (4) Reduction of sentence.
- (5) Alteration of the nature of the sentence.
- (6) Acquittal or discharge

VI. Order in respect of a person who has not appealed.

- (1) Power of the High Court
- (2) No Court other than High Court can deal with the case of a person who has not appealed.
- (3) Procedure when subordinate appellate Court think that interference is called for.

II. Enhancement of sentence.

- (1) Rules of Practice.
- (2) Change of Law.
- (3) What amounts to enhancement.
- (4) What does not amount to enhancement.

II. Consequential and incidental orders.

- (1) Scope of S. 423 (1) (d).
- (2) Incidental orders which may or may not be passed.

X. Interference with the verdict of the jury.

- (1) General Rules of Practice.
- (2) What amounts to misdirection.
- (3) When the High Court will or will not interfere.
- (4) Appeals to Privy Council.

X. High Court.

XI. Miscellaneous.

- (1) S. 423 applies to proceedings under S. 270 (3).
- (2) Orders under S. 502 Cr. P. C.
- (3) S. 515 does not control the application of Ss. 423 and 434.
- (4) Abatement of appeal.
- (5) Appeal from orders under S. 54 of the Frontier Crimes Regulations.
- (6) Appeals from orders by District Magistrate as Superintendent of Hill States in the Punjab.
- (7) Judge personally interested should not hear appeal.
- (8) Award of fine to the complainant.
- (9) No appeal from conviction by Deputy Commissioner of Sonthal Pergana.
- (10) Annulment of conviction without setting aside proceedings.

THE APPELLATE COURT—ITS POWERS, FUNCTIONS AND LIMITATIONS.

(1) Powers.

1. Power of Appellate Court measured by the power of the original Court.—It is a rule underlying the whole fabric of appellate jurisdiction, that the power of an Appellate Court is measured by the power of the Court from whose judgment or order, the appeal before it has been made. This is equally so in the Civil and Criminal branches of the law of procedure. It is a fundamental principle that every Court of appeal exists for the purpose, where necessary of doing or causing to be done, that which each Court subordinate to its appellate jurisdiction should have, but has not, done or caused to be done and nothing further. Therefore, the jurisdiction in appeal is necessarily limited in each case to the same extent, as the jurisdiction from which that particular case comes. Where therefore a Criminal Court alters a sentence of imprisonment into a sentence of fine, it cannot inflict a fine beyond the maximum which could have been imposed by the first Court.—[7 N. 103.] An appellate Court has power to pass any sentence which the Court of first instance could have passed [13 M 54.]

2. Distinction between the powers exercisable under cl. (a) and cl. (b).—S. 423 Crim. Pro. Code, defines the powers of the appellate Court and in that section a clear distinction is drawn between the powers which may be exercised in an appeal from an order of acquittal and in an appeal from a conviction. Where two persons are tried by a Magistrate, one of whom was acquitted and the other convicted and the convict appealed, *held* that the Sessions Judge, in dealing with the appeal, had no jurisdiction to pass any order which affected the acquittal of the other man. 6 A J 1125.

3. Power to dispose of appeal in the absence of the appellant.—The limitation which S. 423 provides is that the appellate Court, before disposing of the appeal must peruse the record, and if the appellant is present or is represented by a pleader, the appellant in person or his pleader must be heard. It cannot be contended

under that section that in the case of an appeal, which has been admitted, the Appellate Court, notwithstanding that the record of the case has been sent for and perused by the Court, is incompetent to dispose of the appeal, if the appellant who is not represented by a pleader is not present [13 A. 171 (P. B.) *Mahomed J. dissenting*].

Note, *Per Mahomed J. contra*.—Where an appeal is admitted, and is not summarily rejected under S. 421, the appellant must have an opportunity of being heard. On a proper understanding and interpretation of S. 423, it will be seen that the condition precedent for the disposal of the appeal is that either the appellant is heard or at least choice is given to him to appear.

4. The whole case is thrown open in appeal.—An appeal against a conviction opens out the entire case and the Appellate Court being empowered to alter the finding by S. 423 (1) (b) of the Cr. P. C. may record a conviction in respect of an offence of which the trial Court has found the accused not guilty.—16 A J 915.

5. Interference with verdicts of jury.—In the case of a trial by jury, the questions that can be gone into by the Appellate Court lie within an extremely narrow compass and that Court will not interfere with the unanimous verdict of a jury. When in a trial by jury the jury having been properly directed and warned, deliberately by their verdict come to the conclusion that the circumstantial evidence given in the case connected the accused with the guilt and convicted him. *Held* that in the absence of misdirection, the High Court would not interfere merely on the ground that the jury had convicted on circumstantial evidence alone.—[21 Cr. 6 (C)]. S. 423 must be read with S. 415 and where facts are in issue, the absolute finality of the verdict of a jury on a question of fact must be given effect to [19 A 345].

6. Power on reversal of the verdict of the jury.—Once the verdict of the jury is set aside under S. 423 (d) there is no restriction on the power of the appellate Court to deal with the case of which it has complete jurisdiction.

the manners provided in that Section its powers are not restricted to directing a retrial. It may reverse the finding and sentence and acquit or discharge the accused or order him to be retried or alter the finding and maintain the sentence or without altering the finding, reduce the sentence. 23 O 711 See 10 B R. 665

7 Powers of the appellate Court in laying down the mode of the retrial—

(1) An appellate Court under S. 423 (1), may in a suitable case, in ordering retrial direct at the same time that the new proceedings shall commence with the framing of a proper charge—9 N 42 Bat See 4 N 74

(2) When there has been no legal decision of an appeal, the Judicial Commissioner has power to remand the case for retrial of the appeal and its disposal by a legal judgment—8 N 84 See 11 C 449 13 C 110 22 C 241 32 C 174 37 C 134 15 B 11 (84) A N 250 31 P R. 1891 Int See 52 C 1064

(3) The Appellate Court in remanding a case cannot restrict the evidence to be taken. In such a case, the accused person is at liberty to adduce such additional evidence as he may desire—7 C 1 303

8. There is nothing in Sec 423 of (b) Cr P C to limit the power of an appellate Court to order a retrial—27 C 172 7 C N. 301 23 C 971 (Bamji J) 17 C P 97

9. The power to take additional evidence when and how to be exercised.—The Sessions Judge in appeal, acting under S 428 might take additional evidence or order it to be taken by the Magistrate, but he must record his reasons for admitting additional evidence and comply with the provisions of Ch XXV as if the taking of such evidence was an enquiry. An Appellate Court should not rely upon matters which are not in evidence before it—8 M T 428

10. Power to remand for rectification of errors.—Where one of the two Bench Magistrates omitted by mistake to sign the judgment and the District Magistrate on appeal sent the judgment back to be signed by him, held that the procedure adopted by the District Magistrate was in no way opposed to the provisions of S 423 Cr P C—41 A 217

11. Interference with orders of acquittal.—S. 439 (b) Crim Pro Code does not bar the High Court's power to interfere with an order of

12. *Discon-*
rt.—The
failed to
questions
therein
a deter-

S. 423(a) direct a lower appellate Court to retry a appeal which was before it for determination—1 P. W 1912

13. Power to set aside conviction of persons who have not appealed.—The High Court has power under S. 433, to deal with the case of accused persons not appealing against their conviction, while considering and trying the appeal preferred by the other accused: cf. (5) of the section—does not in any way affect the jurisdiction vested in the High Court to deal with their case.—5 C N. 330 19 W. R. 57. (91) A. N. 191 (93) A. N. 51: 7 P. W. 1916 21 Cr. 705 (Pat)

14. Power to order retrial of persons who have not appealed from conviction.—Where both parties to a riot were tried jointly by a Deputy Magistrate and convicted, but one of the parties only having appealed to the District Magistrate the latter quashed the conviction and directed that each party should

the High Court,

Held, setting aside the orders of the Deputy as well as the District Magistrate, that they (the party who had not appealed) should be tried by a competent Court according to law.

(63) A. N. 163

15. First Class Magistrate. Specially empowered to hear an appeal against an order passed under S. 222 C.P.—24 C. 724

(2) Functions.

16. Functions of the Appeal Court.—A Court of Reference or Appeal under this Code is not a mere Court of Error but the Court as a Court of Appeal, Reference or Revision is enjoined by S. 337 *infra* and S. 167 of the Indian Evidence Act not to reverse or alter the finding or sentence passed by a Court of competent jurisdiction, on account of any error, omission, irregularity, improper admission or rejection of evidence, unless in its judgment, such error, omission or irregularity has in fact occasioned a failure of justice or unless independently of evidence objected to and admitted, there was not sufficient evidence to justify, or that if the rejected evidence had been received, it ought to have varied the decision.—Per Bhagyaiah Ayyangar J. in 24 M. 523 (541)

17. Difference between a Civil and a Criminal Court of Appeal.—The sound rule to apply in trying a Criminal appeal, where questions of disputed fact are in issue, is to consider whether the conviction is right, and in this respect, a criminal appeal differs from a civil one. In a civil appeal the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong [11 C. L. 25. 7 P R 1804 C P. R. 1809: See 17 C P. 75: 17 W. R. 59 20 W R 13] It is not necessary in Criminal cases that the appellant should clearly establish that the order of the Lower Court was wrong, and in this respect, a Criminal appeal differs from a Civil appeal—[23 C 347]

18. Appeal Court cannot refuse to act because the case is trivial.—A Sessions Judge cannot decline to interfere on appeal merely because in his opinion "the matter is a mere trifle." He is bound to hear the appeal and to come to a finding whether the conviction is legal or illegal.—*Rat.* 978.

(3) Limitations.

19. Appellate Court cannot spring a new case on the appellant.—The powers conferred by the Criminal Pro. Code on a Court of

and was therefore illegal.—3 Pat. W. 224; 1 Pat. J. 99.

- 20B. Appellate Court not bound to direct a retrial.—There is nothing in the language of S. 423 (b), to limit the power of an Appellate Court to direct a retrial in cases in which the trying Magistrate had no jurisdiction.—7 C. N. 301; 27 C. 172.
21. The words: "order him to be retried by a Court of competent jurisdiction subordinate to such appellate Court" are not words of limitation and do not exclude the appellate Court from itself trying the offender. 30 M. 223. *Contra* Cr. R. 42 of 1893.

22.

20. When appeal cannot be retained on file.—Where in an appeal to the Court of Session, the Sessions Judge finds that the Magistrate has not written a judgment in conformity with the provisions of S. 367 Cr. P. C. the correct procedure is to accept the appeal and to remand the case for hearing de novo. S. 423 of the Code does not authorize the retention of an appeal on the file of the Sessions Judge when asking for a judgment which the Magistrate failed to record.—21 Cr. 52 (31).

- 20A. Appellate Court after setting aside conviction cannot direct evidence already on record to be treated as evidence in the retrial.—Where in an appeal from a conviction, the Sessions Judge set aside the conviction and ordered a retrial, but at the same time directed that the evidence already on record should be treated as evidence in the case. Held that the order was contrary to the provisions of Ss. 423 and 425 of the Crim. Pro. Code

should apply to the High Court for an order under S. 423 or 430 Cr. P. C. instead of issuing fresh summons which he has no authority to do. 24 C. 529; 1 C. N. 185.

23. Release on Bail.—Sessions Judge cannot release a prisoner on bail pending an appeal, but he may suspend the sentence pending the appeal. 3 W. R. 37. *See* S. 126 *infra*.
24. District Magistrate.—District Magistrate cannot set aside an order of acquittal by a Magistrate of the third class. (191) A. N. 120; (85) A. N. 43. *See*—26 M. 478.
25. Before an appellate Court can set aside a conviction it must be satisfied that the conviction is wrong.—17 C. P. 97.
26. Powers under S. 195 compared with powers under S. 423.—Powers of the appellate Court under S. 195 are not the same as conferred by S. 423. The jurisdiction is of special nature. There is no inherent jurisdiction in such a case to direct the inferior court to take fresh evidence.—30 M. 311.

II. DUTIES OF THE APPELLATE COURT.

(1) Appellate Court bound to peruse record. It cannot dismiss for default.

27. In dealing with the petition of a person convicted of a criminal offence, the Appellate Court is bound in all cases where the appellant is not represented personally or by pleader, to peruse the petition of appeal and the copy of the judgment accompanying it, and determine upon such personal whether the appeal should be admitted or summarily rejected, and if the appeal is admitted, to consider whether there is any ground for interfering with the conviction or sentence. It is illegal to record an order dismissing an appeal "in default", as such an order is not contemplated by the provisions of S. 423 Cr. P. C.—60 J. 370; 21 P. R. 1895; 13 A. 171 (F. B.); 20 Cr. 271 (Pat.); 5 N. 76. *See* 7 M. H. (appx) xxix; 14 Cr. 152 (C); 12 Cr. 481.

[Note.—Th. Court must peruse the whole record. A decision upon a perusal only of the judgment appealed against is not legal.—14 Cr. 152 (C)]

(2) Duty to consider evidence.

28. It is the duty of the Appellate Court in dealing with an appeal preferred to it, to consider the evidence, both oral and documentary, and to apply its mind to the case before recording a judgment thereon. Where an Appellate Court fails to do this, its judgment cannot be said to be in accordance with law.—21 Cr. 618 (Pat.).
29. Duty of the appellate Court to consider the evidence against all the accused.—The first duty of a Court of Criminal appeal is to find whether the conviction had by the lower Court against each of the accused person is sustainable. A general agreement with the lower Court cannot be sufficient to uphold the conviction of each particular individual, each of whom is entitled to a finding on the facts that he did or did not take part in the alleged offence; and where there is no such finding there must be a rehearing of the appeal.—12 Cr. 43 (C); 35 C. 135; 12 C. N. 134.

29A. Appellate Court is bound to decide questions of law itself.—When an Appellate Court does not dismiss an appeal summarily, it is bound by the provisions of S. 423 Cr. P. C. which defines its powers. These powers do not authorise the Court to refer to the High Court for decision of a question of law arising in the appeal. Nor does S. 438 confer any such authority. That Section permits the Sessions Judge to report for orders the result of his examination of any proceeding before an inferior Criminal Court, but does not apply to

occurrence was beyond the local limits of the trying Magistrate's jurisdiction—35 C 786

(6) Duty to arrive at an independent opinion.

34. It is the duty of an Appellate Court, in every case to examine the evidence for itself, and to give to an accused person, the benefit of any reasonable doubt which it may entertain after such examination. In every case, it is its duty to arrive at an independent opinion [2 Weir 535; 12 C. N. 131; 6 P. R. 1899; 5 P. R. 1876; 17 W. R. 59; 8 N. 81]. The Appellate Court should decide both on the sufficiency of the prosecution evidence to warrant a conviction and on its reliability—[2 Weir 536]. An Appellate Court is bound precisely in the same way as the Court of the first instance, to test the evidence extrinsically as well as intrinsically even though it is bound to give every reasonable weight to the conclusion which the original Court has arrived at upon a question depending upon evidence.—[17 W. R. 59]

(7) Duties generally.

35.

whose decision is under appeal, when such imputations have no other foundation than suspicion—[2 Weir 535].

36. **Duty to confine itself within the four corners of the record.**—The Sessions Judge should not in an appeal refer to documents and evidence which did not form part of the record of the proceedings before the Magistrate—8 M. T 81 6 C. J 251.]

37. **Duty to acquit.**—If the Sessions Court is unable even with the aid of the Magistrate's finding of fact to form an independent judgment as to whether the prisoners had committed the offence or not, and the evidence which came before him, whatever its shape, was not reasonably sufficient to satisfy him that the prisoners had been rightly convicted, he ought to acquit them—20 W. R. 13

38. **The benefit of the doubt.**—Though S. 363 directs that the remarks recorded by a Court of first instance as to the demeanour of a witness etc are to guide the Appellate Court in its estimate of the value of the evidence of that witness, the facts of the case ought to be considered independently by the Appellate Court, and if it entertains any reasonable doubt about the appellant's conviction by the lower Court, such prisoner appellant is entitled to the benefit of that reasonable doubt.—6 P. R. 1899; 5 P. R. 1876; 23 C. 347. See 11 C. L. 25

self—7 L. B. 251.

30. **Duty with regard to defence evidence.** In an appeal, it is the duty of the Appellate Court to look into the evidence on the part of the defence even if the Counsel who appeared for the defence did not make any reference to that evidence—40 C. 37

(3) Court bound to comply with Ss. 424 and 367 Cr. P. C.

31. In dealing with an appeal under S. 423 Cr. P. C. the District Court has no power to dismiss it summarily but is bound to comply with the requirements of Ss. 424 and 367—1 B. R. 225; 6 C. P. 21. See Notes under Ss. 367—370 IV Contents of judgment in appeal Notes Nos 56 to 52A (pp 655-657 note)

(4) Sessions Court should not refer the appeal to the High Court but try to dispose of itself.

32.

was barred by S. 439 (3) Cr. P. C. : (3) if the Session Judge thought that the case ought to be tried by the Court of Session he ought himself to have set aside the conviction and ordered a commitment under S. 423 (1) (b)—[13 A. J. 477 15 A. 205]. An appellate Court has no power to remand the case from the Lower Court to pass a proper sentence. It must dispose of the appeal itself—[11 C. N. colv].

(5) Duty of Appellate Court to overlook mere technical defects.

33. The Appellate Court ought not to overlook the provisions of S. 531 Cr. P. Code and set aside a conviction on the ground that the place of

III. PROCEDURE.

(1) Right of audience.

39. **Right of audience.**—If the appellant is present or is represented by a pleader, the appellant

40.

behalf of the appellant—Cr. R. 22-2-70 See 23 C 493

41. **Private complainant.**—A complainant cannot claim as of right to be heard in appeal. The matter is in the discretion of the Appellate Court, which may grant permission in particular cases—[7 M. H. (appv) 42 29 P. R. 1886 See 9 O N 15]
42.
43. **Note—Mukhtears.**—A Mukhtear can plead only with the permission of the presiding officer of a criminal Court—See 4 S 195. Con 6 B. 14
44. **Vakil privately instructed.**—There is nothing in S 423 which prevents the Appellate Court from hearing a Vakil privately instructed to support the prosecution, and when the Public Prosecutor does not appear on behalf of the Government, it would generally be discreet on the part of the Court to do so—2 Weir 476
45. **Right of reply.**—"There is nothing in the language of S 423 Cr. P. C. to preclude the appellant or his pleader from replying to the arguments of the Public Prosecutor and we certainly think that as a matter of principle, such right of reply should be conceded to him"—21 P. R. 1917. 38 O. 307 11 O N xiii
46. **Pleader for appellant entitled to refer to certified copy of evidence.**—Pleader for the appellant is entitled to refer to certified copies of the evidence—11 O C 360
47. **Disposal of appeal in chambers.**—Where an appellant was represented by a pleader, but the Judge disposed of the appeal in chambers, the order of the Appellate Court was set aside and the appeal was directed to be heard—Rat 914

(2) Duty of Appellant to make out his case.

48. **Appellant must satisfy Court.**—An appellant is not precisely in the same position before an Appellate Court as he is before the Court trying him, but must satisfy the Court that there is sufficient ground for interfering with the order of conviction. If no sufficient ground is shown, it is the duty of the Appellate Court not to interfere.—5 A 356
49. **Sufficiency of evidence.**—A conviction is not necessarily bad because, the number of witnesses examined in support of the prosecution is very small. The deposition of a single credible witness is sufficient in law—2 W R 3
50. **Appellant may be permitted to set up a new ground.**—In 7 C. N 884, an objection to the prosecution of an accused on a question of law was allowed to be raised for the first time in appeal and given effect to.

(3) Procedure in the Court of Appeal.

51. **Duty to peruse the record.**—See Note No 27 above
- 5 A. **When the record of the Lower Court is lost.**—The High Court on appeal will generally order a new trial—See ('89) A. N 85 (85) A. N 117 14 C. N. ciii
52. **Appellate Court cannot direct prosecution of witness after setting aside conviction.**—Neither S 437 nor S 476 Cr. P. C. authorises a Judge who hears a Criminal appeal and sets aside a conviction, to direct in such judgment the prosecution of a witness in the case—('89) A. N 85
53. **Appellate Court's power to make local inspection.**—Where inspection of the scene of the crime is material either to the case for the prosecution or that of the defence, it is desirable that the Appellate Court should also inspect the spot—16 P. W 1911 (F. B.).
54. **Power to direct appellant to be brought up from jail.**—Neither Ss 417, 419, 421 Cr. P. C., nor any other provision of law authorise a Sessions Judge to cause an appellant undergoing sentence of imprisonment to be brought before him at the hearing of the appeal—Ret 22

Powers of the Appellate Court to suspend sentence.—pending appeal and to release on bail [See S 426 *infra*] To take additional evidence [See S 428 *infra*]

55. **Duty of appellate Court to write judgment.**—[See Notes under Ss 367-70 Chapters IV, and IX] A judgment of an Appellate Court other than the High Court is defective unless it contains at least (1) the point or points for determination raised by the memorandum of appeal (2) the decision thereon and (3) the reasons for the decision—8 N 84

56. **Copy of judgment in appeal to be sent**

appealed against or his successor in office.—Bomb H C Cr Cu p 43

57. **Fresh warrant to be issued on modification of judgment.**—When a sentence on a prisoner is reversed or modified on appeal by a Court other than the High Court, a fresh warrant will be issued by the Appellate Court to the officer in charge of the jail, and its order will be communicated to the Lower Court for record. * * * In all cases in which a sentence or order is modified or reversed whether in appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been so modified or reversed.—Bomb H C. Cr. Cr Para 61

IV. PROCEDURE IN APPEALS AGAINST ACQUITTAL.

(1) General Rules of Practice.

59. **Additional evidence.**—S. 423 Cr. P. C. allows evidence to be admitted in appeals against

acquittals as well as in appeals against convictions although cases in which this power is exercised will naturally be rare—26 M. J. 100.

58A. *See* S. 439 only on the High Court—20 C 633 *See* 23 M 225.

58B. Order for acquittal can be reversed only by the High Court.—The words "reverse the finding and sentence" in S 423 (1) (b) mean reverse the finding upon which the conviction is based, and do not empower the Appellate Court (or at any rate an appellate tribunal other than the High Court) to reverse or set aside an acquittal. Where persons were charged with hurt and theft and were convicted on all the charges except on that of theft, held—the appellate Magistrate was not competent to reverse the acquittal on the charge of theft—26 M 478. But *See* 34 M 515 35 M 243.

59. Procedure the same as in appeals against conviction.—There is no distinction in the Code between the right of appeal against a conviction and an acquittal both being governed by the same rules and being subject to the same limitations—17 C 155 7 P R 1903 20 A 459 26 M 3 160.

60. Principle which should be followed.—The High Court ought not to interfere with an acquittal by a Magistrate who had the witnesses before him, and arrived at conclusions of fact with this great advantage in his favour, unless the Judge was clearly wrong and the judgment either perverse or based on obvious errors of procedure—16 Cr 529 (M).

61. Limitations of the power to entertain appeals.—High Court's interference should be limited to those instances in which the lower Court, has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public—4 A 148 11 P R 1903 66 P R 1885 (92) A N 64.

61A. A Magistrate may arrest on an appeal under S. 417—2 A 389.

62. Note.—There must be strong indications of errors in the judgment of acquittal and more palpable urgent and convincing evidence than in the case of an appeal against conviction to justify its being set aside—7 P R 1904 *See*—17 C P 75, 17 C P 97 7 M 31, 339. But *See* 12 B H 1.

62A. No appeal against acquittal by way of revision.—An appeal against acquittal by way of revision is not contemplated by the Code—14 M 363 *See* 9 A 131 (F.B.) But *See* Notes under S 439 Cr, P C *infra*.

63. The benefit of the doubt.—An appeal from acquittal should not receive different treatment from any other appeal or class of appeals. The only distinction is that where as in an appeal from conviction, the benefit of doubt is in favour of the appellant, in an appeal from acquittal the benefit

is against the appellant—15 P R 1909, 17 C 485 20 A 459.

64. Where the original trial is void ab initio.—Where the original trial was illegal as held in contravention of S. 233 *supra*, held by *Batty J* "though it is open to the High Court under subs (1) (a) to reverse the order of acquittal and to order the accused to be retried, such an order was not necessary or possible in the present case. There had been no legal trial, and therefore there had been no legal acquittal and hence no valid appeal from acquittal. The High Court had therefore no acquittal to reverse, and the question whether the accused should be tried legally, was a question not for judicial decision, but for the Government—29 B 119 (467).

65. Acquittal obtained by fraud.—Where the Session Court was deceived by alteration in a document and fraudulently led to acquit, the High Court reversed the order of acquittal and directed a retrial (M, H C, Pro 2144-43). An appeal from an acquittal under S. 247 Cr P C, lies on the ground that the complainant had been kept out of the way by the action of the accused, so that the acquittal had been procured by the latter's fraud (26 M, J 100. *See* Archbold's Cr. Pleadings (23rd Ed.) p 292 R. 1 *See* 17 Q B 238).

66. Acquittal due to erroneous view of law. Where the Session Judge on an erroneous view of the law, acquitted the accused on appeal the High Court ordered the rehearing of the appeal on the merits by the Session Judge—24 W. R. 41 7 N P 196. *See* 13 P W 1912.

(2) Orders which may be passed under Subcl. (b).

67. Meaning of "Reverse" :
To 'alter'
for 'not'
26 M 1 (15)

68. Power to order further enquiry.—S 423 (1) applies only to the High Court (7 M 213). The District Magistrate as an appellate Court has no jurisdiction to order further enquiry into a case in which there has been an acquittal under S 247 Cr P C (the complainant being absent) (ibid 24 C 525 20 C 633 23 M 225). A Sessions Judge can interfere with an order of acquittal if it has been passed in a case triable exclusively by the Court of Session [See 24 M 136 (F.B.). *Con* 2 C. N. colvi].

69. The power to direct further enquiry limited.—S 423 does not enable a Court of Appeal to direct that further enquiry be made into a case in which an order of discharge or dismissal may have been passed. S 423 confers a power to direct further enquiry only in respect of a case of an appeal from an order of acquittal and that this power is so limited, is shown by an express enactment in S 437 making provision for such orders—27 C 126 7 C N, 421. *Con* 26 C 716.

70. [Note.—Under Ss 123, and 439 the High Court has jurisdiction to set aside an order of discharge,

if such preliminary order be necessary, and to direct that a person improperly discharged of an offence be arrested and forthwith committed for trial.—27 B 84 (86), 30 C 99.]

71. **Power to order retrial.**—The power to order retrial in appeal in a case where the accused has been acquitted by the lower Court belongs to the High Court and High Court alone. A District Magistrate sitting as a Court of appeal cannot order a retrial under subs. (1) (a)—11 C N vi

72. **As to other points.**—See Notes under S 417 supra

(3) Procedure in appeals from acquittals in jury trials.

73.

by the Judge or to a misunderstanding on the part of the jury as to the law laid down by him [Per *Davies J* in 26 M 1.] The High Court ought not to order a retrial on the ground of misdirection unless it is satisfied that the misdirection has in fact occasioned a failure of justice.—[*Benson J* in *ibid*] 26 C 230. See 5 W R 80 (F.B.), 5 W R 13 32 M 179 4 M T 487 10 B R, 565 Bat 432

74. **Power to go into facts in such appeals.** In order to determine if the verdict is erroneous and if so which of these powers the High Court should exercise, it is absolutely necessary for it to go into the facts and to consider the evidence in the case before passing orders in it.—[Per *Davies J*]. As soon as the verdict of the jury is reversed, the Court has the same powers to deal with the case that it has to deal with a case triable by assessors as soon as the order of acquittal by the jury is set aside, that is, the Court may order a retrial or may find the accused guilty and pass sentence on him according to law.—[Per *Benson J*].—26 M 1. See 27 C 361 25 C 711 19 B 744 But See 14 C 161

75. **Meaning of the term "erroneous."**—In s 423 (d) the word "erroneous" is not to be read as meaning "wrong on the facts" it must be

read in connection with the words that follow, as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a misunderstanding of the law. The effect of the clause is evidently to prevent the Appellate Court from reversing the verdict of a

Per *Brerley* and *Danejee JJ* in 21 C 955 See 14 B 115

(4) Procedure in appeals re trials by aid of assessors.

76. **Where Assessors disagree.**—Where there was a difference between the assessors and the

and convicted him.—5 B 100

77. **Where Judge and Assessors disagree.**—In a murder case the Sessions Judge disagreeing with the assessors who found the accused guilty, acquitted him. On appeal by the Government, the High Court sentenced the accused to be hanged. 26 W R 1

(5) When the High Court should not interfere.

78. (a) Where the Sessions Judge in appeal, has acquitted the accused where he might have convicted him under another section.—7 M 1 330
79. (b) When the judgment appealed from is based on facts and the conclusions of the Court are such as may reasonably be arrived at upon the findings. 16 A 212
80. (c) When the appeal is preferred on the ground of discovery of fresh evidence which with due diligence might have been preferred at the original trial.—(2) 1 B 9

22 C 377 See 24 C 974 14 M 545 15 M 213 37 M 119 2 Pat W 188 S A J 1291

82. **Scope of S. 423. (b) (2) Cr. P. C.**—See 423 (b) (2) Cr P C makes no reference to s 237 and 238 and unqualifiedly gives the power to the Appellate Court to "alter the finding" on appeal only where the accused has been prejudiced by the omission to frame the charge on which the Appellate Court wishes to give the altered finding, that is where, if the altered charge had been framed in the first Court "the defence made and the evidence adduced for the defence might have been of an entirely different character. The Appellate Court should not use the power vested in it by s 423 to give such an altered finding. (1917) 2 M,

V. ORDERS IN APPEALS AGAINST CONVICTION.

(1) ALTERATION OF FINDING.

81. **The principle explained.**—"When an act or a series of acts is of such a nature that it is doubtful which of the several offences the facts which can be proved will constitute, an appeal from a conviction for any one of such offences must lay the whole case open to the interference of the Appellate Court notwithstanding any order of acquittal by the first Court in regard to any of the other offences. The inference of the Appellate Court in such a case is directed primarily, not against the acquittal, but against the conviction which is called in question by the accused, though if the interference is to be rational and complete, the Appellate Court must deal with the whole case."

N. 267. 2 Weir 485. 8 M. T. 313. 21 M. J. 805. 23 C. 975. 30 C. 288; But see 21 M. J. 805.

[Note.—The only restriction on the power to alter the finding is that the Appellate Court cannot enhance the sentence—2 Weir 485]

83. **Power to alter the conviction—principle**—If the acquittal on the one charge and the conviction on the other are based *identically* on the same facts, the Sessions Judge in appeal has the power to change the section and convict the accused of the right offence. Where the Deputy Magistrate acquitted the accused of the charge under S. 497 I. P. C. but found him guilty under S. 504, the Sessions Judge had power in

conviction from one under S. 353 I. P. C. to one under S. 183 I. P. C. [(12) M. N. 1119]

84. **The true test—has the accused already met the altered charge at the trial?**—It would obviously be improper and unfair to an accused that, on his appeal, he should be convicted of a more serious offence to which he had never pleaded on the trial, and there are many instances in which the adoption of such a course would work injustice upon the accused. This would be particularly so, if the offence which the Appellate Court might consider to be established, was not cognate to the offence of which he had been tried and convicted, and it would also be so, if there are circumstances of aggravation of an offence to which the accused had not pleaded. But there are exceptions to this rule. Some of these are referred to in Ss 236, 237 and 238. Another exception is the case in which the prosecution has established certain acts constituting an offence and the Court has misapplied the law to those acts by charging and convicting him for an offence other than that for which he should have been properly charged on proof of commission of those acts. If notwithstanding this error, the accused has by his defence endeavoured to meet the accusation of the commission of those acts, understanding the charge to mean an offence arising out of and made up of those acts, his conviction for the offence which those acts properly constitute may be maintained, if the accused has not been prejudiced by the alteration. *Where the finding of substance, Court of the* would not necessitate a retrial expressly on a charge of that offence. *Where the*

the substance of the substantive offence without ordering a retrial—26 C. 565. See 13 C. P. 125; 3 N. 67. 20 A. 107. 21 M. J. 805 (87) 1N 130. 3 C. N. 296

85. **Principles governing the exercise of the power to alter the finding.**—If the accused has been prejudiced by the omission to

prove the altered charge and if the defence might have been of a different character had the altered charge been framed in the first Court, the Appellate Court should not exercise the power vested in it by S. 423 Cr. P. C. to give such an altered finding—30 C. 288; (16) M. N. 267; 20 Cr. 760 (M) (90) A. N. 86; 13 C. P. 125

[Note.—Except in cases falling under Ss 237 and 238 Cr. P. C., the Appellate Court cannot convict a person of an offence with which he was not charged in the first Court—33 M. 264. 18 Cr. 560 (M); 35 M. 213. 20 M. J. 84; 34 C. 325; 23 W. R. 59; 3 C. N. 367; 41 C. 743. 21 Cr. 496 (Pat); 4 P. R. 1917.

86. **Conviction of offence of which the accused was acquitted by the Lower Court.**—Under S. 423 of the Code, the Appellate Court may, after the the appel- may have

in the sentence of the lower Court and not enhancing it—23 C. 875. 2 Weir 485; 27 C. 172; 12 P. R. 1904; 2 Pat. W. 188. 3 Pat. J. 563; See 41 C. 350; Con 26 M. 478.

87. **Finding may be altered to legalise the sentence.**—The accused an old offender, was sentenced to 18 months' rigorous imprisonment and to lashes for housebreaking by night with intent to commit theft. Held, that the previous conviction being only for theft, the double sentence was quite illegal as a sentence under S. 457 I. P. C.; but on the facts it was open to the Sessions Judge as an Appellate Court to alter the conviction and to convict the accused of both housebreaking by night and theft in a house, and the double sentence would then be legal as a sentence for theft—3 L. B. 112.

Powers summed up.

The appellate Court can alter a finding.

88. (1) If the accused was convicted of a composite offence by the lower Court, into any element of such offence—Rat 293; 761.
89. (2) If the acquittal by the lower Court was not a complete acquittal, but conviction on some counts and acquittal on others—12 P. R. 1904; 37 M. 119.
90. (3) even if the new offence is one which requires previous sanction, but no such sanction exists and although such sanction would be a condition precedent to the lower Court's taking action in respect of the offence—25 A. 534; 23 C. 975 (877)
91. (4) if the new offence is one which is cognate to the offence of which the accused was convicted within the meaning of Ss 235, 236 and 237 Cr. P. C.—See Note No. 85 above

- 91A. (5) The finding which an Appellate Court may

it cannot alter a finding.

2. (1) If the new offence is one for which the accused had not been charged or tried—e.g.—A person convicted under S. 409 I P C. cannot be acquitted of that offence and convicted of the offence of bribery—8 A 120. See 39 P R 1905 13 C N ex vi Cr. R 16 of 12-4-68.
3. (2) If the new offence is one which the original Court was incompetent to try—7 A. 414 (F. B.)
4. (3) If the new offence is one of which the accused could not have been convicted by the lower Court.—3 L B 232. 27 C 660. Con 25 A 534
5. (4) If the new offence is abatement of the offence with which the accused was charged and convicted 33 M 264 13 Cr. 203 (M). 43 Cr 223 (M) 11 B 11 240. Con 23 M J 722
6. (5) If the new offence is a more serious offence than the one of which he was convicted—26 C 563. 3 C N 367. 6 C L 427. 4 B. 11. (CC) 16. See 7 W R 3
7. If the new offence is not cognate to the one which was the basis of the conviction by the lower Court and the accused had no opportunity of meeting it

[*Examples.*—Alteration of conviction under Ss. 211 and 109 I P C to 193 I P C [3 C N 367] of conviction S 370 to one under S. 366 I P C. [8 B R 120] of conviction under Ss. 44 to one under S 379 or 411 [Rat 368] of conviction under Ss 477 and 357 to one under S 379 [7 M. T. 202]. of offence under S. 490 to one under S. 447 I P C. [3 L R 283] of offence under S 379 to 143 I P C. [27 O 660] of offence under S. 323 to S 445 [Rat 353] and of offence under S. 143 to S. 323 [30 C 285. See 12 Cr 52 (G)].

98. (7) on the basis of a different common object from the one to which the accused were called upon to plead in the lower Court.—33 C. 293. 27 C. 900. 11 C N. c111

99. (8) When the effect would be an enhancement of the sentence.—So where the appellant was convicted of simple hurt and sentenced to a fine and on appeal, and the Appellate Court altered the conviction to one of causing grievous hurt under S 325 I P C. and in order to make the sentence to be awarded a fine imprisonment no power re let the r referred

00. Under S. 423 cl. (h) Cr. P. C. an Appellate Court has power to alter the finding of the lower Court maintaining the sentence.—21 M. J. 605. 20 Cr. 760 (M.)

[*Note.*—But the power to alter should not be exercised, if the accused would be prejudiced by the omission to prove the altered charge, and if the defence might have been of a different character had the altered charge been framed in the first Court. [20 Cr. 750 (M)]

01. When person is convicted of an offence under S. 457 I. P. C. the conviction cannot be altered to one under S. 414 I. P. C.—Rat 281.

102. Where an accused person was convicted of theft held that a Court of Appeal on revision could not alter the finding and convict the accused of the more serious offence of robbery.—3 L B 232
103. It is doubtful if the High Court has power when it holds what the conviction by the Sessions Court is wrong to alter the finding to some other offence for which accused had not been charged or tried. 8 A 20. See 20 A 107. But See—(03) U. B 3-q 9
104. If the acquittal on the one charge and the conviction on the other are based on identically the same facts, the Sessions Judge in appeal has the power to change the section and convict the accused of the right offence—(11) U B 4 q 100. See 8 A J. 1239
105. From S. 353 to 183 P. C.—An Appellate Court has power under S 423 Cr P C to alter the conviction from one under S 353 P C to one under S 183 P C.—(12) M N, 1110
106. Where the lower Court convicted an accused person under S 409 P C the appellate Court held that on the facts proved, the conviction under S. 409 was not sustainable, and convicted the accused of an offence under S 424 I P C.—(03) U. B 3-q 9

(2) RETRIAL.

Grounds on which a retrial may be ordered.

107. (t) Omission to frame a proper charge.—There is nothing in the language of S 423 (b) to limit the power of an Appellate court to direct a retrial in cases in which trying Magistrate had no jurisdiction. A Sessions Judge has the power to direct a retrial to be had upon a charge framed in whatever manner he thought fit, on the ground that the accused had been misled in their defence by absence of a charge or by a defect in the charges.—(02) 17 C. N. 301. 27 C. 172. 17 C. P. 97. See 28 C. 63.
108. (1) Misjoinder of accused.—An Appellate Court when setting aside the conviction and sentence in a warrant case on the ground that the accused had been illegally tried along with another person, is competent to direct that the accused be retried on a fresh charge framed on the evidence already recorded for the prosecution.—9 N. 42. 4 N 71. 29 C. 104
109. (3) Serious irregularities.—e.g. Conviction on evidence not given in the presence of the accused.—[2 Weir 481] Conviction by a Second class Magistrate of an offence triable by a Magistrate of the first class.—[2 Weir 452. 8 A. 14. 1 P R. 1879]. Where material evidence has been arbitrarily excluded.—[(82) A. N. 112] A retrial should be held if it were found that the accused had not been properly convicted.—[1 C N. 332. 3 C N. 99. Cr. R. 9 of 97]. The Sessions Judge is competent, under S. 423 (b) of the Cr. P. C. to order the retrial of an appellant.—[(53) A. N. 99. See 13 B. 506].
110. (4) Where the case was tried by a Magistrate who could not have punished adequately.—The appellate Court may order retrial

if it is of opinion that although the Magistrate was competent to try the case, he was not competent to punish adequately.—[16 P. R. 1895]

111. (5) Where the accused should have tried for a graver offence.—11 O. N. C. [But where in the interests of the public justice a retrial is unnecessary, it should not be ordered.—[2 M. T. 495]
112. (6) That the trial should have been by a jury.—If the Court is of opinion that on the evidence appearing from the record, there is a case which ought to be investigated by a jury, it may direct the appellant to be retried according to law.—30 C. 822
113. (7) Verdict had on account of misdirection.—When a case had been tried before a jury, and the conviction has been set aside on the ground of misdirection, the accused is entitled to have his case retried before a jury.—4 C. N. 576 *Makin v. Attorney General for New South Wales* L. R. (1894) A. C. 57 26 M. 1 [Per Benson J.] 19 B. 749
114. (7A) When the jury had been improperly discharged in the midst of the trial.—2 Wen 197
115. (8) When the judgment of the lower appellate Court is defective.—Where in the judgment of the Appellate Court no facts are stated, nor reasons are given of the conclusions arrived at by the Appellate Court in upholding the conviction, the deficiency in the judgment cannot be made up by having recourse to the judgment of the Magistrate who convicted the accused. The appeal must be tried again.—7 C. N. 30.
116. (9) Where the judgment of the lower appellate Court is defective.—Where in the judgment of the Appellate Court no facts are stated, nor reasons are given of the conclusions arrived at by the Appellate Court in upholding the conviction, the deficiency in the judgment cannot be made up by having recourse to the judgment of the Magistrate who convicted the accused. The appeal must be tried again.—7 C. N. 30.

a conviction. Mere disagreement between Judge and assessor is no sufficient reason for directing a retrial.—[Per Maclean C. J. and Geidt J. in 8 C. J. 59 *Woodroffe J. Contra.*]

- 116A. (10) Where nothing in *See* 423 cl. (6) Cr. P. C. to limit the power of an Appellate Court to order a retrial.—27 C. 172 7 C. N. 301. *See* Rat 938
117. (11) Where Magistrate has improperly refused to take the defence of the accused, the Session Judge ought to set aside the conviction and direct the Magistrate to recommence the proceeding from the state when his evidence was refused.—
- 28 P. R. 1884.
118. (12) Where there has been irregularity occasioning a failure of justice, the Session Judge is competent to order a new trial.—28 C. 63.
119. (13) Where the Magistrate has tried and convicted the accused on a minor charge but facts on record disclose an offence of a more serious nature beyond

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120. (14) Where a Magistrate having jurisdiction to try the charge against the accused committed an error in procedure in convicting the accused upon evidence which was not given in their presence held—that the Appellate Court was competent to order a retrial.—[2 Weir 491].

121. (15) When a Sessions Judge in an appeal from a conviction for theft is of opinion that the accused should have been tried for dacoity held—he should not report the case to the High Court but order the retrial of the case according to law.

(33) A. N. 112.

121A. (16) Where a Sessions Judge in an appeal from a conviction for theft is of opinion that the accused should have been tried for dacoity held—he should not report the case to the High Court but order the retrial of the case according to law.

waite public time in having them re-examined.—16 A. J. 325, 2 Weir 481

When a retrial may not be ordered.

121B. (1) When the trial in the case was by a Magistrate having no jurisdiction, no trial had in fact taken place, so that the Sessions Judge could not possibly have ordered a retrial.—22 C. 412.

122. (2) If a Sessions Judge, hearing an appeal, thinks the evidence of some more witnesses, who were not examined in the lower Court is necessary, he should proceed under cl. (1) of S. 424 Cr. P. C., and cannot merely on that ground order a retrial.—31 C. 710

123. (3) If the Magistrate's decision was not satisfactory as he thought it should have been, it

124. (4) The fact that the law gives operation to the finding of the Judge and not to that of the assessors does not detract from the value of the opinion expressed by them. Where therefore the Judge and assessors have disagreed as to the facts, which were peculiar and as to which different conclusions have been arrived at by different minds there ought to be no retrial ordered.—[Per Woodroffe J. in 8 C. J. 59]

125. (5) The English law.—with reference to the granting of new trials when evidence has been improperly admitted, does not apply to India.—

10 B. 749

126. (6) Where a Sessions Judge in an appeal from a conviction for theft is of opinion that the accused should have been tried for dacoity held—he should not report the case to the High Court but order the retrial of the case according to law.

facts, on which a conviction for any offence could

- be sustained had been put in issue before the trying Magistrate. *Hill*—that before quashing the sentence and directing a new trial the Appellate Court should have come to a certain conclusion as to the offence which the accused were shown by the evidence to have committed and that it should have considered whether if the evidence showed that the accused should properly have been convicted of another offence than the charged, they would be prejudiced by amending the conviction.—2 Weir 180
127. When a retrial should or should not be ordered.—A retrial may not necessarily be ordered because the trial was held by a Court without any jurisdiction or because certain material evidence was left out when the prosecution of its own negligence failed to produce such evidence after having ample opportunities to do so [30 M. 157 See 7 W. R. 3] But where the original trial was void for want of jurisdiction or misjoinder and the enquiry was held very superficially and without examining material witnesses, a retrial was ordered [3 Bur T. 9] Where the error though undoubted, was not material, as for instance, when a person who should have been convicted of cheating by personation had been convicted of giving false information, the High Court declined to interfere [3 B. H. 42; 7 W. R. 3]
128. Power to be exercised with discretion.—The power of ordering a retrial under S. 423 Cr. P. C. should be exercised with discretion. A retrial may properly be ordered, when the original trial is void for want of jurisdiction or for misjoinder or when the enquiry has been obviously superficial and material witnesses have not been examined. A retrial should not be ordered with the object of enabling the prosecution to fill up deficiencies in the evidence of the prosecution.—8 L. C. 601 (31)
129. Retrial should not be ordered in the absence of irregularity.—Where the evidence recorded by the Magistrate is as full as the law requires, and there is no irregularity in procedure necessitating a retrial, it is not competent to a Sessions Judge to order a retrial. He must consider the case on evidence before him and proceed to judgment.—Rat 530
130. Retrial should not be ordered merely for the purpose of filling up deficiencies in the evidence.—See Notes under S. 423 infra
131. Proper order in a case in which evidence has been illegally refused or admitted.—Where a Magistrate had refused to take the evidence offered by the accused in his defence, the proper order for the Sessions Judge is to set aside the conviction and sentence, and direct the Magistrate to recommence from the stage when the evidence was refused [28 P. R. 1884] If the verdict is vitiated owing to reception of inadmissible evidence, the High Court may consider whether after excluding the evidence wrongly admitted the rest of the evidence is sufficient to sustain the verdict. If such evidence does not appear to be conclusive, the High Court may reverse the conviction and order a new trial [27 B. 626 (636) 10 H. H. 497; But See 14 C. N. 493; 4 C. N. 578]
132. High Court may direct retrial by a fresh jury.—2 Weir 193
133. Appellate Court may direct retrial by a particular subordinate Court.—Rat 367
134. Effect of an order for retrial. When a conviction is set aside and a retrial ordered the *habeas corpus* is assigned and the accused must be tried again on all the charges originally framed. Having regard to the provisions of S. 123, the provisions of S. 403 in this respect cannot apply. 20 C. 163 S. 22 C. 377
- Form of order.*
135. (1) the appellate Court in remanding a case for retrial should not restrict the evidence to be taken to that mentioned in its order. 3 C. J. 301
136. (2) A Sessions Judge has power to direct a retrial upon a charge framed in whatever manner he thinks fit on the ground that the accused had been misled in his defence by the absence of or defect in a charge.—7 C. N. 301
137. Can the appellate Court on setting aside the conviction order a retrial by itself? Ho can.—30 M. 288 2 Weir 481
Ho cannot.—Rat 682 See also 21 C. 935 [Per Maclean C. J.]
- (3) COMMITTAL FOR TRIAL.
138. Order for committal by Sessions Court.—A Sessions Judge, as a Court of appeal, having reversed the sentence and finding of the lower Court, can order the appellant to be committed for trial to the Court of Sessions.—15 A. 205 23 C. 975; 27 C. 172.
- Cantley* 8 A. 14 (52) A. N. 47; (81) A. N. 62; (85) A. N. 288
- Note.—The power to direct committal is not confined only to cases exclusively triable by the Court of Sessions. Even in cases not exclusively triable, the appellate Court has such power.—23 C. 330; 27 C. 172 16 P. R. 1895. 16 B. 580.
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competent to try and referred the matter to the District Magistrate, held, that the procedure adopted by the Head Assistant Magistrate was not legal and his proper course was to follow the procedure laid down in S. 423 (t) (b). If there was no Court of competent jurisdiction subordinate to the Head Assistant Magistrate he should have directed the committal of the accused to the Sessions.—(02) 2 Weir 484
140. Preliminary investigation unnecessary on receiving order for committal.—Where a Deputy Magistrate had convicted some persons of the offence of house-breaking by night and of voluntarily causing hurt, but the Sessions Judge, on appeal, being of opinion that the offence committed was that of *larceny*, directed a commitment for trial of Sessions, held that

an investigation preliminary to commitment was not necessary.—2 Weir 479

141. Where an order for committal should and should not be made.—Where the lower Court in trying the case has ignored circumstances of aggravation (e.g., when it has convicted the accused of an offence under S 193, when it should have committed him to the sessions under S 194 I P C) the only questions which need be considered by the Appellate Court, is whether its interference is called for, in the interests of justice or whether the punishment is hopelessly inadequate. But if no failure of justice has occurred, the conviction should not be set aside and a committal ordered. The proceedings of the Magistrate are not void but merely voidable.—[S 530 Cr P C]—24 M 675

- 141A Scope of the order—S 423 (1) cl (b) does not authorise a Sessions Court to commit a case to itself but only empowers it as a Court of appeal to direct a competent Magistrate to make a commitment to itself.—(OT) A N 178 See 22 C 50

(4) REDUCTION OF SENTENCE.

141. On the ground that it is excessive—High Court can mitigate a sentence by a Magistrate, confirmed or altered on appeal by the Sessions Judge, on the ground that it is excessive
6 W R 7.

143. When the Appellate should reduce the sentence.

(1) When the Appellate Court sets aside the conviction for one of the offences, it should reduce the sentence otherwise the upholding of the sentence passed by the Lower Court would amount to enhancement, which is illegal.—8 M T 117 3 M T 312 22 B 760 See 2 Weir 457 A.

(2) Where a Magistrate convicts the accused persons under Ss 147 and 379 I P C but passes only a single sentence for both the offences, an Appellate Court in acquitting the accused under S 379, should make some reduction in the sentence unless the Court thought that the sentence ought not to be reduced, in which case it should refer the matter to the High Court for enhancement of the sentence.—30 M 48 24 O 316 3 N 67 (69)

144. When the injury caused is trifling.—High Court will reduce sentence if there is no clear evidence of the amount of damage done
2 B R 335

145. Appellate Court after rejecting an appeal cannot diminish the sentence.—Rat 304

146. Appellate Court cannot divide the sentence between the two offences.—Where a Magistrate in convicting a person of two offences, passed a single sentence of imprisonment and fine, held that separate sentences should have been passed, and that the Appellate Court, in reversing the conviction for one offence cannot allot the imprisonment to one offence and the fine to the other.—Rat 409.

(5) ALTERATION OF THE NATURE OF THE SENTENCE.

147. Principles to be observed.—The exercise of the Court's discretion in this respect, must be regulated by a consideration of the nature of the evidence in support of the charge upon which the accused was convicted, and of the question whether that evidence reasonably supports the particular finding to which it is proposed to alter the conviction, and whether the accused, would, in any way be prejudiced or injured by the alteration.
(100) A N. 56

148. Meaning of the word "reverse".—The word "reverse" means to make void to set aside or annul and not merely to change or turn to the contrary
5 W. R. 80

149. When alteration amount to enhancement.—An alteration of a sentence by the Appellate Court from 3 months R. I. to 1 month's R. I. and a fine of Rs 100 in default 1 month's further R. I. may amount to an enhancement regard being had to the fact a fine can, under S 70 I. P. C., be levied even after the imprisonment awarded in default has been under gone, such imprisonment not being a discharge of the fine
7 P R. 1915 [23 A. 497 R.]

150. When alteration does not amount to enhancement.

(a) Alteration of a part of the sentence when a portion is altered to a punishment of lesser degree of severity does not amount to enhancement.
27 C 173.

(b) Alteration of imprisonment for one month to one for 5 days and a fine of Rs. 40 in default imprisonment for 2 weeks, is legal and does not amount to enhancement.—30 M. 103 (F.B.); 17 A 67 23 A 497.

151. For further notes.—See VII Enhancement of sentence

(6) ACQUITTAL OR DISCHARGE:

152. Where the Court does not expressly order a retrial.—The fact that the Appellate Court did not expressly order a retrial does not necessarily mean that the Court held that such retrial should not be held. (85) A. N. 640. 29 C 412; 3 M 48

153. Setting aside a conviction because case is of a civil nature.—It is not good reason for an Appellate court to set aside a conviction for criminal trespass without going into the case, or discussing the evidence or coming to any conclusion thereon, because it considers that it is a matter for civil courts, where the matter has been tried by the first court and the Magistrate had come to the conclusion that the accused was guilty of criminal trespass.—27 C J. 226.

VI. ORDER IN RESPECT OF A PERSON WHO HAS NOT APPEALED.

(1) Power of the High Court.

154. **Power of the High Court.**—The High Court has power under S 143 to deal with the case of accused persons not appealing against their conviction, while considering and trying the appeal preferred by the other accused cl (5) of the section does not in any way affect the jurisdiction vested in the High Court to deal with their case. [5 C N 330 14 P R 1109 4 Bur T 57 19 W R 57 9 P H 1909]

[**Note.**—Where in the memorandum of appeal the name of one of the three persons jointly tried and convicted was by oversight omitted, the High Court on the ground that the reasons for the acquittal of the two appellants applied to him also, acquitted him—(33) A N 51]

155. **Enhancement of sentence is illegal.**—Where the accused has not appealed, the sentence against him cannot be enhanced, simply because his co-prisoners had appealed and their sentences had been enhanced 5 M H (ap) 7

(2) No Court other than High Court can deal with the case of an accused who has not appealed.

156. An appellate Court, other than a High Court,

has no authority to alter the sentence of a prisoner who has not appealed and whose sentence is not appealable—8 M H (ap) VII Rat 358

[**Note.**—The District Magistrate cannot deal with his case in any way, excepting by reporting it to the High Court—Rat 358]

157. **Order against a person who has been acquitted.**—Where two persons are tried by a Magistrate one of whom was acquitted and the other convicted, the Sessions Judge in dealing with the appeal of the convicted person has no jurisdiction to pass any order affecting the acquittal of the other man—5 A J 1129

(3) Procedure when subordinate appellate Courts think that interference is called for.

158. Appellate Court cannot on the appeal of one prisoner alter the sentence of another prisoner in the same case, who has not appealed

The appellate Court should submit the record to the High Court for order 2 Weir 570 Rat 358.

VII. ENHANCEMENT OF SENTENCE.

(1) Rules of Practice.

159. **Practice of the Bombay High Court.**—It has been the invariable practice of the Bombay High Court, in cases that came up before it for enhancement of sentence to accept the conviction as *conclusive* and to consider the question of enhancement on that basis 32 B 182
160. **Order having the effect of enhancement of sentence is illegal.**—

- (1) An appellate Court when it reverses the conviction

2 Weir 187(a) 10 M. T 115 3 M T 312

Note.—Where only one offence has been committed and a Magistrate erroneously splits it into two and passes either two sentences or a combined sentence, the joining up of the erroneous split—whether in conviction or sentence cannot be regarded as beyond the powers of the Appellate Court under S. 423 3 N. 67 See S C P. 23

161. **High Court cannot enhance a legal sentence on appeal** [1 W. R 119] But it can do so as a Court of Revision under S 439 [6 A 622 (F. B.) 11 C. 530]

- (2) An appellate Court has no power to enhance a sentence by altering a sentence of fine only into one of imprisonment 18 B 751 18 A 301 (33) 00 L B 423

- (3) Where Sessions Judge and assessors acquit the accused of murder but find guilty on a minor charge, the appellate Court has no power to interfere to enhance the punishment awarded.

11 J (N. S.) 54

162. **Sessions Judge cannot enhance sentence.**—Where there are separate convictions and sentences under Ss 117 and 323 I. P. C., the Sessions Judge, while settling aside the sentence under S 323 I. P. C cannot enhance the sentence under S 117 I. P. C to the total of the sentences

above

(2) Change of Law.

163. —

not be made without giving notice to the appellant 21 W. R. 72. See 14 P. R. 1887 or in the case of persons who have not appealed—8 M. H. (ap) 7.

164. **Present law.**—If the High Court wants to enhance the sentence it cannot do so under S 423, but it can proceed under S 439 Cr. P. C and pass the order in its revisional jurisdiction 11 C 530.

165. [**Note.**—“Under S 280 (of the Code of 1872), the Appellate Court had power” if it saw reason to do so, to enhance any punishment that has been awarded. This power was taken away from Courts of Appeal by S 423 of the Code of 1882, which was re-enacted in the Code of 1898. The High Court, however, when hearing an appeal against a conviction, may, under S 423 c) (b)

after the finding and then as a Court of revision may under S 439 enhance the sentence so as to make it appropriate to the altered finding"—37 M 119.

(3) What amounts to enhancement.

166. Order for joint fine.—Two persons who had been sentenced to a fine of Rs 75 each were jointly fined Rs 150 on appeal by the appellate Court—held—this amounted to an enhancement in each case—32 P. L 1900

167. Acquittal without reduction of sentence.—Acquittal on one of the charges, at the same time maintaining the original sentence in its entirety, amounts to enhancement—33 M 45, 22 B 760

168. Enhancement by substitution of imprisonment by fine.—Alteration of 15 days R. I. and a fine of Rs 10 or in default one week's R. I. to a fine of Rs. 50 or in default 1 month's R. I. [87 A N 100] Where in lieu of imprisonment the Appellate Court imposed an additional fine held that it amounted to an enhancement of the sentence [2 Weir 457]

169. Whipping.—"We have no data from which the comparative severity of the two sentences of whipping and rigorous imprisonment can be determined and it is impossible to say how many lashes would be equivalent to a sentence of rigorous imprisonment for a specified period [6 B L (appx) 95] The addition of a sentence of whipping by the Appellate Court although the sentence of imprisonment is reduced amounts to an enhancement of the sentence [2 Weir 487] Where the accused was sentenced by a 2nd class Magistrate to a fine of Rs. 50 or in default 45 days' rigorous imprisonment but the District Magistrate, on appeal, altered the sentence to 50 lashes in lieu of the term of imprisonment which the accused had yet to undergo, held that the whipping should have been substituted for the sentence passed by the 2nd class Magistrate and not for the remaining term of imprisonment [Rat 131]

170. Alteration of a sentence of fine to one of imprisonment. 18 B 751, 16 A 301

171. Order for payment of Costs.—Where a Magistrate convicting the accused persons directed, out of the fines imposed upon them, the payment of Rs 2 to the complainant as process fees, and on appeal the Deputy Magistrate directed the accused to pay a further sum in addition to the fine already imposed on them as being expenses incurred by the complainant for process fees, etc

under S 31 of the Court Fees Act, held that an order to pay a fee under S 31 being an integral part of the sentence, such fee should be treated as a fine imposed by the Court and the Deputy Magistrate had therefore enhanced the sentence which was illegal—5 M. H (appx) 25, 22 M 153, Con. 26 M. 421; 29 M. 188

172. Retention of entire sentence, after reversal of conviction on one of the charges.—Where the accused was convicted under Ss 147 and 379 I. P. C. and sentenced to 4 months R. I.

1 M. L. 405, 3 N. 61

(4) What does not amount to enhancement.

173. Addition of order under S. 106 no enhancement.—Having regard to the provisions of S 106 (3) of the Criminal Procedure Code, the order of the Sessions Judge directing the Appellant to furnish security to keep the peace under S 106 did not amount to an enhancement of the sentence—1 U. P. 14, 20 Cr 760 (N). 21 P R 1905

174. Addition of fine after reduction of sentence whether an enhancement.—Where the lower Court convicts the accused and sentences him to imprisonment for a certain period and on appeal, the period of imprisonment is reduced but a fine is imposed in addition, and in default, a further period of imprisonment, the fact that a fine is imposed by the Appellate Court would not, in law, be an enhancement of the sentence, if the aggregate period of imprisonment which the accused may have to undergo is, to any extent, less than the period of the original sentence in a case where such an alteration of the sentence has the effect of rendering it, in the circumstances of the case, excessive or inappropriate, the interference in revision of a superior Court may be called for—30 M 103 (F.B.). See 1 M J 194 (N) 23 B 439, 27 C 175 Cr R 31 of '98, Con 17 A 67, 23 A 497, 2 Weir 456, 2 Weir 457.

175. [Note.—An alteration of sentence by the Appellate Court from simple imprisonment for one month to a sentence of simple imprisonment for three weeks and a fine of Rs 50, in default a further imprisonment of one week amounts to an enhancement of the sentence—3 N 90

VIII. CONSEQUENTIAL AND INCIDENTAL ORDERS.

176. Scope of S. 423 (1) (d).—The phrase "make any consequential or incidental order that may be just or proper" in S 423 (1) (d) of the Code, does not embrace any and every auxiliary order which is capable of being described as consequential or incidental—39 C 157 (F.B.)

177. Meaning of "consequential order."—A consequential order which follows as a matter

of course, being the necessary complement to the main order passed, without which the latter would be incomplete or ineffective [30 C 157 (F.B.), 8 Ban 1 250]

178. Principles applying to the passing of consequential and incidental orders.—Under S 139 read with S 423 of the Crim. Pro. Code, the Court has power to pass any order that

may be just and proper, and the offence having been compounded, the conviction should be set aside.—13 O C 161

79. **Order for compensation.**—An Appellate Court can pass an order against the complainant awarding compensation to the accused under S 250 Cr. P. C. Such an order may very reasonably be regarded as a consequential order within the meaning of S. 423 (1) (d) —11 C N 212 Con—24 A 625; 39 C 517 (F.B.)

[**Note.**—An Appellate Court cannot order compensation such as is contemplated by S. 250 Cr P C 39 C 157 (F.B.)]

2) Incidental orders which may or may not be passed.

80. **Power to order restoration of property**—(S. 522 Cr. P. C.)—S 123 of the Code of 1895 provides for the making by an Appellate Court of any consequential or incidental order that may be just or proper, therefore a Magistrate of the first class empowered to hear appeal from subordinate Magistrates, has jurisdiction under S 423 (d) to pass an order under S 522 Cr P C [21 C 524 14 Cr 172 (C) See 23 B 194 23 W R 54 But see 25 C 630] Under the Code of 1895, the High Court has the power of making any consequential or incidental order that may be just and proper as a Court of revision. An accused person may be restored upon his acquittal, to the possession of the property from which he has been deprived in favour of the complainant.—[27 A 415 (O) A N 216 19 O N 490 16 O N 831] The High Court has power to interfere in revision with an order passed by a Magistrate under S 522 Cr P C [36 C 117 O C 25]

81. **Order for removal of obstruction.**—Although an appellate Court has under S 123 the power of making any amendment or any consequential or incidental order that may be just and proper, the Appellate Court could not set aside the order for removal of obstruction made by a lower Court upon conviction under S 341 I P C—5 C N 412

[**Note.**—In 31 C 91 (F.B.) it was held (*Bett and Anders v JJ desai*) that such an order cannot be made by a Magistrate. The order may therefore presumably be set aside as illegal.]

82. [**Note per Contra.** An Appellate Court is not competent to make an order under S 522 Cr P C directing the restoration of the possession of immovable property to the person entitled thereto. When the trial Court had, for some reason or other refrained from taking action under the aforesaid section as such, an order cannot be

recorded as a consequential or incidental order within the purview of S 423 (1) (d) Cr. P. C. [11 P B 1919, 39 C 1070]

183. **Order under S. 31 of the Court Fees Act**—for payment of costs by the accused to the complainant can be made in the Appellate Court [29 M 188] But when made by the lower Court cannot be set aside [31 M. 517]
184. **Sending back judgment to be signed by the Magistrate**—is an incidental order within the meaning of S 421 (1) (d) Cr P C—11 A 217
185. **Permission to compromise.**—The Code of Criminal Procedure S 459 sets forth the powers of a Court in revision. It only grants certain fixed powers and does not mention S 345 cl (5) If the Appellate Court has power under cl (d) of S 423, to grant sanction in compromise, then cl (5) of Sec 345 was unnecessary.—*Per Tubbill J* 11 A J 13 2 A 379 29 M J 521 37 A 127. Con 32 A 153 13 O C 161 30 O 311
186. **Order under S. 471 (1)** is clearly an order which the acquitting Court, whether original or appellate, not only has powers to make but is bound to make (if the circumstances of the case require it) Such an order falls within cl (d) of S 423—S Bur T 285
187. **Action under S. 562 Cr. P. C. *Infra.***—The new provisions inserted in S 423 (i) empower the High Court as a Court of Appeal to exercise the powers conferred by S 562 Cr P C—24 A 106 29 M 567 (568) 2 B R 817
188. **Requiring security to keep the peace under S. 106 *supra.***—An order for security under S 106 (3) Cr P C may be made in appeal whether the original Court had jurisdiction to pass such an order or not—33 B 31 30 M 182 37 M 153 (F.B.) 2 Pat J 21 (F.B.). See Note No 97 under S 106 *supra* at p 111
189. **Setting aside lower Court's order under S. 106 *supra.***—An order under S 106 may be set aside on appeal and the order of the Appellate Court setting aside such an order is an incidental order within the meaning of S 423 cl (j) Cr P C—30 C 101
190. **Order of confiscation under the Indian Forests Act.**—An order of confiscation under S 54 of the Indian Forests Act VII of 1878 is not incidental to a conviction under that Act. Hence an Appellate Court cannot make such an order of confiscation.—27 C 450 4 A 417
191. **Expunging remarks in lower Court's judgment.**—The High Court has no power to direct a Subordinate Court to expunge or otherwise deal with certain passages in its judgment
2 Weir 331

IX. INTERFERENCE WITH THE VERDICT OF THE JURY.

(1) General Rules of Practice.

Duty of High Court.

92. (1) It is manifestly the intention of the legislature that the power of interference conferred on the High Court, should not be lightly exercised especially when the verdict is one of acquittal and

unanimous. The High Court is not authorised by S 423 to alter or reverse the verdict of the jury, unless it is of opinion that the verdict is erroneous owing to a misdirection by the Judge—10 B 11 765 25 W R 25 10 B 11 767

193. (2) Before the verdict of a jury can be reversed on the ground of misdirection, the High Court

must be satisfied that the verdict was erroneous, or in other words there has been a failure of justice by reason of the misdirection. But these provisions do not require that the High Court is to go through the facts and find for itself whether the verdict is actually erroneous upon the facts.—25 C. 230; 2 C. N. 40

194. **Meaning of the word "verdict."**—The word "verdict" in S. 423 cl. (d) Gr. P. C. means the entire verdict on all the charges framed in course of a trial for various offences as provided by S. 236 Gr. P. C. The term is not limited to a verdict on a particular charge on which the accused is convicted and conviction on which is appealed against.—22 C. 377

195. **Meaning of misdirection.**—The expression "misdirection" as used in the Crim. Pra. Code includes not only an error in laying down the law by which the jury are to be guided, but also an error in summing up the evidence.—[3 S. 102 5 B. H. (C.C.) 85-85 94] Technically "misdirection" means an error of law made by a Judge in charging the jury (Wharton) or "an error of a Judge in charging the jury on a matter of law." (Mosley and Whiteley).

196. **Effect of the reversal of a jury's verdict.**—The law nowhere lays down that where the verdict of the jury is set aside, the Court must necessarily direct a new trial. It can deal with the case of which it has complete seisin.—25 C. 711

197. **Interference to lessen the punishment.**—The High Court cannot nullify the verdict of a jury by interfering to lessen the punishment when the conviction itself was not considered improper.—6 W. R. 6

198. **Construction of order interfering with the verdict.**—The petitioner was convicted in a trial by the Sessions Judge with a jury on a verdict of guilty. On appeal, the verdict of the jury was set aside on the ground of irregularity, and the following order was passed "It will be open to the Crown to proceed further with the case, if it be so advised. We direct that until a fresh trial, if any, the accused be enlarged on bail to the satisfaction of the District Magistrate. Held that the order of the High Court did not amount to an acquittal or discharge but an order for retrial subject to the right of the Crown if it thought fit to withdraw the proceedings.—46 C. 212

199. **Powers of interference lie within extremely narrow compass.**—See Note No. 208 below

(2) What amounts to misdirection.

200. (1) In a rape case the judge said in his charge "You will observe that this sexual intercourse was against the girl's will and without her consent"—held this was a misdirection.—25 C. 230

201. (2) Omission to explain the law to the jury amounts to misdirection.—25 C. 361.

202. (3) The omission to sum up properly to the jury, if the prisoner is thereby prejudiced.—5 B. H. 85 18 W. R. 65.

203. (4) Where material facts of the case which are proper subjects for consideration by the jury are not left to them.—7 W. R. 2

204. (5) The omission of the Judge to tell the jury that it was for them to consider whether upon the evidence adduced the offence was established. 25 C. 230-10 C. 970.

205. (6) Omission to read material portions of evidence to the jury, unless, it has led to misdirection of the jury, is not by itself sufficient to justify a reversal of the verdict of the jury.—5 B. R. 207

206. See—Note under S. 297-99 Gr. P. C. for a fuller treatment of the subject IX. Misdirection and Non direction (p. 559 *Synopsis*.)

(3) When High Court will or will not interfere.

207. **Evidence inadmissible.**—Where a part of the evidence which has been allowed to go to the jury is held inadmissible, it is open to the High Court in appeal to quash the verdict and order a new trial.—19 B. 749 10 B. H. 497.

208. **Limit of High Court's powers.**

(1) High Court has no power to go into the facts of the case in order to see whether or not the conviction is right.

20 W. R. 41 See 25 C. 230

(2) A Court of appeal will not interfere with the verdict of a jury if the omission of the Judge to read out material portions of the evidence to them has not prejudiced the accused.—5 B. R. 207 See 5 B. H. 85

(3) Where the Judge has omitted to draw the attention of the jury to the two classes of culpable homicide mentioned in S. 304 I. P. C., the High Court would take it that the jury found the accused guilty of the lighter description of the offence.—5 B. L. (sp) 86.

(4) Appeals to Privy Council.

209. **Appeal to Privy Council not confined to cases of misdirection.**—No countenance is to be given to the view that appeal to the Privy Council would be allowed merely on the ground that the jury had been misdirected. 15 A. 310 See also—18 W. R. 407-18 W. R. 407n 10 B. H. 75 7 B. H. 77

210. High Court has no power to grant leave for appeal to Privy Council in criminal cases against the verdict of jury
15 W. R. 407-18 W. R. 407n 7 B. H. 77 See 11 J. (N. S.) 61

X. HIGH COURT.

Power in revision.

211 (1) The High Court can in revision order a person

convicted by a Presidency Magistrate to be committed for trial under S. 423 C. P.—16 B. 541

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Notes.

1. For notes relating to this Section see the following—Ss 367-370 IV. Contents of judgments in appeals [p 655] IX. Effect of non-compliance with the provisions of S 367 and S 424 [p 659]
2. Whether the section applies to judgments under S. 123 *Supra*—It may be open to doubt whether the provisions of Ss 367 and 424 Cr P C which apply to judgments in trials and appeals govern orders under S. 123 Subs (3). But even if they do not, it is only reasonable to require the Sessions Judge in writing his order to show that he has considered the case of each individual accused. Even if the order need not contain all the details required by S 367 still each prisoner has a right to have his case considered on its own merit and the

order should show that this has not been lost sight of.—37 C 91

3. Omission to direct new trial may be supplied after delivery of judgment—Where a Sessions Judge on appeal annuls the conviction of the accused on the ground of want of jurisdiction of the Magistrate who tried the case, but omits to order a new trial before a competent court, the Judge is not precluded from passing such order subsequently. The order annulling the conviction is not an acquittal.—(81) 3 M 45.
4. Duty of the Appellate Court—The appellate court should decide both on the sufficiency of the prosecution evidence to warrant a conviction and on its reliability.—2 Weir 536

425. (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding sentence or order was recorded or passed by a Magistrate other than the District Magistrate the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary the record shall be amended in accordance therewith.

426. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Notes.

1. The Section applies only to a Court before which an appeal is pending—A Sessions Judge has no authority to suspend a sentence in the absence of an appeal [5 M 11 (apps) 1]. The only Courts which have power to suspend the execution of a sentence are the Courts to which an appeal lies and the High Court. A Sessions Judge has therefore no power to suspend the operation of the sentence passed on certain accused persons by a second class Magistrate under S 126 [2 Weir 536]
2. No power to suspend his own sentence—A Sessions Judge has no authority to suspend his own sentence [1 M. 11. (apps) 1]. A sentence of imprisonment be it for however short a period,

cannot be suspended to take effect at a future time. A Magistrate, at the request of the accused suspended the sentence in order to enable him to appeal, held that he had acted illegally in doing so [12 W. R 17]

3. Order for detention under S. 10 of the Reformatory Schools Act.—An order of detention passed by a District Magistrate under S 10 of the Reformatory Schools Act (VIII of 1897) is not a "sentence" within the meaning of S 426 Cr P. C. nor is it a punishment enumerated in S 53 I. P. C. A Sessions Judge therefore, has no power to suspend its operation under S 126 Cr P. C.—16 Cr. 134 (VI).

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Note.—1. See Note No 22 under S 417 *Sup a*

428. (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal

(3) Unless the Appellate Court otherwise directs the accused or his pleader shall be present when the additional evidence is taken, but such evidence shall not be taken in the presence of jurors or assessors

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV., as if it were an inquiry

Notes.

1. **Object of the section.**—The object of the section is the prevention of a guilty man's escape through some careless or ignorant proceedings of the Magistrate, or the vindication of a wrongfully accused person's innocence, where the Magistrate, through the same carelessness or ignorance, has omitted to record circumstances essential to the elucidation of truth—18 W R 31
2. **S. 428 applies equally to appeals against acquittal and conviction.**—S 428 Cr P C allows additional evidence to be admitted in appeals against acquittals as well as in appeals against convictions, although cases in which this power is exercised will naturally be rare—26 M J 160
3. **Scope of the section.**—S 428 does not empower the Appellate Court to call for a fresh finding from the subordinate Magistrate nor can the Appellate Court instead of disposing of the case itself, after considering the whole evidence, including the additional evidence, set on the fresh finding called for—(14) M N 778 9 M T 406
4. **S. 428 Cr. P. C. applies to appeals from sentence by Agent of Mewas Estates in West Khandesh.**—S 4 of Act XI of 1846, taken in conjunction with rule 44 which permits of a petition being made by a party against whom a sentence has been passed by the Agent of Mewas Estates in West Khandesh, permits the High Court to entertain the appeal of an accused, and if necessary to resort to the provisions of S 428 Cr P. C. for the purpose of obtaining any additional evidence that may be necessary—18 B R 789
5. **S. 428 does not apply to orders under S. 125 Cr. P. C.**—The proceeding under S 125 is neither appellate nor revisional [32 C 948] See 428 Cr P C dealing with remand has no application to an order under S 125 Cr P C—20 Cr 221 (Pat)
6. **S. 428 does not apply to proceedings under S. 195. (6).**—The power to take or call for further evidence given by S 428, is expressly limited to appeals under that chapter (i.e) under Chapter XXXI of the Code S 195 is not part of that chapter nor does the section itself give any power to call for further evidence—33 M 90—See 30 M 311
7. **Remand for removing technical defects in the prosecution evidence.**—"It would not, in my opinion be creditable to the administration of justice, or in accordance with modern ideas on the subject, that a conviction on a charge, if otherwise sustainable, should be upset owing to a misconception on the part of the prosecution as to the proper mode of proving a statutory requisite, not affecting the merits, a misconception which was shared by the trial Magistrate. When the Appellate Court has statutory power to prevent such a miscarriage by directing fresh evidence to be taken on the point, it should take action under S. 428 to supply a defect in formal proof. *Per Wallis C. J.* in 42 M. 885
8. **...**

885.] When no evidence or insufficient evidence has been adduced on a relevant point in the Court of the first instance by a party who had ample opportunity to adduce all his evidence,

takes all the evidence produced by the prosecution and that evidence fails to sustain the charge, the High Court, will not *except in very exceptional circumstances* direct that additional evidence should be taken. The powers conferred by S 282 Cr P C (S 424) are not, in my opinion, intended to be exercised in cases like the present, in which the prosecution having had ample opportunities to produce evidence have done so and that entire evidence falls short of sustaining the charge.—*Per Mahmood J* in 5 A 217. See 6 B II (C.C) 64.] Where the additional evidence to be taken does not bear on the guilt or innocence of the accused an order under this section is unnecessary.—[23 W R 34]

9. Direction to take additional evidence

accused and directing the Magistrate to take additional evidence, but at the same time, requiring him to record a fresh decision, on evidence already on the record of the case, and upon the additional evidence which he was directed to take is wholly illegal.—1 Pat J 99 3 C J 303. 3 Pat W 224

10. Appellate Court bound to record rea-

taking of such evidence was an enquiry.—S M T 424 8 W T 418

[Note.—The failure of a Deputy Magistrate to record his reasons for ordering fresh evidence under S 424 Crim Pro Code is an irregularity that is cured by S 637 [9 M T 406]

11.

Court under S 564 of the Civil P C. (1882) A Court of criminal appeal can take additional evidence at any time, only it must record reasons for so doing.—8 M T 418 See 8 M T 423.

12. When the appellate Court may act.—The appellate Court can call for further evidence under S 424 Cr P C only if it considers necessary, that is where the evidence on record is unsatisfactory or leaves room for some doubt and not where there is no evidence at all [10 M T 506; 9 R. L. (app) 31]

[Note.—The necessity for taking additional evidence must be apparent from something on record and cannot be derived from external information.—

3 L B 114.

13. Discovery of fresh evidence after filing appeal.—Fresh evidence will not be allowed to be adduced in appeal which was not tendered in the lower Court on the ground that it was discovered after the filing of the appeal.—9 M T. 321 3 M 111

14. When the new evidence was improperly refused by the lower Court.—Where the prosecution offered to adduce evidence but the

the Sessions Judge refused to adjourn a case in order to obtain the evidence of two absent witnesses for the defence on the ground that they were persons of very ordinary status, whose evidence would in no case carry much weight, the High Court directed the Sessions Judge to take the evidence of the two witnesses and to certify the same to the High Court [19 M. 375 See 31 C 710; 6 C J. 231]

15. What an appellate Court may not do.—(f) it cannot call for a finding from the lower Court [9 M T. 406] Cannot send a case to the police for investigation [(00) A. N. 130] The section does not authorise the examination of an accused as a witness [12 M 451 (153)]

16. presence of . . . to the mode enquiries and 175 *Supra* the High Court could dispense with the presence of the accused when additional evidence was recorded by itself.—Cr A 52 of 1906 (A)

17. Power to record evidence in the absence of the jury.—In only one instance is a Court of Sessions authorised to record evidence in the absence of the jury or the assessors, and that is when additional evidence is called for by the Appellate Court.—15 A. 130

18. Lower Court's duty on remand for additional evidence.—A remand of a case under S 422 Cr P C (=S. 423) can only be for the purpose of taking further evidence and certifying the result thereof to the Appellate Court, and not for the purpose of retrying the case upon such fresh evidence. After remand under this section, the Appellate court can only try the case, as an ordinary appeal and has no power to enhance the punishment.—3 B L. (app) 62

19. Date of rehearing must be fixed.—Whenever a Criminal appeal is sent back for further enquiry, the Appellate Court should invariably fix a date for the rehearing of the case taking care that the date so fixed is, in each instance, sufficiently remote to allow of a return being made to the order of remand.—*Punj. Cr p 290.*

20. Effect of dismissal of appeal after taking additional evidence.—An appellant whose appeal is dismissed by an Appellate Court, after it has taken additional evidence under S 423, has no right of appeal to the High Court.—27 C 372. See 8 W R 59; 15 W. R. 33. 6 B II. (C. C.) 64; Con. 2 W. R. 13.

[Note.—The law as contained in S 422 (= S 124) Cr. P. C. was amended by Act VIII of 1899]

21. Subordinate court taking further evidence may not under Ss. 195 and 470 Cr. P. C.—When an Appellate Court directs further evidence to be taken by a subordinate court under S 422 Cr. P. C. (= S 124) it is competent to the subordinate court before which such evidence is given, if any offence against public justice as described in S 169 (= S 195) is committed before such court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under S. 171 (= S. 476)—5 B. L. 628 (F. B.)

22. —

cannot restrict the evidence to be taken to that mentioned in its order, but it should order the case to be retried in view of the instructions contained in its order. The accused is entitled to adduce such additional evidence as he may desire [3 O J. 303]. S 437 does not authorise a Sessions Judge or District Magistrate to take evidence or to direct evidence to be taken supplementing the evidence given in the lower court. He is authorised to direct a further enquiry, but not to take evidence or direct evidence to be taken. Under S 424, an Appellate Court dealing with an appeal may direct additional evidence to be taken and itself record such evidence. The High Court under S 439 has powers, as an Appellate Court to direct evidence to be taken. No such powers are given to the Sessions Judge or the District Magistrate under S. 437. [6 C. J. 251]

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case,

Procedure where Judges of Court of Appeal are equally divided with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

Proposed amendment to the section.—To section 429 of the said Code the following proviso shall be added, namely:—

"Provided that, if either of the Judges composing the Court of appeal so require, the appeal shall be re-heard before them and another Judge, or if the Chief Justice or the Judicial Commissioner so direct, before three other Judges, and the judgment or order shall follow the opinion of the majority of the Judges so re-hearing the case."

Notes.

1. Differences between Judges on a reference under S. 307 Cr. P. C.—In difference between the Judges on a reference under S 307, the practice of the High Court in differences under S 429, should be followed—15 B 512 See 27 C 501 (503) 27 C 892 (910)
2. The whole case is to be considered by the third Judge.—Where the Judges composing the Court of Appeal are equally divided in opinion upon the question of the guilt of an accused person, though upon certain aspects of the case they may be agreed, the case of the accused is, under S 429, laid before a third Judge, whose duty it is to consider the whole case and all the points involved, and it will be according to the opinion of such Judge that judgment will follow—*Per Mookerjee J.* in 15 C N 18 See 21 Cr 517 (c)
3. When there is difference in proceedings under S. 195 (6)—Where on an application

to the High Court under S 195 cl (c), the Judges hearing the application are equally divided in opinion, the case is governed by S 36 of the Letters Patent and not by Ss 429 and 449 of the Cr P C—22 M. J. 419 (F. B.)

4. S. 429 does not apply to proceedings under S. 107 of the Government of India Act.—When on an application to the High Court under S 107 of the Government of India Act (5 and 6 Geo V C 61), there is a difference of opinion between the Judges, the decision of the senior Judge prevails—21 Cr 25 (c).
5. Third Judge should not differ on points of agreement.—Where on a difference of opinion between the two Judges of a Criminal Revisional Bench of the High Court, the case is referred to a third Judge, the third Judge will not differ upon a point on which both the referring Judges are agreed, unless there are strong grounds for doing so—22 C N 74

Finality of orders on appeal. 430. Judgments and orders passed by an Appellate Court upon appeal shall be final except in the cases provided for in section 417 and Chapter XXXII.

Notes.

1. Meaning of final sentence.—A sentence can only be said to be final, when it cannot be set

aside or interfered with by any Court or authority whether on appeal or otherwise—12 C 530

2. **Where criminal limitation.**—Where a Sessions Judge has no power to admit it, as the Crim. Pro. Code nowhere provides for a review of judgments in criminal matters [10 B 732, 24 P. R. 1857]. An order of rejection of an appeal is clearly an order made by an appellate court in appeal and is therefore final [1 B 101. But see 7 B II (C C) 67].
3. **Verdict and Judgment of Division Bench is final.**—The verdict and judgment of a Division Bench of the High Court in a criminal case, coupled with the sentence are absolutely final [14 C 42 (F. B.)].
4. **Order under S. 195(b).**—An application to a Sessions Judge to set aside a sanction granted under S. 195 is a criminal proceeding in revision and not by way of appeal. His order thereon being final, he has no power to review or revise it.—23 B. 59.
5. **Criminal judgments in Sonthal Parganas.**—Under S. 1, clause 1, Act XXXVII of 1855, which is in force in the Sonthal Parganas, all sentences in criminal cases are final [12 C. 536].
6. **Case is dismissed in default.**—The Court has power to re-open and dispose of a criminal case, which has been previously disposed of in default of appearance.—[10 C. J. 80 7 M H (appx) xxix 5 N. 76].

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Notes

1. **Abatement of appeal.**—The Code has not made any provision for the continuance of the appeal either by the heir, or devisee, or executor of the deceased convict or by any other person. The appeal abates upon the Appellant's death. But the High Court has the right to call for the record and make such order thereon as it may deem to be due to justice.—2 B 364. *Con* 39 P. R. 1893.
2. **Reason for the exception.**—"We think that an appeal against a sentence of fine should not abate by reason of the death of the accused, because it is a matter which affects his estate. We have accordingly excepted this case."—*Sel Com Rep.* See S 701 P. C.
3. **Principle in the section applies to proceedings in revision.**—The principle contained under S. 431 of the Criminal Procedure Code, is applicable also to cases on the revision side, so that on the death of an applicant for revision, the application would abate except in so far as it relates to a sentence of fine.—8 P. R. 1919; 6 P. R. 1893. *Con* 24 P. R. 1908.
4. **S. 431 does not apply to proceedings in revision against order under S. 250 *supra*.**—Where compensation has been awarded under S. 250 Cr. P. C. and an application for revision against this order has been made, pending which the petitioner dies, the application does not abate also, but can be prosecuted by his legal representatives.
24 P. R. 1908.
5. **Abatement of appeal on the death of the appellant.**—One of the two accused convicted of criminal breach of trust died after the filing of the appeal from the conviction. The High Court on appeal quashed the conviction of the surviving appellant. A nephew of the deceased appellant applied to the High Court to reverse the conviction and sentence passed upon the deceased. *Held* that the appeal of the deceased abated and that the case should not be taken up by the High Court under its revisional powers, as it depended on appreciation of evidence; the only remedy open to the representative was to apply to the Governor-in-Council.—19 B. 714.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

432 A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference and, pending such decision, may either commit the accused to jail or release him on bail to appear for judgment when called upon

Notes.

1. **The section applies only to Presidency Magistrates.**—Except in cases where there is a reference under S 432, a High Court cannot and will not express an opinion upon any question unless it is brought before it in the ordinary way by an application for revision—1 S. 4.

2. **Reference can be made only on a point of law.**—A reference to the High Court under S 432 of the Cr P C must be on a question of law and not on one of fact [Rat 539]. A reference with regard to the expression "stand to ply for hire" in S 22 of the Public Conveyances Act (Bomb Act VI of 1903) was not accepted as the question whether drivers of public conveyances are liable under S 22 of the Act for driving

slowly along the road to pick up a fare was held to be one of fact and not of law. [Rat 539]

4. **The right to begin in reference proceedings.**—In a reference to the High Court by a Presidency Magistrate as to whether on the facts stated, any offence has been committed by

Section 432—Cr P C

5. **Power of the High Court.**—Where a reference is made by the Presidency Magistrate to the High Court under S 432, the High Court should deal only with the particular points of law referred to

6. **Reference can be made only on a point of law.**

to the merits of the case and the Quantum of punishment—[90] A N 225

433 (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose the case conformably to the said order

Direction as to costs (2) The High Court may direct by whom the costs of such reference shall be paid

Note.

1. **Order under S. 433 not open to review**
—The High Court sitting as an Appellate Court

cannot review an order made by itself under S 433 Cr P C—Rat 635.

434. (1) When any person has, in a trial before a Judge of a High Court consisting of more than one Judge, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial

(2) If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or if the Judge thinks fit, be admitted to bail; and the High Court shall have power to

review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction and to pass such judgment or order as the High Court thinks fit.

Notes.

- 1. Analogous provisions.**—See cl 25 of the Letters Patent “And we do further ordain that there shall be no appeal to the said High Court of Judicature at Madras, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to *re-examine any point or points of law*, for the opinion of the said High Court” and cl 26 “And we do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court shall be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction and to pass such judgment and sentence, as to the said High Court shall seem right.” See also Ss 11 and 12 of the *Lower Burma Courts Act VI of 1900* *Punjab Act XVIII of 1884*; Ss 18 and 19, *N W P Letters Patent*.
- 2. See Notes under Ss. 297-303.**—*XVII Review under the Letters Patent* 335-341 at p 573
- 3. Who has the right to begin.**—Where on the application of the prisoner's counsel, a question of law has been reserved for the decision of the Court under S 434, the counsel for the prisoner has the right to begin—S B 200
- 4. Nature of proceedings under S. 434(2)**—The power which the High Court exercises under S. 434 is that of review, and the Court is a Court of reference and revision [S B 200] “The Legislature has not conferred, in express words, upon a High Court, the power of reviewing its judgment in all criminal cases, as it has done under the Civil Procedure Code in civil cases.” *See S. 434, Civil Procedure Code*, and *see* *merely criminal and are* subsequently disposed of under the provisions of S 434 and the corresponding Sections of the Letters Patent N. W. P (Ss 18 and 19)—*Per Bhathurst J.* in 7 A. 672 *See* Note Noa 338 and 339 under Ss 297-303 (p 573) and 1 C 207 10 C J 13. 25 M. 61
- 5. As to High Court's power of review of its own judgment.**—*See* Notes Ss 387-370: N. Alterations and Interpolations (S 369) No 115 A at p. 660 above.
- 6. When a question can be referred.**—The Judge presiding at the Sessions has no power, under the Charter Act to refer to a Full Bench a point of law raised before the accused was called upon to plead.—28 C 211
- 7. Revision of decision by a single Judge.**—The powers of a Single Judge in a matter with which he has jurisdiction to deal are the powers of the Court, and cannot be, in any way controlled by a Bench or Full Bench of the Court. As no appeal lies, so no revision lies. Both procedures imply subordination or inferiority which does not exist. Except on a reference under S 434, the proceedings of such Single Judge cannot be revised.—1 P. R. 1909 4 P. R. 1909 *See* 14 C 42 (F. B.)

435 (1) The High Court or any Sessions Judge or District Magistrate or any Sub-divisional

Magistrate empowered by the Local Government in this behalf.
Power to call for records of inferior Courts

may call for and examine the record of any proceeding, before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) Orders made under section 143 and 144 and proceedings under Chapter XII and section 176 are not proceedings within the meaning of this section.

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

Proposed amendments to the section.—In section 435 of the said Code—

(i) To sub-section (f), the following words shall be added after the words "proceedings of such inferior Court," namely :—

"and may when calling for such record direct that the execution of any sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record"

(ii) After the same sub-section the following *Explanation* shall be added, namely :—

"*Explanation*—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section"

(iii) For sub-section (j) the following shall be substituted, namely :—

"(j) Orders made under sections 143 or 144, or proceedings under Chapter XII, or under sections 156, 156A, 156B, or 156C, are not proceedings within the meaning of this section."

ARRANGEMENT OF NOTES.

S. 435=SS. 234, 235, para 1 S. 320 (1872)=SS. 107, 134 (1861)

I. Introductory Notes.

- (1) History of the Section.
- (2) Distinction between the power of revision and the power of superintendence
- (3) Sec 435 (3) does not control S. 107 of the Government of India Act 1915
- (4) The inherent power of Courts of justice to pass just and proper orders
- (5) The inherent power to issue a writ of Certiorari possessed by High Court
- (6) Interference purely discretionary
- (7) Nature of jurisdiction exercised under Ss 435 to 439
- (8) Miscellaneous

II. Object and Application of the Section.

- (1) Object of the Section.
- (2) Proceedings under S. 145 Cr. P. C.
- (3) Proceedings under S. 144 Cr. P. C.
- (4) The rule as to concurrent jurisdiction
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- (6) Application of the Section

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- (1) Meaning of the word "inferior"
- (2) The term does not include Civil and Revenue Court
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IV. Scope of the powers conferred by the Section.

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VI. Proceedings liable and not liable to revision.

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- (1) Procedure on receiving the record
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- (3) Points to be noted in revising proceedings of inferior Courts
- (4) Rules of Practice
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IX. The High Court.

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- (1) Proceedings abate on the death of the applicant
- (2) S. 36 of the Letters Patent not overruled by S. 435
- (3) Right of complainant to be heard in revision proceedings
- (4) Power to review order refusing to interfere in revision
- (5) District Magistrate cannot question the decision of the Sessions Judge
- (6) Miscellaneous

I. INTRODUCTORY NOTES.

(1) History of the Section.

1. **History of the Section.**—"Under Act XXV of 1861, the Sadder Court was empowered to call for and examine the record of any case tried by any Court of Session for the purpose of satisfying itself only as to the legality or propriety of the sentence or order passed and as to the regularity of the proceeding of such Court and to reverse the sentence or order only when it was "contrary to law" (vide S. 405 Act XXV of 1861) Act X of 1872 enlarged the power of the High Court to call for the record of any case tried by any subordinate Court instead of only of the Court of Sessions as in the Act of 1861, and also

enlarged the power to interfere with any judgment, sentence or order of any Court subordinate to it on the ground of material error in any judicial proceeding instead of the order and sentence being "contrary to law" (vide Ss. 234 to 237 Act X of 1872) Thus under the old Acts of 1862 and 1872 the power of interference of the High Court was restricted to questions of law and material error in any judicial proceeding. It used to be held under the old Acts that the High Court had no power to enquire into the propriety or correctness of any decision on facts depending upon conflicting evidence [23 W. R. 40] Act X of 1882 introduced a radical change in

the law regarding the High Court's power of revision. Under S. 435, the High Court was empowered to call for and examine the record of any inferior Criminal Court for the purpose of satisfying itself not only as to the legality or propriety of any finding, sentence or order, but also as to the correctness of such finding, sentence or order, and was further empowered under S. 439 to exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427 and 428. The power conferred by Act X of 1882 has been repeated in sections 435 and 439 of the present Act V of 1894.—*Per Juala Prasad J.* in 2 Pat. W. 295

(2) *Distinction between the power of revision and the power of superintendence.*

2. In Bacon's Abridgment, title 'Prohibition' it is said, "As all external jurisdiction, whether ecclesiastical or civil, is derived from the Crown, and the administration of justice is committed to a great variety of Courts, hence it has been the care of the Crown that those Courts keep within the limits and bounds of their several jurisdictions, prescribed to them by Laws and Statutes of the Realm. The Superior Courts, having a superintendence over all inferior Courts may in all cases of innovation, award a prohibition." The distinction lies in the fact that whereas in revision the Superior Court is empowered to call for the record in order to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order passed (S. 435) and "may in its discretion exercise any of the powers conferred on a Court of Appeal by ss 195, 423, 426, 427 and 428 Cr. P. C." [S. 439], the power of superintendence is entirely distinct from the jurisdiction to hear appeals. If the inferior Court after hearing the parties, comes to an erroneous decision, either in law or fact on a matter within its jurisdiction, the Court having power of superintendence never interferes." (*Per Noorunn J.*)—9 W. R. 309 Bnt See 21 Cr. 25 (O)

(3) *Sec. 435 (3) does not control S. 107 of the Government of India Act 1915.*

3. "It is now well-settled that a High Court is competent, in the exercise of the power of superintendence vested in it under S. 107 of the Government of India Act 1915 (which replaced S. 15 of the Indian High Courts Act 1861) to set aside proceedings instituted without jurisdiction by a Subordinate Court under S. 145 Cr. P. C., such power of superintendence can be exercised notwithstanding S. 435 (3) Cr. P. Code."—*Per Moonjeejee A. C. J.* in 22 Cr. 213 (S. B.).—26 C. 185; 27 C. 212 (299); 28 C. 416; 33 C. 33; 33 C. 68 (F. B.); 33 C. 352 (F. B.). See 10 C. 105; 18 C. N. 700; 26 M. J. 208; 1 Pat. J. 326 (F. B.).—Cm 25 A. 144; 18 Cr. 118 (A.)

(4) *The inherent power of Courts of justice to pass just and proper orders.*

4. Criminal Courts in which Civil Courts exist for the administration of justice and Courts of both

descriptions have inherent power to mould the procedure, subject to the statutory provisions applicable to the matter in hand to enable them to discharge their functions as Courts of justice [16 C. N. 1105 (1136); 22 Cr. 213 (S. B.).] 44 O. 816; 33 C. 927; 12 C. N. 678; 9 W. R. 402.] There is no species of injustice which the High Court would be powerless to correct under the Charter, where its interference is called for [12 C. N. 678; 14 M. T. 200.]

5. *The duty of higher Courts to conserve the legitimate rights of suitors.*—"One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression 'the act of the Court' is used it does not mean merely the act of the primary Court or of any intermediate Court of Appeal but the act of the Court as a whole from the lowest which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case"—*Per Lord Collins* in 40 L. J. P. C. 1. See 22 Cr. 213 (S. B.). [P. 11] *Moohjeejee A. C. J.*

(5) *The inherent power to issue a writ of certiorari possessed by High Courts.*

6. It is now well settled that unless the power to issue a writ of *Certiorari* is expressly taken away it inheres to the Court.—*Per Seshanna Aiyar* in 39 M. 1164 (F. B.). See *R. v. Rame* 2 Burr 1040 R.; *Jules* 5 R. R. 445 R.; *Plourlight* 3 Mod 94—87 R. R. 60.
7. *Power to interfere where certiorari has been expressly taken away.*—"Although certiorari is taken away, it may be granted even on the application of the defendant where the inferior Court has acted without or in excess of jurisdiction, for in such a case the Court has not brought itself within the terms of the statute taking away *Certiorari*"—*Per Lord Halsbury* *Ex parte Bradlaugh* 3 Q. B. D. 509 *King Justice of Somersetshire* 5 R. and Bl. 49 *Queen v. Hunt*—15 L. J. Q. B. 310; 34 M. 1164 (F. B.).

[Note.—"Where that (want of jurisdiction of the inferior Court) is made out, the statutory prohibition does not apply and the inherent jurisdiction of this Court is unrestrained" *Per Coleridge* in *J. Queen v. South Wales Railway Company* 12 Q. B. 327]

(6) *Interference purely discretionary.*

8. A Sessions Judge is not required by law to call for or examine the record of any proceeding before an inferior Criminal Court. It is purely optional with him to do so or not.—[74 A. J. 146] The High Court is not bound to interfere under Ss. 435 and 439 Cr. P. C. even if the Magistrate's order sought to be reversed is an illegal order.—[26 M. J. 223]

(7) *Nature of jurisdiction exercised under Ss. 435 to 439.*

9. (1) It is competent to the High Court, by proceeding in the nature of mandamus, to order the Lower Court to do that which it ought to have done.—3 L. A. 230 (238)

10. (2) "As to *certiorari* (writ of *certiorari*) it was entered on behalf of the respondent in the High Court that there is no power in the High Court to issue a writ of *certiorari* . . . As to (that) point it would seem that at any rate the three High Courts of Calcutta, Madras and Bombay possessed the power of issuing this writ [1 Knapp 1 H. C. 275] where any of the other Courts which are by definition High Courts for the purposes of this Act have the power to issue writs of *certiorari* is another question. Supposing that this power once existed, has it been taken away by the two Codes of Procedure? No doubt those Codes provide for most cases a much more convenient remedy. But their Lordships are not disposed to think that the provisions of S. 435 Cr. P. C. and S. 115 of the Civil Procedure Code of 1908 are exhaustive. Their Lordships can imagine cases, though rare ones, which may not fall under either of those sections. For such cases, their Lordships do not think that the powers of the High Courts which have inherited the ordinary or extraordinary jurisdiction of the Supreme Court, to issue writs of *certiorari* can be said to have been taken away."—*Mrs. Annie Besant's case* 46 I. A. 176—43 M. 149 (P. C.) 39 M. 1164 (F. B.).
11. (3) The power is to set matters right according to the rules of reason and justice and not according to private opinion [Sharp v. Walfield (81) A. C. 173 (179)]. It is "the exercise of a right or duty to decide" [Re: Wonthouse 75 L. J. K. B. 745].
12. (4) There is no authority for the proposition that the High Courts' power of superintendence over inferior Courts is confined to questions of jurisdiction alone. This power can be exercised, not only where inferior Courts act without jurisdiction or refuse jurisdiction, but also when these Courts commit an illegality or a material irregularity.—*Per Shamsul Huda J.* in 21 Cr. 25 (C).
13. (5) "The controlling power of revision of the High Court in criminal cases is a discretionary power, and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances which vary greatly. For myself I say emphatically that this discretion ought not to be crystallized, as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion which the Legislature has committed to them. This discretion like all other judicial discretions ought as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case."—*Per Jenkins C. J.* in 24 B. 533 11 P. B. 1908. 5 N. 4 2 S. 25 (27) 22 C. 978 (1001).
14. (6) S. 435 Cr. P. C. applies not only when the order is incorrect or illegal but also when it is improper as violating the principles of natural justice.—35 M. 1091.

(8) Miscellaneous.

15. Scheme of revisional jurisdiction.—Sec. 437 authorises a High Court in revision to call for the records of inferior Criminal Courts, and sections 437 and 439 lay down the powers which a High Court may exercise in proceedings, the records of which have been called for by itself, or which have been reported for orders or which may otherwise come to its knowledge. The summoning of the record must be a necessary preliminary to any action, which a High Court may take under S. 437 or 439 of the Code of Criminal Procedure. Sec. 115 states the ground and provides the machinery for the exercise of the powers which the later sections confer.—*Per Kanhaiya Lal A. J. C.* in 17 O. C. 25, See 32 M. 220 (233) 30 M. 275.
- 15A. Duty of criticising proceedings of subordinate Magistracy.—The Magistracy are subordinate to the Sessions Court only for the purpose of reference to the High Court in cases in

(appx) xviii

- 15B. Jurisdiction not confined to matters coming before the Court by means of petitions under S. 435 Cr. P. C.—The power of a Sessions Judge to call for records under S. 295—S. 435 are powers which are at all times to be exercised and such powers may be put in force not merely on matters coming before the Judge but also on matters coming to his knowledge on reliable information.—2 Weir 375. See 2 M. 35.
- 15C. The general rule for interference by the High Court.—In cases where the High Court has concurrent revisional jurisdiction, with a subordinate Court, the aggrieved party should in the first instance seek his remedy before the subordinate Court.—1 Pat. 1 302 2 Pat. W. 115. 30 A. 116 (04) A. N. 112 36 C. 643 14 B. 331. See Note No. 109 infra.
16. Disposal of property attached without jurisdiction.—The High Court has inherent power to give directions as to the disposal of property attached in a criminal proceeding initiated without jurisdiction as may be necessary in the interest of justice.—22 Cr. 213 (S. B.).
17. Ministerial acts of inferior tribunals.—The High Court cannot interfere by a writ of *certiorari* with the ministerial acts of an inferior tribunal under S. 435 Cr. P. C.—31 M. 1164. *Eyler experte* 2 K. B. 701 (341). See American Encyclopedia 11, p. 753 27 M. 274 (F. B.). But see Rat. 129.
18. Powers of Sessions Judge.—The power of a Sessions Judge to call for records under S. 295 (—S. 435) are powers which are at all times to be exercised and such powers may be put in force, not merely on matters coming before the Judge, but also on matters coming to his knowledge on reliable information.—2 Weir 375.

II. OBJECT AND APPLICATION OF THE SECTION.

(1) Object of the Section.

19. The object of the Legislature in enacting S. 435 Cr. P. is to secure the setting right of a patent

error or defect. In the absence of well founded suspicion of error, it is not expedient to scrutinise orders of discharge or other orders which,

upon the face of them, bear token of careful consideration and appear good and lawful. The Section does not give the High Court a saving commission either in the direction of stamping with approval the proceedings of a Lower Court, or in the direction of questioning about and looking to see if possibly under a fair record, there lies some trace of possible error.—(99) A N 137

(2) Proceedings under S. 145 Cr. P. C.

20. The order to which hasty is given under Ss 145 and 145, must be an order which not only purports to be, but is in reality an order under S. 145 passed by a Court having jurisdiction. Where the Court has exceeded its jurisdiction or where without complying with the procedure prescribed in S. 145 the Court passes an order under S. 145 the High Court is competent to interfere in revision.

[Note the principle applies to cases under Chap XII generally.]

25 A 537 (O) A N 40. 7 P R 1107. 23 P R 1102. 2 P R 1699 (F. B.) 3 O C 1 7 B R 18. 24 B 527. 25 B 179. 27 C 892. 30 C 775 (N)

[Note—It has been held that High Courts which are not chartered cannot interfere in revision with proceedings under the exempted sections under any circumstances. 2 L B 239. 1 S 50. 17 C P 133. The Allahabad High Court is inclined to later rulings to lay down the proposition that even the chartered High Courts cannot interfere either in its ordinary or extraordinary jurisdiction. 26 A 144. 31 A 150. See also 30 C 112. There is however a current of rulings to the effect that such High Courts can interfere under S. 15 of the Chartered Act—See 26 C 188. 27 C 892. 27 C 259. 33 C 68 (F. B.). 24 B 527 when the proceedings are in fact, name, and intention, proceedings under Chap XII. High Courts cannot interfere either under 435 Cr P C or S. 15 of the Chartered Act. 4 B R 352. (93) A N 212. 4 C N 1888.]

21. When proceedings under Chapter XII may be interfered with.—“If proceedings totally without legal foundation or legislative authority are taken by a Magistrate in the name of proceedings under Chapter XII but not seriously purporting to be taken under, or to comply with the provisions of that Chapter and the Court is satisfied that fact by reliable evidence, then I think there is clearly a case for interference. . . . It is always open to a party in such a case to satisfy the High Court that the property of which he is entitled to possession has been dealt with by an order which has no legal authority at all, and he may do so by an affidavit or in any other reliable manner and thereby invoke the Superintending power of the Court but I do not think he can ask this Court to interfere in revision or to send for the record, merely by showing that on the face of the judgment, the Magistrate has neglected or misinterpreted some of the provisions of this Chapter.”—*North J* in *10 A 304*. 26 A 141 (1917) 31 B 37. See *11 A 150*. 36 A 233. 17 A J 143. 25 B 179. 29 Cr 107 (N). 31 C 510

[Note.—See S. 145 XXIII Reference, Revision etc. Nos 410-454, (pp 24-217)]

(3) Proceedings under S. 144 Cr. P. C.

22. (1) Where the order is altogether outside the scope of S. 144 the High Court has jurisdiction to revise the order under S. 435; 5 C N. 373. See 13 C N. 168
- 23 (2) An order under S. 141 Cr P. C. does not fall within the scope of S. 135 of the Code and can only be revised in virtue of the jurisdiction conferred on the High Court by S. 107 of the Government of India Act (5 and 6 Geo. V Ch 61). But it is only in rare cases that the High Court will interfere under that section even where there is a question of jurisdiction, if there is no question of jurisdiction it will interfere only if very great miscarriage of justice would otherwise result—36 M 275 (26). 26 M. J. 208. (19) M. N. 872. See—S. 141 XIX. Revision and Reference (134-146) [pp 214-215]

(4) The Rule as to concurrent jurisdiction.

24. In cases where the High Court has concurrent revisional jurisdiction with a Subordinate Court the aggrieved party should, in the first instance, seek his remedy before the subordinate Court—2 Pat W 115, 3 Pat J. 302; 36 C 643; 30 A 116. (94) A N 232. 14 B 331.

(5) Power to interfere at an interlocutory stage.

- 25 (1) The High Court may interfere with and set

previous case the Magistrate had, after carefully considering the prosecution evidence, expressed the opinion that the prosecution had hopelessly failed to establish the charge.—10 A. J. 458. 14 A J 571

26. (2) Where a complaint of theft brought by a person against his brother was compromised and thereafter the complainant was prosecuted under s 182 I P C. Held, quashing the proceedings under S. 435 Cr P C that this was not a case in which any action ought to have been taken or any proceedings instituted.—16 A. J. 734
27. (2) The High Court can interfere in revision with an order calling upon a witness to show cause why his prosecution under S. 143 I P C should not be directed though the practice is very unusual.—14 A J 631. (12) A N 102
28. (3) The power of the Court to stop the case, if it thinks it a waste of time to go on, is unlimited, though the stage at which it ought to do so, may be a matter of opinion.—25 M. J. 490
29. (5) The High Court has power to interfere at any stage of the case, if it considers that the grounds have been made out for interference. But the interference at an interlocutory stage should be

rare and only in exceptional cases, i.e., cases where there is some manifest and patent injustice apparent on the face of the proceedings calling for prompt redress—24 W R 4 24 M J 507 22 C. 131; 25 C 233 24 C 750; 20 W R 23 20 B 543 3 L B 109 See 21 Cr 370 (A)

Note.—But where a Magistrate has *prima facie* authority to order the prosecution of the accused and there was nothing from the facts of the case to indicate that the case was one fit for the interference of the High Court, *held*, that the High Court would not be justified in interfering during its pendency in a Subordinate Court—10 C N 322; 2 S 25

O. (6) In exceptional cases, where a bare statement of the facts without any elaborate argument is sufficient to convince the Court that the case is a fit one for interference at an intermediate stage,

the High Court will exercise its discretion in interfering during its pendency in a subordinate Court—10 C N 322, 2 S 25

(6) Application of the Section.

31. A proceeding under Part I of S. 2 of the Workman's Breach of Contract Act is subject to the revisional jurisdiction of the High Court under S 477—2 B R 801 43 B 607
32. Subject of a Native state in custody in British India.—The case of such a person can be revised by the High Court See 4 A J 51
33. Provisions of S. 435 or 438 not controlled by S. 125 Cr. P. C.—There is no ground for holding that the revisional jurisdiction of a Sessions Judge or a District Magistrate under Ss 435 and 438 of the Code is in any way trenchant upon by the provisions of Ss 125 Cr P C—3 Pat J 302

III. INFERIOR CRIMINAL COURT MEANING AND SCOPE.

(1) Meaning of the word "Inferior."

34. (1) "Inferior" means "statutorily incompetent to hold or exercise equal powers" It carries with it the idea of 'subordinate' which means 'inferior in rank'—9 B 100

35. (2) The term "inferior" in S 435 includes the term subordinate as used in S 437 [8 M 18 (F.B.)] A District Magistrate has power therefore to call and examine the records of a subdivisional Magistrate of the first class

36. (3) The reason for the substitution of the word "inferior" in the Code of 1852 (S 435) for the word subordinate used in the corresponding S 295 of the Code of 1872 is to meet the rulings under that Code to the effect that a District Magistrate is not subordinate to the Session Judge and to provide that nevertheless, the revisional authority of the latter over the former should remain unquestionable [12 C 473 (F.B.)]

Note.—12 C 473 (F.B.) overruled (84) 10 C 268 (81) 10 C 551 which had laid down that the word "inferior criminal Court in S 435 of the Cr P C meant inferior so far as regards the particular matter in respect to which the superior Court was asked to exercise its revisional jurisdiction Under this interpretation a first class Magistrate would not be inferior to the District Magistrate The last two Calcutta rulings were followed in (81) 7 A 134 which in its turn was overruled by 7 A 853 (F.B.)

37. (4) The explanation added to the section by the new amending act settles the meaning of the term inferior Criminal Court "All Magistrates whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection

(2) The term does not include Civil and Revenue Court.

38. The term "inferior Courts in S. 435 Cr. P. C. does not include a Civil or Revenue Court.—exercising its powers under S 476 Cr P. C—40 C. 477 (F.B.) 8 C N. 73. 26 A. 244

29 A 554 31 A 34 (04) A N 170 (02) A N 202 9 B R 1347 23 M 139 36 M 72 2 Weir 541 602 4 C 60 7 C 25 4 L B 339 138 21 Cr. 270 (N) Con 4 N 140. 34 C 42 5 P R 1908 (F.B.) 26 B 755 6 C 210

(3) Inferior Court—Examples.

39. The High Court.—A single Judge sitting on the original side (criminal jurisdiction) is not an inferior Court to the Full or Divisional Bench within the meaning of S 435—See 4 P R, 1909 1 P R 1909 14 C 42

40. The Magistrate of the District.—Is competent under S 431 Cr P C to call for and deal with the record of any proceeding before any Magistrate of whatever class in his own District See 6 M T 157 12 C 473 (F.B.) (overruling 10 C 268 10 C 551) 9 B 100 82 P R 1855 7 A 853 (F.B.) (72 92) L B 367 including proceeding before a subdivisional Magistrate of first class 8 M 18 (F.B.) [The following rulings have now been definitely rendered obsolete 10 C 268 7 134 A]

41. Court of District Magistrate inferior to Court of Sessions Judge.—The Court of the District Magistrate is inferior to that of the Sessions Judge within the meaning of S 435 Cr P C

(89) A N 100

42. Magistrate first class.—A first class Magistrate is subordinate to the District Magistrate for the purposes of S 431 Cr P C—10 P. R. 1894 38 P R 1895 7 A. 853 (854) O S. 85 (72 92) L B 387

43. Court of the District Sub-Registrar.—The District Registrar not being an inferior Criminal Court within the meaning of S 435 Cr P C an order passed by him granting sanction to prosecute a person for an offence cannot be revised by the High Court under S 435 Cr P C—14 B. R 970 35 A 109

44. Court of Additional District Magistrate. An Additional District Magistrate, as such, if not subordinate to the District Magistrate in Burma

nor is his Court inferior to that of the District Magistrate within the meaning of S 435 Cr. P. C. 12 Bur T 36 But See 25 P R 1105

45. **Magistrate first class acting under S. 195.**—A Magistrate first class refusing sanction for prosecution of a complainant under S. 195 Cr. P. C. is not a Court inferior to that of the District Magistrate within the meaning of S 435 The District Magistrate cannot therefore grant sanction in such a case either under S. 195 or S 435 or S 476 Cr. P. C.—3 A J. 362

46.

47. **District Magistrate acting under S. 195 (6) Cr. P. C.**—A Sessions Judge has no power to revise an order of the District Magistrate setting aside an order of a third class Magistrate refusing to sanction a prosecution under S 211 I. P. C The only Court to which an appeal lies from an order of a third class Magistrate is the District Magistrate and he alone can revise such orders—30 A. 116

[Note.—See 30 M 382 (F. B.) in which it was held that the High Court can revise an order by a Superior Court, revoking sanction granted by the Court of first instance]

IV. SCOPE OF THE POWERS CONFERRED BY THE SECTION.

48. **Recording of evidence.**—A District Magistrate cannot record evidence of his own motion in a case which comes before him under S 435 Cr. P. C.—3 B R 677
49. **Case made over under S. 190 or 192 Cr. P. C.**—When once the District Magistrate has made over a case to the Deputy Magistrate, it is out of his hands and he is not competent to pass any order relating to it other than an order such as might be made by him under Chapt XXXII Cr. P. C.—30 C 449 See 32 C 763 [Per Henderson J.]
50. **Condition precedent to exercise of powers.**—A *prima facie* case as to the irregularity of the proceedings, or the illegality or impropriety of the sentence or order must appear, before the Court will call for or direct a return of the record of the proceedings—1, M 11, 138
51. **What the District Magistrate or Sessions Judge has to report under the Section read with S. 438 Cr. P. C.**—They are not to refer abstract points of law but to report the incorrectness, illegality or impropriety, if in his opinion any such exists, of the finding, sentence or order recorded or passed by the inferior Court or the irregularity, if any, of the proceedings of such court.—5 O, C 316
52. **Power to call for record of proceedings under S. 195 (6).**—Where a sanction is upheld by the Sessions Judge acting under cl (6) of S 195, the High Court has jurisdiction under S.

435 (1) Cr. P. C. to call for and examine the record of the proceedings before the Sessions Judge and to set aside the order if it is dissatisfied with its propriety.—20 Cr. 564 (A) : 36 A 403

53. **Right to issue writs of Certiorari**—can be taken away by statutory provision only by express words and in clear terms.—See R 1. Moreley, 2 Burr 1040 R. 1 *Howright*, 3 Mad Rep 94 R 1. *Cashbury Justices* 5 R R 445 *Colonial Bank of Australasia* 1 Willan 43 L J P. C. 39

54. **Power to call for record of proceedings before Civil Judge.**—A Civil Judge is not himself not meaning of ample power via Act to an order made by a Magistrate in a proceeding in which a writ is called upon to show cause why he should not be committed for contempt of Court—12 A 25.

55. **Power to call for the entire record of proceedings under Ch. XII.**—See 435 (3) does not preclude a High Court from calling for the entire record of a case in which an irregular proceeding is embodied, for the purpose of examining the said irregular proceeding and satisfying itself as to the correctness and legality of any sentence or order therein recorded, and under S 439 (1) read with S. 423 (C) of the Code, a High Court has jurisdiction to set aside an irregular order.—21 Cr. 242 (A).

V. COURT WHICH MAY ACT UNDER THE SECTION.

50. **Joint Sessions Judge.**—The rulings in 25 W. R. 21 9 B 161 8 Bur 16 9 B 352, also Rat 830 (F. B.) to the effect that a joint Sessions Judge can not Act under Chapt XXXII must be deemed to be obsolete in view of the changes introduced into the Code of 1894.—See S. 439 (2).
57. **Sub-Divisional Magistrates specially empowered.**
- (1) In Madras and the Punjab—all Sub divisional Magistrates have been empowered to act

under this section.—*Fl. St. Geo. Gaz.* 1883 p 13 : *Punjab Gaz* 1883 p 52

(2)

Note.—The powers of Sub-Divisional Magistrates are limited by subs (2) to reporting the case to the District Magistrate for orders [7 M. 560]

58. **District Magistrates.**—See Note No. above

VI. PROCEEDINGS LIABLE AND NOT LIABLE TO REVISION.

(1) Not liable.

59. (1) Proceedings under S. 68 Cr. P. C.—are proceedings within the meaning of S 435 Cr. P. C.—9 P. R. 1918. See 27 A 572; Rat see 6 A 487 4 L R. 109; 20 M. 88
60. (2) Proceedings under S. 22 of the Press Act.
61. (3) The High Court cannot revise the proceedings of Magistrates under Ss. 3 and 4 of the Indian Extradition Act (XV of 1903)—38 C. 547 38 C. 550 (F. N.).
62. (4) The High Court is not competent to interfere in appeal or revision with an order for detention in a Reformatory School passed in lieu of transportation or imprisonment even if the order is made without jurisdiction—See S. 16 of Act VIII of 1897; 21 A 391 (F. B.).
63. (5) Proceedings under the Income Tax Act II of 1880.—See Note No 129 under the heading Miscellaneous *infra*
64. (6) Proceedings before a District Registrar.—See Note No 43 *above*
65. (7) Proceedings under S. 86 of the Bombay District Municipalities Act.—9 B R 1347.
66. (8) Proceedings under S. 17 of the Police Act—See Note No 123 under Chapter X Miscellaneous
67. (9) Proceedings under Bombay District Police Act IV of 1890—12 B R 1029 Rat 540 692
68. (10) Order under S. 3 of the Sind Frontier Regulation V of 1872—5 S 54
69. (11) The decision of a jury under S. 138 *supra* is not a proceeding in a Criminal Court which the District Magistrate could not call for and examine

and refer to the High Court under this section.—Rat. 336. But see 14 C N 17.

(2) Liable.

70. (1) Order under S. 283 of the Cantonment Code 1899—9 P R 1909
71. (2) Proceedings under the Indian Railways Act IX of 1890—13 P R 1891
72. (3) Proceedings under Ss. 4 and 5 of the Police Act (V of 1861)—9 P W 1908.
73. (4) Proceedings under the Orissa Municipal Act III of 1899—73 C 287. 34 C 311.
74. (5) Proceedings under the Eastern Bengal and Assam Disorderly House Act (II of 1907) 37 C. 287.
75. (6) Proceeding under S. 517 Cr P C.—2 Weir 638.
76. (7) Proceeding under part I of S. 2 of the Workman's Breach of contract Act See Note No 81 *above*.
77. Extra judicial orders.—A circular by a District Magistrate prohibiting uncertified pleaders from practising in the Criminal Courts in his District is not open to revision by the High Court [19 M J 568]. In (92) A N. 175 the High Court declined to interfere with an order passed by a District Magistrate whereby he revised the list of petition writers who had been allowed to carry on their business within the precincts of District Courts. The rule may be summed up as follows:—*The High Court cannot, as a Court of Revision, interfere with the extra judicial order of a Magistrate [(83) A N 25]. An order passed by a District Magistrate under the rules framed by Government under S. 45 (3) Cr P C is an executive order and not subject to the revisional jurisdiction of the High Court [29 A 563]*

VII. PROCEDURE.

(1) Procedure on receiving the record

78. Explanation of the subordinate Court.—Before referring the matter to the High Court, (after receiving the record of the case) the Sessions Judge should call upon the Subordinate Magistrate concerned to submit an explanation of the order passed and should forward it to the High Court along with the record of the case

8 C 644

79. If the Judge was of opinion that any judgment or order was contrary to law or that the punish-

below has wrongly excluded a question which the party wished to put to a witness must state the form and substance of the question proposed to be put to enable the appellate or revisional Court, as the case may be, to determine whether the question in each case was so framed as to make it admissible under the Evidence Act 1872 9 B R 1385

(3) Points to be noted in revising proceedings of inferior Courts.

81. Some of the points to which the attention of the

(2) Duty of applicant to specify the exact nature of the wrong

80. Question wrongly disallowed.—A party asking for redress at the hands of an appellate or revisional Court, on the ground that the Court

- (1) the rash issue of process
- (2) the dealing with disputed claims of right under colour of a charge of criminal trespass or mischief and convictions held of the former offence without a finding as to the criminal intent.
- (3) the indiscreet imposition of fines beyond the means of offenders
- (4) the light punishment by inferior Courts of offences requiring severe punishments in cases

which ought to have gone up to a Superior Court for enhanced punishment.

- (5) the imposition of heavy fines in addition to imprisonment with a view, in default of payment to extend the term of imprisonment beyond the ordinary powers of the Magistrate to inflict
 - (6) the exaction of excessive bail or excessive Security for keeping the peace or for good behaviour.
 - (7) unnecessary delay in the trial of cases.
- Mad H. C. Rule 17th Decr 1884
87. **Limited powers of Sessions Judges and District Magistrates.**—These powers differ materially from the power exercised by the High Court under S 439. The District Magistrate or Sessions Judge, except when exercising the powers defined by Ss 436 and 437, can only report the case for orders to the High Court under S 438. See 7 M. B. (appx) xviii: See ('82) A N 146; Rat 334; 3 B R. 677.

(4) Rules of Practice.

What a Sessions Judge or District Magistrate may not do.

83. (1) Sessions Judge or District Magistrate making a reference, after calling for records under this Section, cannot take fresh evidence—See ('82) A N. 141. 3 B R. 677.
84. (2) There is no provision in the Criminal Procedure Code which enables a Judge to stop a trial already commenced and to refer to the High Court any question or questions of law arising on the merits of the case. Rat 214.
85. (3) A District Magistrate has no jurisdiction to reverse the conviction and sentence of a prisoner who has not appealed and order a retrial [See Rat 358; 3 B R. 677 M. H. C. Pro. 19 4-75: 20-2-79]
86. (4) A District Magistrate cannot order the trial of persons who had been complained against but against whom the Magistrate to whom the case had been referred for trial had refused to issue process. 30 C 419.
87. (5) District Magistrate cannot quash the proceedings of a subordinate Magistrate on the ground that the requisite sanction under S. 197 *supra* is wanting. 23 M. 540.
88. **Calling up record does not amount to a judicial proceeding.**—The calling up of the records under S 435 from a Subordinate Magistrate is not a judicial proceeding. A District Magistrate who calls up the records, has no power to make an order at that stage under S. 476 Cr. P. C.—15 M. J. 489. 7 M. 560
89. **Power to stay proceedings.**—The Sessions Judge or a District Magistrate cannot stay proceedings but the object may be indirectly attained by calling for the record as the case cannot possibly go on during the time the record is with the Superior Court.—See 9 C N. 829

Rules for forwarding the proceedings.

90. (1) Copy of the appellate Court's order should be sent—When proceedings are called by the High

Court from any Magistrate, the copy of any order made by the Appellate Court and transmitted to the Lower Court shall be forwarded to the High Court with the record and proceedings of the Magistrate—B. H. C. Cr. Cir. p. 47,

91. (1) **Forwarding of the records.**—The Court sessions Court the records of the case for the orders of the High Court, also obtain and submit an explanation from the inferior Court of the order passed by it.—8 C. 644.
92. (3) **Originals should not be given to Executive Government.**—No Court is at liberty to part with its judicial records except when these are called for by an Appellate Court or on the demand of a Superior Court under S. 295 (=S. 435) of the Cr. P. C. They must be retained in order to meet the contingency of such legal requisitions being made. For the purposes of any reference or report to the Executive Government, copies of proceedings are sufficient, but for the purposes of appeal to, or revision by Superior Courts, the originals are indispensable—Rat 125.

(5) Interference on facts.

93. **The Practice of the Calcutta High Court.**—was stated by Mookerjee J. "Although it is unusual in revision to interfere with a finding of fact, there can be no question as to the competency of the High Court so to interfere with a finding of fact when the occasion requires
- 988 (1901). 32 C 180 (1899). 2 C. B. 34. 20. 608 (F.B.) at p. 618; 14 C. 169; 10 C. 1047 19 W. R. 30; 18 W. R. 7.

[Note.—The ruling under the old Code 22 W. R. 40 to the contrary was overruled in 21 C. 931]

94. **The Patna High Court.**—"Where an occasion for enquiring into the evidence has been made out, in my opinion, it is the duty of the High Court to examine the facts of the case. After such an examination, the Court will not interfere as lightly as it would, if it were a matter of appeal and not revision. The distinction may be a fine one but it is a real distinction, in my opinion, between the two cases. That in revision the Court is aroused to such an extent as to compel the Court to expressly say that the applicant ought not to have been convicted on the evidence—Chapman J. [Juala Pd J. agreeing and Roe J. dissenting]—2 Pat W. 295
95. **The Madras High Court.**—"No doubt the High Court does ordinarily when acting in revision take the facts as found by the Magistrate, but there is nothing in the Code of Criminal Procedure to limit the Court's powers of interference

to cases where the Magistrate has ignored or contravened an express provision of the law."—[*Benson and Sundaram Aiyar JJ*]-14 M. T. 200; 18 M. J. 57.

98. **The Bombay High Court.**—"The law as laid down in the Code gives the High Court the power to go into the evidence in revision, but the Bombay High Court has, as a matter of practice, held that it will not go into evidence as a rule, but will interfere only when there is an error of law."—*Per Chandavarkar J.*—[*But See the Judgment of Jenkins C. J.*]-28 B. 533. See 9 B. R. 1385

[N. B.—The powers under the codes of 1861-9 and 1872 were much more limited—See 12 B. L. 249 9 B. II 451]

[8 B. 197. Rat 244; 9 B. R. 706 11 B. R. 858, 14 B. 331] It is only, in very exceptional cases, that the High Court, sitting as a Court of Revision, deals with questions of evidence, and disturbs or supplements the finding of a lower Court on a question of fact. It will do so in the interests of justice, where the enquiry in the Lower Court has been faulty—12 B. 377 (390) Rat 908 (914) See 14 B. 115 (118)

97. Only in exceptional cases.—It is only in

very exceptional cases that the High Court, sitting as a Court of revision, deals with questions of evidence and disturbs or supplements the finding of a lower Court on a question of fact

12 B. 377. See 21 W. R. 26. 21 W. R. 88. 12 W. R. 47

See—the rulings cited under the head "High Court"

98. **Misapplication of evidence.**—The High Court, can under S 435 Cr P C interfere in revision where there appears misreading of the documentary evidence and fundamental errors in principle which vitiate the conduct and disposal of the case—28 B. 477 See 6 B. R. 1096; Cr. R. 52 of 23-9-95

[N. B.—The powers under the codes of 1861-9 and 1872 were much more limited—See 12 B. L. 249 9 B. II 451]

99. **The principle to be followed.**—The High Court acting in revision under S 435 Cr. P. C. is bound to accept the finding of the lower Court, unless there is any error, of law or procedure vitiating that finding or unless there are any special circumstances, apparent on the record to show that in arriving at its conclusion of fact, the lower Court has misapprehended the evidence

9 B. R. 1385

VIII. THE MUTUALLY EXCLUSIVE JURISDICTION OF THE DISTRICT MAGISTRATE AND SESSIONS JUDGE.

100. **After the Sessions Judge has refused.**—After the Sessions Judge's refusal to take action under S 435 Cr P C it is not competent to the District Magistrate to entertain an application for commitment of a discharged accused, nor can he act *suo moto*. The mere fact that the District Magistrate acted in ignorance of the Sessions Judge's refusal does not make the District Magistrate's order legal—26 M. 477 See 21 Cr. 91 (M) 12 A. 434

101. **Co-ordinate jurisdiction.**—Under S 435, the Sessions Judge and the District Magistrate have co-ordinate powers to order a commitment upon the evidence already taken instead of directing a fresh enquiry—28 C. 397 See Rat 523

102. **Sessions Judge cannot**

(1) direct further enquiry under S 437 after the District Magistrate has refused to do so and *vice versa*—22 C. 573 28 C. 102 10 P. R. 1912 40 C. 119 17 M. J. 153 But See (75) A. N. 38 17 C. N. 431

(2) refer the proceedings of the District Magistrate under S 438 to the High Court—22 C. 573 17 M. J. 153

[In 22 C. 573 and 12 A. 434 it has been held—that in such a case either of them as the case may be should refer the matter to the High Court. In 17 M. J. 153 however it was held—that these cases were decided before S 434 (4) was enacted. The

has already been moved.—On the 23rd June, the Sessions Judge called for the record of the Special Power Magistrate his order reaching the District Magistrate on the 24th. On the 4th June the District Magistrate had already called for the record. Instead of sending the proceedings at once, the District Magistrate on the 26th signed his name on a printed form bearing the words "on a perusal of the record, no cause appearing for interference, ordered that the record be returned." On the 27th, the Special Power Magistrate sent the record to the Sessions Judge. On the 29th July, the Sessions Judge directed the accused to be committed for trial. On an objection being taken that the Sessions Judge had no jurisdiction to direct it to be made by reason of the provisions of S 435 (4) Cr P C *Heid*—that to hold that the District Magistrate by such action as he took in the case, rendered the Sessions Judge's order

Judge of the application prevented the District Magistrate from dealing with the matter *suo motu*. 8 L. B. 361.

104. **The object of enacting S. 435 (4).**—S 435 (4) applies to all cases in which either a District Magistrate or a Sessions Judge has taken action or has refused to take action, under S 433, or 436 or 437 or 438 Cr P C. The object of the subsection is to avoid a conflict between the orders of the District Magistrate and the Sessions Judge, and the words "further application" in S 435 (4) mean any other application in respect of the order in question of the inferior Criminal Court—10 P. R. 1912

103.

IX. THE HIGH COURT.

105. **Extent of Revisional powers.**—The High Court is competent in the exercise of its revisional jurisdiction to question not only the *legality* but the *propriety* of any finding sentence or order.

10 C. 263.

106. **Revision of proceedings before Presidency Magistrates.**—The High Court has under S 435 and 439 read with S 423 Cr. P. C. the power to revise the proceedings of a Presidency Magistrate, he being subject to its appellate jurisdiction and order further enquiry to be made.

26 C 746; 13 C. N. 1221; 27 B 84; See 12 C. N. 678. Con. 27 C. 126

107. **No limit to High Court's powers.**—There is nothing in the Criminal Procedure Code which limits the power of the High Court to revise the decision of acquittal passed by the Sessions Judge. The High Court has power to revise a judgment of acquittal, though such power should be exercised with great caution—5 M. T. 258.

108. **Interference on questions of fact.**—It is the settled practice of the High Court to refuse

jurisdiction on account of inconsistency of documents, or the placing by that Court of the onus of proof on the accused contrary to law of evidence—12 B R. 21 Rat 244 See 8 B 197-14 B 331; Rat 826 708. 22 C 998 Rat 908

Practice of the High Court.

109. (1) It is not the practice of the High Court to entertain an application for revision, where the Sessions Judge has concurrent jurisdiction unless a similar application has first been made to the lower Court and has been rejected.

2 A 276; 29 A 268 30 A 116. (04) A. N. 232: (90) A. N. 164 14 B 331; 36 C 643 3 Pat J 302-2 Pat W. 115 19 Cr. 126 (Pat)

110. (2) The powers of revision can be exercised by the High Court, whether the order is of preliminary or final nature with the exceptions of proceedings mentioned therein—See (02) A. N. 102.

111. (3) The High Court will not interfere on the mere statement of a prisoner, unsupported by any evidence whatever, that the Magistrate did not record the whole of the defence evidence.

8 W. B. 57.

112. (4) ...
tion
anti
order and his appeal has been disposed of.

(56) A. N. 295

Orders which cannot be interfered with

113. (a) order of the Commissioner of Kumaon refusing a certificate to practice as a mukhtar (92) A. N. 236

114. (b) executive orders, See (91) N. N. 178.

115. (c) Proceedings of His majesty's consul with the dominion of the Sultan of Muscat.—21 B. 47

116. (d) Proceedings under the said Frontier Regulation Act of 1872. 5 S 4

117. **Where appeal lies.**—The High Court will not interfere as a Court of revision except on exceptional grounds—8 B 107

118. **Matters other than those for which the rule was issued.**—The High Court in its revisional jurisdiction has power at the hearing of the rule to consider and decide matter in respect of which rule was prayed for but not granted

27 C. 120.

119. **Improper exercise of discretion.**—Where a Magistrate has not properly exercised his discretion, the order is not a proper order, and the High Court has power to set it aside—33 C. 287.

120. **When the sentence has already been served out.**—There is nothing in the terms of the law to prevent the High Court from interfering with a conviction even though in consequence of the expiry of the sentence, it may not be possible to interfere with the matter.

7 A 135.

121. **Omission to record evidence on an important point.**—is a good ground for interference in revision and for directing for their enquiry—(11) M. N. 8

X. MISCELLANEOUS.

(1) Proceedings abate on death of the applicant.

122. An application under S 435 Cr. P. C. for the revision of an order passed under S 145 of the Code abates upon the death of the applicant, the right to carry on the proceedings conferred by Subs. (7) of S 145 being confined to proceedings before a Magistrate—23 P. R 1919; See 6 P. R 1843

(2) S. 36 of the Letters Patent not overruled by S. 435.

123. The Criminal Procedure Code has not overruled the provisions of S 36 of the Letters Patent

In the case of a difference of opinion, the opinion of the Senior Judge prevails. There is no obligation to refer to a third Judge under S 429 Cr. P. C. 21 Cr. 25 (c) See 15 C. J. 337; 39 M. 750 (F.B.). Con 15 B 432; 27 C 692; 22 C. N. 490

(3) Right of complainant to be heard in revision proceedings.

124. In my judgment, there is no doubt that we have power to say that we would hear Mr M— (Yakil for the complainant) in pursuance of the powers conferred upon this Court by S. 435 Cr. P. C. by way of revision, and upon the hearing of that Rule it was within our power to say that

we would hear Mr. M.—on behalf of the complainant—*Per Sanderson C. J.* in 21 Cr. 682 (c).
See 23 C. N. 802

Allahabad High Court may revise order by City Magistrate Lucknow.—The High Court at Allahabad has jurisdiction to entertain an application for revision of an order of the City Magistrate of Lucknow in a case in which the complainant is a European British Subject, (irrespective of whether he has a claim to be dealt with as such) and against whom an order under S 250 Cr. P. C. has been made.
21 Cr. 707 (A).

(4) Power to review order refusing to interfere in revision.

125. A Sessions Judge who called for the proceedings in the case but ordered the record to be returned on the ground that "on a perusal of the record, no cause appeared for interference," is not precluded from hearing the petitioner and from re-opening the case, if on hearing the arguments, he is of opinion that there are grounds for doing so—8 Bur T 213.

(5) District Magistrate cannot question the decision of the Sessions Judge.

126. A perusal of Ss 435, 437 and 438 Cr. P. C. shows that the Code emphatically does not contemplate a reference by a District Magistrate against the decision of a Sessions Judge. It is no part of the business of the District Magistrate to criticize the judicial decisions of Sessions Judges—18 B R 706 23 C. 250 18 C 186 8 C 873 (877) G. C. L. 215 (218). 23 M J 732 2 N 149 14 W R 25 13 W R 42 See 10 A 140 28 A 91

Note.—A District Magistrate, if he considers that there has been a miscarriage of justice in an appeal heard by the Sessions Judge, should not report the case to the High Court for orders

under S 438, but should communicate with the Public Prosecutor and invite his attention to it. 9 A. 362; 2 N. 119; See 10 A. 146; 12 A. 431; 1 S. 40; Hat 601; 623; 15 M. 30; 2 Weir 665; 566; See Note Nos 29 and 30 under S. 130 *infra*.

(G) Miscellaneous.

127. S. 435 does not apply to sanction proceedings.—The machinery for correction of possible errors in sanction proceedings is provided by cl (G) of S 195 and consequently the party who seeks relief must have recourse thereto and cannot invoke the aid of S 115 Civil Procedure Code or Secs 435 and 430 Cr. P. C. 41 C. 816.
128. Order under S. 17 of the Police Act.—An order passed under S 17 of the Police Act (V of 1861) is of an executive nature, and cannot be made the subject of revision under S 435 Cr. P. C. In appointing any person as special Police Officer, the Magistrate does not act in his judicial capacity 20 O C 229
129. Proceedings under S. 38 of the Income Tax Act.—An order arising out of assessment proceedings under the Income Tax Act cannot be made the subject of revision in the High Court under S 435 Cr. P. C. unless passed under S 476 Cr. P. C. Sec 435 applies to proceedings before inferior Criminal Courts and as held in 38 C 60, an order of the Collector under S 30 of the Income Tax Act arising out of a proceeding pending before another officer does not fall within the purview of that Section—15 Cr 2 (O), 30 M 72 8 B R 477 2 Weir 694 See however 44 P R 1905.
130. Value to be attached to affidavits by the accused.—Where a Magistrate has recorded that the accused had pleaded guilty, the High Court cannot admit the affidavit of the accused for the purpose of showing that he did not plead guilty if there has been any mistake in the matter, it is the vakil and not the client who ought to make an affidavit—10 M 209

436. When, on examining the record of any case under section 135 or otherwise, the Sessions

Power to order commitment

Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, cause him to be committed for trial upon the matter of which he has been, in the opinion of the Judge or District Magistrate, improperly discharged

Provided as follows—

(a) that the accused has had an opportunity of showing cause to such Magistrate why the commitment should not be made,

(b) that, if such Judge or Magistrate thinks that the evidence of the offence has been committed by the accused, such Judge or Magistrate may cause the Court to inquire into such offence.

2.

of the Code of 1872 was held to mean "a case exclusively triable by a Sessions Court." [1 A. 413 (F.B.) *Spankie and Olfield JJ. dissenting*. - See also (1880) 7 C. L. 168 (170); 24 W. R. 61. - (92) A. N. 105. ('84) 4 C. 16: *Con* (74) 11 B. H. 98. The Legislature set its seal on this interpretation by substituting the words "case triable exclusively by the Court of Session" for "Session case" in the subsequent Code of 1882. To give the District Magistrate or Sessions Judge jurisdiction to act under this section, the accused must have been charged with an offence triable exclusively by the Court of Session *i. e.* an offence shown to be so triable in the 8th column of *Sch II infra* [234 P. L. 1904; 4 C. 16. 8 A. 14 (16). 15 A. 205 (F. B.). 60 P. L. 1904; 3 P. R. 1897; 2 B. L. (S. N.) n. 3 B. L. 65; See 15 M. J. 373; *Rat* 42]. It has therefore been held that a direction by a Court of Session to a Magistrate to commit an accused person to the Sessions for an offence under S. 471 P. C. is beyond its power under S. 436 Cr. P. C. as the offence is not exclusively triable by the Sessions Court [42 M. 561].

10. [Note.—If in a case not falling under S 436, a District Magistrate sees reason to think that a

11. There must be a discharge and not acquittal.—In ('93) 20 C 633 and ('99) 23 M 225 it has been held that it is only when an accused person has been discharged by the Magistrate that he has jurisdiction to interfere under S. 436 of the Code. But if the Magistrate *acquits* the accused, the Sessions Judge (or for the matter of that, the District Magistrate) has no such power. It has been held following 20 C 633 and 23 M. 225 and dissenting from 24 M. 130 (F. B.) that where

the Magistrate could have charged the accused on the materials before him with an offence triable

does not go further than the limits laid down in
(1864) W R 3 S W. R. 61. 15 W. R. 61.

[*Note Per contra*,—Where a Magistrate being of opinion, that there was no evidence to warrant a charge for an offence triable exclusively by the

committal to the Sessions for the major charge if he was of a different opinion.—21 M. 136 (F.B.) 8 W. R. 11 21 Cr. 91 (M)]

12. When acquittal no bar to order under S. 436—the principle explained—When a Magistrate takes cognizance of a minor offence against an accused and a graver offence triable by the Sessions Court is disclosed in evidence *but the prosecution does not press* for the framing of a charge in respect of such offence, a commitment to the Sessions Court in respect of the graver offence is illegal [41 M 982]. But where the prosecution *had pressed* for the framing of the graver charge, the acquittal would be no bar to an order under S. 436 [24 M. 138 (F.B).]

13. Conviction on a minor charge no bar to committal on a graver one.—Where no accused person appears on the evidence to have committed murder but has been tried and convicted by a Magistrate on a minor charge, the Sessions Judge, if he thinks that there is a *prima facie* case, may order his commitment under S 436 Cr P C—Rat 377 See ('83-'00) L. R. 169

III. POWER TO GO INTO EVIDENCE.

14. Power to go into evidence in order to see whether Where a District Magistrate directs the commitment of the accused to the Sessions, the High Court has jurisdiction to go into the evidence in order to ascertain whether the order of the District Magistrate is or is not justified, and if it finds no justification for the order it will direct the discharge of the accused — [21 Cr 325 (Pat) - 12 C N. 117]

15. **Duty of the Sessions Judge.**—It is the duty of the Sessions Judge in considering whether an accused person has been improperly discharged within the terms of S. 436, to consider all the grounds upon which such order of discharge has been passed including a consideration of the evidence which has not been believed or held to be sufficient to establish a *prima facie* case. Then only he can pass an order for the commitment of the accused or for a further enquiry.

IV. POWERS OF THE SESSIONS JUDGE AND THE DISTRICT MAGISTRATE.

The Sessions Judge.

16. Power of the Sessions Judge to revise proceedings of the District Magistrate.—The reason for the substitution of the word "inferior" in the Code of 1882 for the word "subordinate" as used in the corresponding S. 235 of the Code of 1872 is to meet the rulings that a District

Magistrate is not subordinate to the Session Judge and to provide that nevertheless the revisional authority of the latter over the former should remain unquestionable—12 C 473 (F.B.): See 8 M 19. Cp 7 A. 853 (F.B.): 9 B 100; 25 P. R 1908.

17. **Provision as to Sessions Judges.**—Under the old Code of 1872, the Sessions Judge's powers

were much more limited than those conferred on him by Ss 436 and 437 of the present Code—For example see (82) A. N. 105, 2 A. 570: 24 W R 70 10 W R 30 4 W R 4 7 C 662.

18. **What he cannot do.**—(1) He cannot direct evidence to be taken while making an order under this Section [4 N P 50] (2) He cannot direct a fresh enquiry in a case in which the accused has been acquitted of an offence within the Magistrate's jurisdiction [20 C 633] (3) He cannot commit, when there is no legal evidence against the accused [24 W R 70]

19. **Sessions Judge cannot direct commitment of accused person sent up by him under S 476 Cr. P. C.**—A Sessions Judge acting under S 476, sent an accused person to a Magistrate to be tried for an offence under S 193 P C But the Magistrate discharged the accused. Held that the Sessions Judge was not, thereupon competent to direct the accused to be committed for trial under S 195 on the same fact—2 Weir 549

20. **Refusal of application by High Court when no bar to action by Sessions Judge.**—A refusal by the High Court to order further enquiry is no bar to the Sessions Judge's order for further enquiry, if fresh evidence has been brought to light, and the order of the Sessions Judge is made upon materials totally different from that which were before the High Court—7 C N 80

21. **Duty of the Sessions Judge himself to commit in certain cases.**—In a case triable by the Sessions Court to which S. 436 Cr P C applies, if the Sessions Judge or District Magistrate is satisfied that on the evidence, there is clear case for a commitment, and there is no reason for desiring a further consideration by the Magistrate, it would bar ordinarily, his duty to direct a commitment under S 436 and not to order a further enquiry under S 437 Cr P C

15 C 608 (F. B.)

22. **Power to act suo motu.**—A Sessions Judge

compounded and S and R were acquitted, K soon after died and the post mortem revealed the fact that the death was due to the injury inflicted by S and R. The police challaned S and R, under S 304 I P C. The Magistrate after enquiry, committed R to the Sessions but refused to commit S as in his opinion, the latter had at the most committed an offence under S. 323 I. P. C. of which he had already been acquitted. The Sessions Judge acting under S. 436 Cr. P. C. directed S to be committed to the Sessions on a charge under S 304 I. P. C. Held that there was no legal bar to the trial of S on a charge under S 304 I P C.—36 A. 4

23. **Power to act suo motu.**—A Sessions Judge is competent to set aside an improper order of

cannot act suo motu and direct a commitment where a Sessions Judge had previously refused to interfere holding that the reasons for discharge were good [20 M. 177]

24. **The mutually exclusive jurisdiction of the District Magistrate and Sessions Judge.**—Under S 435 (1), where the District Magistrate has already dealt with a matter in revision, the jurisdiction of the Sessions Judge is non-existent so far as that particular matter is concerned. The subsection was grafted on the Code of 1848 and overrules the ruling in (96) Rat 837 under the older Code of 1842 which decided that the District Magistrate and Sessions Judge

25. **Co-ordinate powers of the Sessions Judge and the District Magistrate.**—Under S 436, the Sessions Judge and the District Magistrate have co-ordinate powers, in a case exclusively triable by a Court of Session, either to order commitment upon the evidence already taken or to direct a fresh enquiry, if the Magistrate has improperly discharged the accused person.—28 C 307 26 M 477 17 M. J. 153, see 10 F. R 1912 40 C 119.

The District Magistrate.

26. **Power to direct a fresh enquiry.**—A District Magistrate who has discharged an accused person, may direct a fresh enquiry if he is satisfied that there is a case for a commitment.

evidence of witnesses whom the accused has had no opportunity of cross examining. The proper course for the District Magistrate is to direct a fresh enquiry—2 Weir 550 15 M. 39, see 2 C 405 4 C 16

27. **District Magistrate can direct first class Magistrate to commit.**—A District Magistrate has jurisdiction under S. 436 of the Code to direct a first class Magistrate who has

397.

28. **Power to direct a fresh enquiry.**—Under S. 436, as for example by ordering further enquiry in supersession of an order of discharge, prior to making an order of commitment. Under

S. 436, as for example by ordering further enquiry in supersession of an order of discharge, prior to making an order of commitment. Under

29. **District Magistrate's power to direct a fresh enquiry.**—The S. 436 considers to have been improperly discharged, to be

committed to the Sessions, where the charge under S 408 I P C (which is not triable by the Court of Session) is so intimately connected with the charge under S 477A I P C as to form part of the same transaction. [The latter charge being exclusively tried]—16 B R 60

V. PROCEDURE.

30. **Accused must be given opportunity to show cause.**—An order of commitment made by the District Magistrate in contravention of S 436 (a) Cr. P. C without giving the accused an opportunity of showing cause why the commitment should not be made is illegal and the omission vitiates the proceedings. [312 P L 1913; 15 M J 373 G M 372, 7 C 662 1 O L 93; 24 W R 70; 22 W R 67; 1 B 64] Where a District Magistrate being of opinion that a person has been improperly discharged by a subordinate Magistrate, makes an order to commit to the Sessions for trial without notice to the accused person, the irregularity is cured under the provisions of S 537 of the Cr. P. Code, if the subordinate Magistrate gives him an opportunity to show cause before committing him [Rat 899] Where no notice has been served as required by this section and a trial under a commitment by an erroneous order of the Sessions Judge has been held, the irregularity will not necessarily vitiate the proceedings, if no actual failure of justice has been caused by such error [7 C 662]
31. **The opportunity must be reasonable opportunity.**—The consequences to public justice would be very serious if a witness, called at a trial were, during the course of his deposition and before being absolved from his oath as a witness, suddenly called upon to show cause why he himself should not be committed for some other distinct and serious crime, of which a Magistrate had discharged him—Rat 588
32. **Reasons to be recorded.**—Under this Section the reasons for directing a commitment should be recorded. The reasons for exercising the power conferred by this Section are reasons which should arise upon the materials to be found on the record and not upon the materials to be found on the record and not upon extraneous matter—(90) A N 147
33. **Order must specify the particular acts constituting the offence.**—An order by a Judge under S 236 of Act X of 1872 (=S 436), directing a Magistrate to commit an accused person, who has been discharged at a preliminary

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enquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot direct a commitment for offences with which the accused was in no way charged before the Magistrate—[10 B L 285 21 W R 11] In 10 Cr 551 (A) Stanley C J held that a Sessions Judge has no jurisdiction under S 437 to direct an enquiry into the offence of forgery (S 467 I P C) where the accused persons had been charged under Ss 342 and 357 I P C by the Magistrate and discharged because these offences had not been proved

34. **Power to take additional evidence.**—Where a Deputy Magistrate discharged an accused person in a case of theft (S 380 I P C) without

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being an offence triable exclusively by the Court of Session, the Sessions Judge or the District Magistrate would have no power to commit in such a case—[4 C 16]

- 34A. **Change in law under the Code of 1861**

—the District Magistrate, if he was of opinion that in a case tried by a Magistrate subordinate to him, a failure of justice had occurred in consequence of the latter not committing the accused for trial to the Court of Session, was bound to refer the case to the High Court with an expression of opinion [5 B II 65 (14) A N 154] By the Act VII of 1869, the law was changed so as to enable the District Magistrate to refer the matter to the Sessions Judge [see 7 B II 72] Under the present Code he can act direct without the intervention of a Superior Court.

35. **The Section does not apply to Presidency Magistrates.**—A Presidency Magistrate has power to revise a complaint after having previously dismissed it and discharged the accused as neither S 436 nor S 437 apply to Presidency Magistrates—1 C N 49 25 C 652 (F.B.), 25 C 211 29 C 726 (F.B.)

VI. THE HIGH COURT.

36. **Power of High Court to interfere with orders by Presidency Magistrates.**—The High Court has ample power under the Charter, if not under the Code to revise an order reversing a complaint after discharge—[1 C N 49] The powers of the High Court to interfere with the orders of a Presidency Magistrate are limited. Where a Presidency Magistrate dismisses a complaint under S. 203 Cr. P. C the High Court

cannot direct a further enquiry under S 437, nor can they interfere under S. 439, although the order of the Magistrate dismissing the complaint might not be quite proper. It can act only under S 15 of the Charter Act—[17 C 1252, 27 C 125; 6 C J. 705] In 25 C 716 it has however been held that both under Ss 435 and 439 read with S 423 and under cl 28 of the Letters Patent, the High Court has the power to

revise the proceedings of the Magistrate subject to the Appellate jurisdiction of the High Court (such as Presidency Magistrates) and to direct a further enquiry into a complaint --[See also 36 C 914 14 M T 200 27 R 84]

37. The High Court will not ordinarily interfere with orders under S. 436 by Subordinate Appellate Courts.

(1) District Magistrates.—Unless the District Magistrate's power of interference with the lower Court's order of discharge was exercised on very weak and clearly untenable grounds. The High Court would not interfere with the discretion vested by law in the District Magistrate by S 436 Cr P C 15 Cr 373 (M)

(2) Sessions Judges.—The High Court should be slow to interfere with the exercise of the very wide discretion with which Sessions Judges have been invested under the provisions of S 436 Cr P C 13 A J 111 26 A 561

38. Powers of the High Court under Ss. 215 and 439 compared.—See Notes under S 439 *infra*

39. Power to quash a commitment ordered under this Section.—The High Court has full jurisdiction under S 439 to revise a commitment order under S 436, on points of law as well

as of fact. [12 C, N 117. 7 C N 327 20 27 M 54] It is open to the High Court to consider whether the Sessions Judge, has or has not exercised a proper judicial discretion under S 436 in setting aside a Magistrate's order of discharge [30 M 224]

40. When the High Court will interfere.—An order of a Sessions Judge or a District Magistrate

charge on insufficient grounds or that while there were good grounds for setting it aside the Lower Court has made an order appropriate to the facts of the case, the High Court would be acting properly in revising the order.—15 C. 608 (F. B.).

41. When District Magistrate or Sessions Judge have power to grant relief High Court will not interfere.—Where a case exclusively triable by a Court of Session is tried by a Magistrate and the accused is discharged, without being committed to the Session—held—that under the circumstances the complainant should

Supra

437. On examining any record under section 435 or otherwise, the High Court or the Sessions

Power to order enquiry

Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District

Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any accused person who has been discharged

Proposed amendment to the section.—In section 437 of the said Code, for the words "accused person" the words "person accused of an offence" shall be substituted

ARRANGEMENT OF NOTES.

S 437=S 298 (1872)=S 135 (1861)

I. Object and Scope of the Section.

- (1) General principles to be followed in directing further enquiry
- (2) Application of the section.
- (3) General Rules of Practice
- (4) Miscellaneous
- (5) Concurrent jurisdiction of the District Magistrate and Sessions Judge

II. Further Enquiry—what it means and includes.

- (1) Defined
- (2) What it includes
- (3) What is implied

III. Further enquiry—when it can be directed.

- (1) Further enquiry when no fresh evidence is forthcoming.
- (2) Grounds on which a further enquiry may be ordered.

- (3) When further enquiry ought not to be ordered.
- (4) Second application under S 437 after the first one has been rejected
- (5) Pendency of proceedings under S 436 Cr P. C

IV. Notice to the Accused.

V. Practice and Procedure.

- (1) Reasons to be given for interference.
- (2) Fresh complaint on same facts after discharge of accused not barred by S 437
- (3) Proceedings must commence *de novo* on further enquiry being ordered
- (4) High Court will not interfere unless lower appellate Court has been wrong
- (5)
- (6)

VI.d further

- (1) Power to nominate a particular Magistrate
- (2) When the enquiry should be entrusted to a different Magistrate

II. Powers and duties of the Court directing further enquiry.

- (1) Duty to determine sufficiency of evidence.
- (2) Taking evidence or directing evidence to be taken.
- (3) Duty to peruse evidence etc
- (4) Subordinate Magistrate cannot question the order.
- (5) Powers of the Magistrate holding further enquiry.

III. Powers of the District Magistrate.

- (1) Power to direct a reconsideration of the same evidence.
- (2) Change of Law.
- (3) Action *Suo motu*

- (4) Further enquiry into case dismissed by himself
- (5) He cannot fetter the discretion of the Magistrate directed to hold further enquiry.
- (6) When District Magistrate disagrees with the Sessions Judge.
- (7) A District Magistrate cannot.
- (8) Miscellaneous Rules.

IX. Powers of the Sessions Judge.

- (1) Powers
- (2) A Sessions Judge cannot.

X. Powers of the High Court.

XI. Miscellaneous.

- (1) Subordinate Criminal Court—meaning.
- (2) Miscellaneous

I. OBJECT AND SCOPE OF THE SECTION.

(1) General Principles to be followed in directing further enquiry.

1. Principles to be followed in directing further enquiry.—“It is true, as has been

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the evidence, and that the Magistrate should be directed to farther enquiry into the truth of the complaint. I do not understand the decisions to lay down that the Appellate Court has to act as if it were hearing an appeal in a Criminal case. The powers with which the Magistrate or Sessions Judge is clothed are powers of revision, and in exercising those powers of revision what the appellate Court has to see is whether the evidence is of such a character that it is possible to come to only one conclusion upon it, namely, that the accused has been guilty. The mere fact that if he had heard the evidence himself he would have come to a different conclusion on the facts, would not ordinarily be a sufficient ground for setting aside the order of discharge. It may not be a question of perversity but it must be very near it. The Appellate Court must satisfy itself that there has been a miscarriage of justice, consequent upon one sided or perverse view taken by the trial Magistrate.—*Per Seshagiri Aiyar* in 10 L. W. 630.

- 1A. Note.—“There is in my opinion, very little difference in substance between the case of a person who has been discharged after all the prosecution evidence has been taken and weighed by the Magistrate and that of a person who is acquitted after a charge has been framed. In the former case the Magistrate considers that the prosecution evidence is so weak that there is nothing for the accused to meet and in the latter case the evidence though sufficiently strong to call upon the accused to meet it has in the opinion of the Magistrate

charge being framed”.—*Kumarswami Sastry J.* in 20 Cr. 101 (M) 10 P. R. 1911 (F. B.)

2. “It is true, as has been

of the Magistrate, been met by the defence. There is no reason why different tests should be applied in revision or why an accused against whom the prosecution evidence is weak would be in a worse position than one against whom it is strong enough to warrant a charge being framed. *Per Kumarswami Sastry* in 35 M J 518 10 P R 1911 (F. B.)

- (2) Further enquiry into the case of a discharged person should not be ordered, unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete.—10 P R 1911 (F B) 20 Cr. 592(P) 9 P R 6013 130 P L 1915 16 Cr 662 (P) 20 P W 1916 21 Cr 571 (P)
- (3) Where no fresh evidence is forthcoming and the circumstances and the evidence are such that two different courts might take a different view of not be enquiry 45 22 (S M 336 12 Cr 110 (S))
- (4) An order directing further enquiry should not be passed where on the face of the order of discharge, it does not appear that the order is perfunctory or foolish.—21 Cr 521 (P)
- (5) An order of dismissal passed under S. 203 Cr. P. C.—should not be set aside by a District Magistrate on the bare ground that it is possible on a further enquiry the accused may be convicted.—17 Cr 406 (M)
3. Mistake of law or illegality.—Any mistake of law or illegality or irregularity in the

against whom it is strong enough to warrant a

proceedings will justify the District Magistrate in setting aside an order of discharge.—14 C. P. 161.

(2) *Application of the section.*

4. S. 437 contemplates a further enquiry i.e. an enquiry upon further materials on further evidence, not a rehearing of the matter upon the same evidence which was before the Magistrate holding the first enquiry.—10 C. 207. 10 C. 1027. 12 C. 522 (F.B.). S M 316 G C P. 11. 31 P. L. 1900 G3 P R 1887 11 P R 1891 41 P R 1891. 174 P R 1887 ('90) A. N. 147
5. Discharge under S. 253.—Where an accused person has been discharged under S. 253 Cr. P. C. the High Court or Court of Sessions has jurisdiction under S. 437 to direct a further enquiry on the same material and a District Magistrate may under like circumstances himself hold further enquiry or direct further enquiry by a subordinate Magistrate.—9 A 52 (F.B.). 14 M 334 (F.B.). 15 C 605 (F.B.). 3 L B 97 (F.B.). 10 B 131 1 B R 222 5 C P 20 2 O C 363 21 Cr 321 (P) 304 P L 1902 32 P L 1901 2 P R. 1901: 14 P R 1891
6. Discharge under S. 203.—The High Court acting under S. 437 of the Cr. P. Code has power to direct a further enquiry into a complaint dismissed under S. 203 Cr. P. C. and into the case of an accused person who has been discharged even though no further evidence is forthcoming.—14 P R 1891 14 C P 161. 10 B 131 1 P. L. 33
7. Discharge under S. 259 Cr. P. C.—The prior discharge of the accused under S. 259 Cr. P. C. the complainant having failed to appear on calls does not bar the jurisdiction of the Magistrate to entertain the second complaint on the same facts.—25 C 652 (F.B.). 28 M 310 29 M 120 (F.B.). S S 196 Rat 958
- 7A. S. 437 does not apply when there has been an acquittal.—Where the accused was tried under S. 363 P. C. and acquitted, the Sessions Judge has no jurisdiction to direct further enquiry to be made to ascertain whether S. 366 or 365 I P C was applicable, in as much as kidnapping is an essential element in offences under Ss 365, 366, and 368 P C 20 Cr. 526 (Pat) 2 C J 622
8. Miscellaneous Proceedings.—The Allahabad High Court has held that "under S. 437 Cr. P. C. a District Magistrate has jurisdiction to direct further inquiry in a case where a person has been discharged in an enquiry under S. 110 Cr. P. C." 36 A 147. 20 Cr. 701 (A) 21 A 107 24 A 148. 24 P R 1903. 2 L B 80. See 21 A 376 ('94) A N 293. See Con 27 C 662 ('00) A N 296 G O C. 112: 12 P R 1905 33 C 8. 2 L B (1914) 3
9. Note:—Proposed change of the Law.—There is a great conflict of rulings as to the meaning and scope of the term "accused person." Some rulings put a strict interpretation upon the term and explain it as meaning "a person accused of an offence," while others include within the term persons against whom proceedings are taken in any shape or form by a Criminal Court

acting in its judicial capacity. This conflict will be finally set at rest if the proposed amendment, by substitution of the term by the words "person accused of an offence" is given effect to by the Legislature. [See proposed amendment at the foot of S. 437 above.] Thus, in 20 C. 729 [Distinguished in 29 C. 242] and 30 C. 112, it has been held that S. 437 does not apply to proceedings under S. 115, Cr. P. C. in 17 C. P. 127: [see also 17 C. P. 561. 5 C. 536] S. 437 is held to be inapplicable to proceedings under S. 159 Cr. P. C. in 42 P R 1905. [Pro. 27 C. 612 13 C. N. celti Con 33 P R 1905: 36 C 163], proceedings under S. 107 are held to be outside the purview of the section. Proceedings under S. 133 Cr. P. C. have been held not to be amenable to revision under S. 437 [24 C 395, 25 C. 425: 14 C. N. 16.] See also the following cases.—21 C. 493. 32 C 1085: 15 P R 1900 33 M 85. ('99) A N. 203 1 Pat W. 258 6 P R 1911 (F.B.): 16 B. 661: 13 B R 505

10. Order of discharge under S. 332 by the High Court.—When an order of discharge was passed by an Advocate General entering a *nolle prosequi* under S. 332 in a Sessions case before the Calcutta High Court, held it could not be set aside by any tribunal, but it did not require to be set aside for initiation of fresh proceedings on the same charges.—16 C. N. 983.
11. Discharge and dismissal.—Sec. 437 of the Code of Criminal Procedure applies both to the case of an order of discharge and to an order of dismissal.—21 Cr. 663 (c)
12. Use of caution necessary.—The power of ordering further enquiry should be used sparingly and with great circumspection. Rat 325: 11 C N. 173, especially when the questions involved are mere matters of fact. 9 A 52 (F.B.): 20 C 363.
13. Perverse or foolish judgment.—It is improper to interfere under S. 437 Cr. P. C. with the order of discharge unless it is perverse or foolish or in cases in which the Magistrate has dealt at length with the evidence and recorded what appeared sound reasons for discharge. 391 P L 1902: 31 P. L. 1900
14. Section does not contemplate review of an order of discharge by the same Magistrate.—33 P R 1891

(3) *General Rules of Practice.*

15. Orders of discharge by a special Magistrate.—Where a subordinate Magistrate of the first class invested with powers under S. 30 Cr. P. C. makes an order of discharge in a case which under Schedule II of the code read with Ss 28 or 29 thereof is triable exclusively by the Court of Sessions, such order is open to revision by the District Magistrate under Ss 436 and 437 Cr. P. C. 15 P. R. 1904: 12 N 91
16. Procedure when no further evidence is required.—When no further evidence is required in a case that is being dealt with under S. 437 the matter should ordinarily be referred to the High Court which can pass a suitable order.—1 L B 9 1 L B 100. See 1 L B 311.

17. Where the case is triable only by the Court of Sessions—In a case triable only by the Court of Sessions it would ordinarily be duty of the District Magistrate and the Sessions Judge to set aside the order of discharge, and order a further enquiry under S. 437 or refer the matter to the High Court.—15 C. 608 (F.B.)

Note.—The ruling is not binding on the Courts of Lower Burma.—3 L. B. 97 (F.B.) [q.—2 L. B. 27.]

18. Refusal to issue process against some of the persons complained against—amounts to an order of dismissal under S. 203 Cr. P. C. within the meaning of S. 437.—29 C. 457; But see 27 C. 658.
19. Power to order a retrial not contemplated.—A power to order what is practically a retrial is to give a complainant another opportunity of re-examining his witnesses and adding fresh evidence is not contemplated by the section, as such a course would open a wide door to perjury and corruption. If the District Magistrate is of opinion, that the prosecution evidence is reliable, he ought to refer the case to the High Court for orders. 33 M. 133.
20. District Magistrate can not order retrial by himself.—A District Magistrate has no power when acting under S. 437 Cr. P. C. to direct a retrial by himself.—22 Cr. 49 (A)
21. Jurisdiction irrespective of legality or illegality of dismissal.—S. 437 of the

(4) Miscellaneous.

23. Discharge, and direct a charge to be framed and tried by the proper Court. It can under S. 437 probably also under S. 439 order a further enquiry instead of a committal. The Court of Sessions and the District Magistrate have, in cases triable ex alter. In and r the
24. Change in the Law.—Under the Code of 1872, the District Magistrate could not direct a further enquiry when the accused has been improperly discharged. The only course left open to him was to refer the proceedings for orders to the High Court. See 2 B. 534 10 B. 131 2 C. 405 10 C. 268.

(5) Concurrent Jurisdiction of Sessions Judge and District Magistrate.

25. (1) The Sessions Judge has no power to refer the applicant to the District Magistrate, whose court is not of inferior but of concurrent jurisdiction with the Court of Sessions.—Pet 523
- 25A. (2) Both the District Magistrate and the Sessions Judge are competent under S. 437 to order a
26. (3) After an application has been made to the District Magistrate under S. 435 of the Code, no further application, even though it may be to call for the record and to refer the District Magistrate's order to the High Court can be entertained by the Sessions Judge. 17 M. J. 153

whether the dismissal is legal or illegal. J. 346

22. The trial of evidence.—The

II. "FURTHER ENQUIRY"—WHAT IT MEANS AND INCLUDES.

(1) Defined

27. (1) The term "further enquiry" means an enquiry before the magistrate preliminary to trial, which results in a charge or a discharge, and does not include trial. The terms "further enquiry" and "fresh enquiry" are used as meaning the same thing.—15 C. 608 (F.B.) 1 L. B. 9
28. (2) The term "further enquiry" means, in its primary significance, an enquiry in addition to that which has already been held not the re-taking of the same evidence, which would be a fresh enquiry or a retrial but the taking of additional evidence. In S. 437, the term is used in its ordinary meaning.—8 M. 376 [O] 12 C. 622. 10 C. 268; 10 C. 1027. 31 P. L. 1900

[Note per contra.—The term "further enquiry" in its ordinary acceptance, may signify as well a fresh consideration of the effect of the evidence

already recorded as a supplementary enquiry on such evidence"—14 M. 341 (F.B.)

(2) What it includes.

29. (1) The term includes not merely the taking of evidence but the consideration of that evidence and the conclusion amounting to a charge or discharge of the accused.—15 C. 608 (F.B.)
30. (2) In a further enquiry ordered under S. 437 Cr. P. C. the accused may meet the case for the prosecution by producing rebutting evidence. The Magistrate may also take evidence which he has omitted to take.—13 B. 376 (34)

(3) What is implied.

31. (1) The expression "further enquiry" in S. 437 does not imply that additional evidence must be forthcoming. Any mistake of law or illegality or

proceedings will justify the District Magistrate in setting aside an order of discharge.—14 C. P. 161.

(2) *Application of the section.*

4. S. 437 contemplates a further enquiry; i.e. an enquiry upon further materials on further evidence, not a rehearing of the matter upon the same evidence which was before the Magistrate holding the first enquiry.—10 C. 207; 10 C. 1027; 12 C. 522 (F.B.); 8 M. 336; 6 C. P. 11; 31 P. L. 1900; 63 P. R. 1887; 14 P. R. 1891; 41 P. R. 1891; 174 P. R. 1897; (90) A. N. 147.
5. Discharge under S. 253.—Where an accused person has been discharged under S. 253 Cr. P. C. the High Court or Court of Sessions has jurisdiction under S. 437 to direct a further enquiry on the same material and a District Magistrate may under like circumstances himself hold further enquiry or direct further enquiry by a subordinate Magistrate.—9 A. 52 (F.B.); 14 M. 334 (F.B.); 15 C. 605 (F.B.); 3 L. B. 97 (F.B.); 10 R. 131; 1 B. R. 222; 5 C. P. 20; 2 O. C. 363; 21 C. 521 (P); 391 P. L. 1902; 31 P. L. 1901; 2 P. R. 1901; 14 P. R. 1891.
6. Discharge under S. 203.—The High Court acting under S. 437 of the Cr. P. Code has power to direct a further enquiry into a complaint dismissed under S. 203 Cr. P. C. and into the case of an accused person who has been discharged even though no further evidence is forthcoming.—14 P. R. 1891; 14 C. P. 101; 10 R. 131; 1 P. L. 33.
7. Discharge under S. 259 Cr. P. C.—The prior discharge of the accused under S. 259 Cr. P. C. the complainant having failed to appear on calla does not bar the jurisdiction of the Magistrate to entertain the second complaint on the same facts.—28 C. 632 (F.B.); 28 M. 310; 29 M. 126 (F.B.); 8 S. 196; Rat. 954.
- 7A. S. 437 does not apply when there has been an acquittal.—Where the accused was tried under S. 303 P. C. and acquitted, the Sessions Judge has no jurisdiction to direct further enquiry to be made to ascertain whether S. 306 or 365 I. P. C. was applicable, in as much as kidnapping is an essential element in offences under Ss. 363, 366, and 368 P. C. 20 Cr. 526 (Pat); 2 C. J. 622.
8. Miscellaneous Proceedings.—The Allahabad High Court has held that "under S. 437 Cr. P. C. a District Magistrate has jurisdiction to direct further inquiry in a case where a person has been discharged in an enquiry under S. 110 Cr. P. C." 36 A. 147; 20 Cr. 504 (A); 21 A. 107; 21 A. 148; 24 P. R. 1903; 21 B. 40. See 25 A. 376; (90) A. N. 203. See *Con* 27 C. 662; (90) A. N. 206; G. O. C. 112; 12 P. R. 1905; 35 C. 8; 2 U. II (1914) 3.
9. Note:—Proposed change of the Law.—There is a great conflict of rulings as to the meaning and scope of the term "accused person." Some rulings put a strict interpretation upon the term and explain it as meaning "a person accused of an offence," while others include within the term persons against whom proceedings are taken in any shape or form by a Criminal Court

acting in its judicial capacity. This conflict will be finally set at rest if the proposed amendment, by substitution of the term by the words "person accused of an offence" is given effect to by the Legislature. [See proposed amendment at the foot of S. 437 above.] Thus, in 20 C. 729 [Distinguished in 29 C. 242] and 30 C. 112, it has been held that S. 437 does not apply to proceedings under S. 110 Cr. P. C. In 17 C. P. 127 [see also 17 C. P. 564; 5 C. 636] S. 437 is held to be inapplicable to proceedings under S. 489 Cr. P. C. In 42 P. R. 1903, [Pro 27 C. 662; 13 C. N. coln; *Con* 34 P. R. 1905; 36 C. 163], proceedings under S. 107 are held to be outside the purview of the section. Proceedings under S. 133 Cr. P. C. have been held not to be amenable to revision under S. 137 [24 C. 395; 25 C. 425; 14 C. N. 1]. See also the following cases—23 C. 493; 32 C. 1085; 15 P. R. 1900; 33 M. 85; (90) A. N. 203; 1 Pat. W. 239; 6 P. R. 1911 (F.B.); 16 B. 661; 13 B. R. 505.

10. Order of discharge under S. 332 by the High Court.—When an order of discharge was passed by an Advocate General entering a *nolle prosequi* under S. 332 in a Sessions case before the Calcutta High Court, held it could not be set aside by any tribunal, but it did not require to be set aside for initiation of fresh proceedings on the same charges.—16 C. N. 983.
11. Discharge and dismissal.—Sec. 437 of the Code of Criminal Procedure applies both to the case of an order of discharge and to an order of dismissal.—21 Cr. 603 (c).
12. Use of caution necessary.—The power of ordering further enquiry should be used sparingly and with great circumspection. Rat. 328; 11 O. N. 173, especially when the questions involved are mere matters of fact. 9 A. 52 (F.B.); 2 O. C. 363.
13. Perverse or foolish judgment.—It is improper to interfere under S. 437 Cr. P. C. with the order of discharge unless it is perverse or foolish or in cases in which the Magistrate has dealt at length with the evidence and recorded what appeared sound reasons for discharge. 391 P. L. 1902; 31 P. L. 1900.
14. Section does not contemplate review of an order of discharge by the same Magistrate.—33 P. R. 1891.

(3) *General Rules of Practice.*

15. Orders of discharge by a special Magistrate.—Where a subordinate Magistrate of the first class invested with powers under S. 30 Cr. P. C. makes an order of discharge in a case which under Schedule II of the code may with Ss. 28 or 29 thereof be triable exclusively by the Court of Sessions, such order is open to revision by the District Magistrate under Ss. 136 and 437 Cr. P. C. 15 P. R. 1904; 12 N. 94.
16. Procedure when no further evidence is required.—When no further evidence is required in a case that is being dealt with under S. 437 the matter should ordinarily be referred to the High Court which can pass a suitable order.—1 L. B. 9; 1 L. B. 100; See 1 L. R. 311.

(6) Miscellaneous Rules of Practice.

3. **Acquittal as a bar to further enquiry.**—When the complaint referred to two offences *viz* theft and mischief and the accused being charged with mischief only was acquitted—*held*—the District Magistrate had no power to direct further enquiry under S 437 into the charge of theft as S 493 barred such an order—8 M 296—See 20 C 634; 7 C. N. 493; 19 P. R 1900; 23 M. 225; 1 A. J. 415; 50 P. L. 1901.
4. **Further enquiry refused by predecessor in office.**—If a District Magistrate refuses further enquiry in a particular case, it is not competent to his successor in office to order it on a fresh application of the complainant—4 C. N. 100
5. **Police Case.**—A Magistrate's order directing a case reported to him by the Police to be struck off is not a judicial order dismissing a complaint or discharging an accused person which can be reviewed by the Sessions Judge—Rat 521
46. **When the order of discharge is really**

tal. The District Magistrate was not therefore competent to direct further enquiry to be made into the case.—16 A. J. 388; 35 M 555; 17 Cr 95 (M); S M. T. 78.

47. **Refusal to frame a charge of an offence cognizable by the Court of Sessions.**—A Magistrate's refusal to frame a charge for an

offence cognizable by a Court of Sessions on the ground that there is no direct evidence connecting the accused with that offence is in substance an order discharging the accused under S 209 Cr. P. C. in respect of that offence; and a Sessions Judge is competent to make an order for further enquiry under S 436 Cr. P. C.—“From the terms of the Magistrate's order it is clear that he adjudicated upon the question whether there was any evidence against the accused in respect of the major offence. The Magistrate came to the conclusion that there was not, and he declined to charge him with the major offence. It seems to us that there was a discharge within the meaning of S 209.”—24 M. 136 (F. B.); 42 A. 128.

48. **Dismissal on receipt of report by local panchayat.**—Where a Magistrate dismissed a complaint on the basis of a report by the local panchayat without giving the complainant an opportunity of being heard and his order referred only to one of the two charges preferred in the complaint, the High Court *held* that further enquiry should be made.—23 C. N. 575.
49. **When an appeal is pending in respect of the same matter.**—An order under S 437 Cr P C. can be made, even when the record is before the Court on an appeal—21 Cr 660 (Pat).

50. **Defect in form of process against accused**

discharge within the meaning of S 493 Cr. P. C.—20 Cr 835 (Pat)

IV. NOTICE TO THE ACCUSED.

51. **Note.**—In view of the conflict of opinion as to the necessity of notice being given to the accused of an application made under S 437, views of the different High Courts may usefully be indicated and analysed in separate paragraphs. We may begin with.
52. **The Allahabad High Court.**—The Allahabad High Court has consistently held to the opinion that an order under S 437 cannot be made without giving the accused notice thereby enabling him to appear and show cause. [6 A 367; 9 A 52 (F. B.); 20 A. 337; 25 A 375 (90) A N 147; 36 A 147; 40 A 134; 40 A 416; 12 A. J. 167; 15 A. J. 627; 20 Cr 769 (A) 20 Cr 770 (A) 20 Cr 831 (A) 21 Cr 847 (A) [But see 5 A. J. 74]
53. **Calcutta High Court.**—The leading case for Calcutta is 15 C 608 (F. B.) which lays down that although no notice to the accused under the law is necessary before an order under S 437 can be passed, yet a Court would not be exercising a proper discretion in such matter, if before proceeding under the section, the accused who has been discharged, is not given an opportunity by service of a notice to show cause against such an order being made. This view has been adopted in 29 C 457; 32 C 1030; 3 C. N. 219; 9 C. N. cxxxix; 11 C. N. 173; 11 C. N. 316; 11 C. N. cxxxix; 21 Cr 633 (C) The ruling in 15 C. 608

(F. B.) overruled 10 C. 207 and 10 C. 208 which had laid down that notice was obligatory. Some later rulings though ostensibly following 15 C. 608 (F. B.) have for all practical purposes adopted the stricter rule laid down in 10 C 207; See 20 C N 186; 40 C N 100; 39 C. 238; 12 C. N. 822; 15 Cr 1 (C) 3 C. J. 43; 14 C. N. cclxxiv; See also 25 C. 793; 31 C 811.

54. **The Madras High Court.**—The point has

55. **Bombay High Court.**—The Bombay High Court in Rat 424 (see also 1 B R 782) approved of the strict rule laid down in Allahabad. In 2 B R 546; 3 B R 703; 5 B R 577; 6 B R 479 the rule has been thus laid down. Although the code does not expressly require notice, it is but proper that such notice should be given. In 8 B R 694 *Alton J* remarked that whether notice is necessary or not would depend on the circumstances of each case. See also 10 B. 131.

56. **Patna High Court.**—The Patna High Court has adopted the view of the Calcutta High Court in 15 C 608 (F. B.)—See 4 Pat W. 220; 21 Cr. 833 (Pat)

57. **Punjab.**—The Punjab Chief Court has consistently adopted the view of the Calcutta High Court.—See 2 P. R. 1901 3 P. L. 1902: 44 P. W. 1911: 17 P. R. 1895: 11 P. W. 1908. A stricter rule is indicated in 14 P. R. 1891 and 8 P. R. 1900.
58. **Oudh.**—In Oudh the view taken is the same as in the Calcutta High Court.—See 11 O. C. 261: 13 O. C. 289.
59. **Burma.**—In Lower Burma, the opinion of the Judges follows that of the Calcutta High Court [See 7 Bur. R. 198: 8 Bur. T. 133]. In Upper Burma, the view is the same as that taken by Allahabad High Court.—(‘97-’01) U. B. 1. 96 900 2 U. B. (1914) 3 [see also (‘97-’01) U. B. 100].
60. **Sindh.**—In Sindh it has been held that the notice though not obligatory is desirable.—See 3 S. 7: 12 Cr. 110 (S).
61. **Where all High Courts agree.**—A summary order of dismissal of a complaint under S. 203, takes place in the absence of the accused and would probably be unknown to him. No notice would therefore be necessary before an order setting aside the dismissal is passed.—15 C. 608 (F. B.): 29 C. 457: 32 C. 1090: 10 B. 131: 2 B. R. 585: 20 A. 339: 30 A. 52: 35 A. 78: (‘08) A. N. 45 12 Cr. 46 (A): 11 O. C. 261 11 P. R. 1908. *Con.* 11 O. N. 316: 11 O. N. xxiv.
- 61A. **Note.**—“A notice certainly would not be necessary before an order to set and on order of dismissal under S. 203 could be passed, since that order was not passed, with a notice to the accused person or in his presence and therefore is probably unknown to him.”—*Per Princep J* in 15 C. 608 (F. B.) 35 A. 78: 40 A. 138.

V. PRACTICE AND PROCEDURE.

(1) Reasons to be given for interference.

65. **Reason for directing further enquiry under S. 437 must be recorded.**—15 C. 608 (F. B.): 32 C. 1090. 3 O. J. 43: 5 Bur. T. 37: 3 S. 7. See 8 O. N. 456. *Con.* 4 L. B. 233.
66. **Elaborate reasons need not be given.**—It is not ordinarily desirable that in ordering further enquiry under S. 437 Cr. P. C., a detailed examination of the evidence and elaborate reasons should be given, but enough should be said in the way of reasons to indicate to the court below in what manner it is thought that its order was incorrect, whether on a point of law, or in misappreciation of the weight of the evidence or for want of a complete enquiry. It is far to a person against whom an order for further enquiry is made that the reasons for directing such enquiry should be made explicit to him and that he should have notice of the ground on which the further enquiry has been directed.—(‘17) 3 U. B. 16: 8 O. N. 456: 32 C. 1090. *But see* 4 L. B. 233.

(2) Fresh complaint on same facts after discharge of the accused not barred by S. 437.

67. Where a trying Magistrate has arrived at the conclusion that no *prima facie* case has been made out against the accused, the High Court cannot command him to come to a different

62. The rule as stated by Beamen J.—The law does not make obligatory upon a Sessions Judge or a District Magistrate acting under S. 437 Cr. P. C. to give notice to the accused. In

S. 437 does not compel a Magistrate to issue notice and an order passed under that section without having issued notice is not illegal. But it is a fundamental principle of the administration of English Justice that no order to the prejudice of an accused person should ordinarily be made without giving him an opportunity of being heard in defence. And the mere omission from the section of any direct and positive command to give invariable effect to that principle was never meant to absolve Magistrates from doing so in all ordinary cases.”—8 B. R. 694.

63. **Appearance on notice is not obligatory.**—Notice is for the benefit of the accused, so that he is not under any legal obligation to avail himself of the opportunity if he does not wish to do so.—[15 P. R. 1893]. A notice of this kind is not a summons in terms of S. 53 *Evid.*, so that the accused is free to appear and show cause or may if he like, stay away.—[8 A. 367: 22 C. 573]

64. **Cancellation of notice.**—Where a rule nisi was issued but notice could not be served as the whereabouts of the accused were not known, the High Court discharged the rule giving the petitioner leave to move again when notice could be served on the accused.—[12 C. N. xii]

conclusion on the facts. If the complainant has a good case, he may make a fresh complaint to another Magistrate who will not be prevented from entertaining it by a mere discharge of the accused in a warrant case. Rat 209: 2 L. B. 27: 5 B. 405: 28 M. 310. *Con.* 2 O. N. 290: 23 C. 983 24 C. 628.

Note.—“No court can properly set aside an order of discharge without having and assigning solid and sufficient reasons for doing so.”—15 C. 608 (F. B.): (‘14) M. N. 46.

66. **Dismissal of complaint under S. 203, no bar to rehearing of the complaint by the same Magistrate by reason of S. 437.** 28 C. 652 (F. B.): 29 A. 7 (‘95) A. N. 66: 29 M. 126 (F. B.): 24 M. 337: 21 Cr. 379 (A). See (‘08) A. N. 67: 1 N. 18: 9 P. R. 1902 9 A. 85: 25 C. 211: *Contra* 23 C. 983: 29 M. 255—2 Weir 247 A.: 22 A. 106 24 C. 280.
69. **Discharge in warrant cases.**—A Magistrate in a warrant case having passed an order of discharge is competent to take fresh proceedings and issue process against the accused in respect of the same offence without an order for further enquiry under S. 437 Cr. P. C. 29 C. 720: 29 M. 126 (F. B.): 1 B. 64: 18 W. R. 39. See 24 L. B. 27: 6 O. C. 262: 28 C. 102. *Con.* 24 M. 235 (O. V.)
- 69A. **Restoration of case notwithstanding refusal of District Magistrate to order further enquiry.**—There is nothing illegal in

57. Punjab.—The Punjab Chief Court has consistently adopted the view of the Calcutta High Court.—See 2 P. R. 1901; 2 P. L. 1902; 44 P. W. 1911. 17 P. R. 1895; 11 P. W. 1908. A stricter rule is indicated in 14 P. R. 1891 and 8 P. R. 1900.
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V. PRACTICE AND PROCEDURE.

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S. 437 does not compel a Magistrate to issue notice and an order passed under that section without having issued notice is not illegal. But it is a fundamental principle of the administration of English Justice that no order to the prejudice of an accused person should ordinarily be made without giving him an opportunity of being heard in defence. And the mere omission from the section of any direct and positive command to give invariable effect to that principle was never meant to absolve Magistrates from doing so in all ordinary cases.”—8 B. R. 694.

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68. Dismissal of complaint under S. 203, no bar to rehearing of the complaint by the same Magistrate by reason of S. 437. 28 C. 652 (F. B.); 29 A. 7. (45) A. N. 86; 29 M. 126 (F. B.); 24 M. 337; 21 Cr. 379 (A); See (08) A. N. 67; 1 N. 18; 9 P. R. 1902; 9 A. 85; 28 C. 211; Contra 23 C. 983; 28 M. 255=2 Weir 247 A.; 22 A. 106; 24 C. 286.
69. Discharge in warrant cases.—A Magistrate in a warrant case having passed an order of discharge is competent to take fresh proceedings and issue process against the accused in respect of the same offence without an order for further enquiry under S. 437 Cr. P. C. 29 C. 726; 29 M. 126 (F. B.); 1 B. 64; 18 W. R. 39. See 2 L. B. 27; 6 C. C. 262; 28 C. 102; Con. 28 M. 255 (O. V).
- 69A. Restoration of case notwithstanding refusal of District Magistrate to order further enquiry.—There is nothing illegal in

or *ultra vires* of a Deputy Magistrate reversing a complaint which he had dismissed under S 203 Cr. P. C. after the District Magistrate has, on an application made to him, declined under S 437 Criminal Procedure Code to order further enquiry into the complaint—36 C 115

(3) *Proceedings must commence de novo on further enquiry being ordered.*

70. Further enquiry does not mean proceeding on the evidence already taken, that evidence or other evidence, if there be any, should be taken *de novo* by the Magistrate who holds further enquiry—[9 A. J. 310 See 6 A. 365]. An order for further enquiry opens up the whole case. It is to be taken up again, and every question from the dismissal of the complaint up to the final discharge, acquittal or conviction, has to be reconsidered and appropriate order is to be made, according to the result of such re-consideration [See 32 M. 220 (F.B.) at p 231, 1 L. B. 233]. The effect of an order for further enquiry under S. 437 is to set aside a previous order of discharge and leave the enquiry before the Magistrate open as it was before the hearing of further evidence under S 232 or the decision under S 237 and the subsequent sections of Ch. XXI of the Code. Where after the discharge of an accused person of the

—7 M. 454 4 L. B. 42 1 C. L. 63 2 P. R. 1901
See 3 B. R. 675

(4) *High Court will not interfere unless lower appellate Court has been moved.*

71. When complaint was dismissed by the District Magistrate under S. 203.—The High Court declined to entertain an application under S. 437 when no application for that object had been made to the Sessions Judge.—25 A. 265; (64) A. N. 232

(5) *Conditional restoration of complaint.*

72. In S. 8, 196 the complaint was ordered to be restored on the following conditions—(1) the applicant to pay into court any expenses incurred by Government under S. 544 Cr. P. C. in connection with the first complaint, (2) to execute a bond with one fit surety, undertaking to pay the reasonable costs of the accused (to be assessed by the City Magistrate whose decision thereon shall be final) in the event of his being acquitted or discharged.

(6) *Procedure in general.*

73. ...

NOTE.—MAY 1911

74. Where only some of the persons charged with having committed an offence are tried and acquitted, the acquittal is a bar to

further enquiry against the remaining persons—1 C. N. 346 7 C. N. 711

75. **Order amounting to an order of discharge**—If a Magistrate issues warrants against any accused and then declines not to proceed against them, this amounts to an order of discharge and is subject to revision under S. 437 Cr. P. C. 1 C. N. 212
76. **Delay in making application**—An application under S. 437 should not be dismissed merely on the ground that it was filed after a long time after this date—245 P. L. 1902
77. **Action suo motu**—See VIII Powers of the District Magistrate (B) *infra*
78. **When order directing further enquiry does not justify issue of summons**—A Magistrate without giving any reason for postponing the issue of process passed the following order on the back of the petition of complaint (under Ss 395, 379 and 147 1 P. C.) "Inspector B—to treat this as a first information and make careful enquiry reporting by 15th January 1919" and on the 15th January the Inspector submitted his report for judicial enquiry for an offence under S. 323 1 P. C. On receipt of this report, the Magistrate, on the 18th, dismissed the complaint under S. 203 Cr. P. C. but the Sessions Judge directed a further judicial enquiry. Held that the Magistrate was not competent to issue process against all the accused under Ss 395, 379 and 147 1 P. C. (charges which everybody who had looked into the matter at all, had declared either to be largely exaggerated or wholly false as regards a large number of the accused), until a judicial enquiry had been made and a *prima facie* case disclosed against them—4 Pat J. 459
79. **Persons not named in the complaint nor before the Court**—Under S. 437 Cr. P. C. a Court has no authority to direct further enquiry

of complaint but who had never been summoned to appear before the Magistrate. It should be confined to the case of those accused persons who had actually been summoned and discharged. [27 C. 655. See 12 C. N. 68; 11 C. N. xxviii].

Note—Where after the conviction of some of the accused mentioned in the complaint, the complainant asks for process against the remaining accused who had not been previously summoned, and this is refused, the refusal is, to all intents and purposes, an order under S. 203 Cr. P. C. and S. 437 is therefore applicable—29 C. 457 4 C. N. 212

80. **Effect of acquittal of the accused under trial**—A dismissal of the complaint under S. 247 for complainant's default and the acquittal of one of the accused, terminates also the case against the other accused whose attendance could not be obtained, and against whom the trial did not proceed, nor can the order under S. 247 be set aside under S. 437.—4 C. N. 346 7 C. N. 711.

VI. WHO MAY DIRECTED TO HOLD FURTHER ENQUIRY.

(1) *Power to nominate a particular Magistrate.*

81. Sessions Judge cannot name a Particular Magistrate.—The further enquiry under S. 437 should not be ordered by a Sessions Judge to be made by a particular Magistrate by name. The discretion as to the selection of such Magistrate vests in the District Magistrate and not in the Sessions Judge—*Per Field J.* 10 G. 207. *But See* 8 M. 336.

Note.—The further enquiry should ordinarily be held by the Magistrate who held the original enquiry in as much as the section does not contemplate that the evidence already taken should be retaken.—8 M. 336. 249. 296.

82. Principle to be followed.—When the further enquiry is into the effect of the evidence already on the record, it will usually be desirable that the fresh consideration of the complaint should be entrusted to a different Magistrate, but when it involves the taking of further evidence the function will generally be best performed by the Magistrate who made the previous enquiry, though peculiar or prejudicial views or even possibility of them may make it desirable to bring a fresh mind to bear on the facts. *Rat* 329. 4 L. B. 233.
83. District Magistrate holding enhanced powers under S. 30.—May be ordered by the Sessions Judge to hold further enquiry under this Section.—15 F. R. 1001.

84. Sub-Divisional Magistrate.—(1) A Sub-Divisional Magistrate cannot properly withdraw a case specifically referred by his superior, the District Magistrate, nor can the latter properly insist on repeated further enquiries without fresh evidence.—*Rat* 315.

- (2) Where the District Magistrate had directed the Sub-Divisional Magistrate to hold further enquiry

(2) *When the enquiry should be entrusted to a different Magistrate.*

85. (1) When the first Magistrate has expressed a decided opinion.—A Magistrate stopped the case without hearing all the evidence remarking that "to affirm the guilt to the accused is an impossibility" and "that there is a certain mystery about the whole proceeding which is not amenable to logic." The High Court

do with the case.—*Rat* 320.

86. (2) Unsatisfactory enquiry by the first Magistrate.—It will be a good ground to ordering further enquiry by another Magistrate that the first Magistrate had dealt with the case unsatisfactorily. [*Per Wallis J.*]—32 M. 220 (F.B.)

VII. POWERS AND DUTIES OF THE COURT DIRECTING FURTHER ENQUIRY.

(1) *Duty to determine sufficiency of evidence.*

87. Duty to determine the sufficiency of evidence must be left to Court by which the further enquiry is to be held.—All that the Court of Revision can do under S. 437 Cr. P. C. is to direct further enquiry leaving it entirely to the enquiring Magistrate to determine whether or not the evidence justified the acquittal being charged and put on his trial. 2 H. R. 580.

(2) *Taking evidence or directing evidence to be taken.*

88. S. 437 Cr. P. C. does not authorise a Sessions Judge or a District Magistrate to take evidence or to direct evidence to be taken supplementing the evidence given in the lower court.—6 C. J. 251.

(3) *Duty to peruse evidence etc.*

89. Perusal of evidence.—It is the duty of the Judge, before directing a further enquiry, against a person, who has been discharged, to peruse the evidence and state the grounds which induce him to make the order.—13 C. N. 70.
90. It is not desirable that the District Magistrate in ordering a further enquiry under S. 437 Cr. P. C.

should make a detailed examination of the evidence and give elaborate reasons because that might prejudice the trial afterwards.—32 C. 1099.

91. An order for further enquiry should contain a statement of the reasons therefor.—3 C. J. 43. 13 C. N. 76; 32 C. 1090 (90) A. N. 147.

(4) *Subordinate Magistrate cannot question the order.*

91. A. The order for further enquiry cannot be questioned.—The subordinate Magistrate who is directed to make further enquiry is not competent to question the propriety of the order but is bound to carry it out.—10 B. 131.

(5) *Powers of the Magistrate holding further enquiry.*

92. District Magistrate holding further enquiry into case dismissed by a sub-

93. Enquiry into offences other than the one previously tried.—A Magistrate who is

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committed.—7 M. 154.

94 Charging and trying the accused—A

Magistrate who is directed to make further enquiry into a case under S. 437 Cr. P. C., is competent to proceed to charge and try the accused without reference to the Court which directed the enquiry, when he thinks that the evidence on the record is sufficient.—2 P. R. 1901.

VIII. POWERS OF THE DISTRICT MAGISTRATE.

(1) Power to direct a reconsideration of the same evidence.

95 A District Magistrate or a Sessions Judge, has jurisdiction to direct a reconsideration of the evidence by the same Magistrate who discharged the accused, or a new enquiry before another Magistrate on the grounds, *inter alia* of mistake of law or incorrectness of the finding.—1 L. B. 311.

96 Powers defined.—(1) A District Magistrate can direct a further enquiry under S. 437 into the case of an accused person who has been improperly discharged by a subordinate Magistrate under S. 253 Cr. P. C. though it may involve the reconsideration of the evidence already taken without any additional investigation of facts.—1 B. R. 222

(2) A District Magistrate is competent to deal with a case under S. 437 Cr. P. C. in which a complaint under S. 323, 1 P. C. has been dismissed by a Magistrate owing to the absence of the complainant.—114 989.

(2) Change of Law

97. The Bombay High Court on a comparison of Ss 253 435 436 and 437 Cr. P. C. of the Code of 1882 with Ss 215, 295, 296 and 298 of the Code of 1872,—held—that under the newer Code, the District Magistrate had powers not conferred on him by the old Code.—112—He could interfere with the discharge of any accused person whatever by a subordinate Magistrate, whether or not the case is one triable by a Court of Sessions, and the order of discharge was one under S. 209 or 253 of the Cr. P. C.—10 B. 131

[Note—Under the Code of 1872, the District Magistrate, or the Sessions Judge had no power to direct further enquiry himself. He could only report the matter to the High Court. See (76) 1 C 292 (77) 2 C 405 (79) 4 C 647 (77) 1 C L. 83 (78) 2 B 534 See (79) 2 A 670]

(3) Action suo motu.

98. The District Magistrate should himself take action under S. 437, if he considers that further enquiry should be made into a complaint dismissed under S. 203 Cr. P. C.—0 S. G. 1 Bar 357

(4) Further enquiry into case dismissed by himself

99 The District Magistrate is empowered by S. 437 to direct further enquiry into a complaint dismissed by him under S. 203 Cr. P. C. When in the interests of justice it is necessary to do so.—9 P. R. 1902 See 28 C. 102 11 C. N. 11.

99. A. Order for further enquiry after previous refusal.—It is competent to a District Magistrate under S. 437 of the Cr. P. C. to order further enquiry in a case, though he may have declined to do so on a previous occasion in the same matter.—114 522 Con. 5 Bar. T. 37.

(5) He cannot fetter the discretion of of the Magistrate directed to hold further enquiry

100 When the District Magistrate instead of holding the further enquiry himself directs a Sub-Magistrate to do the same, he has no legal authority to fetter the Sub-Magistrate in the exercise of his judicial discretion with regard to the question whether the case should be committed to the Sessions.—15 M. 39

101. District Magistrate cannot direct Subordinate Court to try the accused.—A District Magistrate is not competent to order a re-trial under this section. All that he can do is to direct further enquiry, leaving it to the discretion of the Magistrate to determine whether or not the evidence justified the accused being charged and put on his trial.—01 P. L. 1805 at p. 65 See 15 M. 39

101A. * * * * *

(6) When District Magistrate disagrees with the Sessions Judge.

102. * * * * *

under S. 439 infra.

(7) A District Magistrate cannot.

103. (a) Take or direct evidence to be taken supplementing the evidence given in the Lower Court.—6 O. J. 251=11 C. N. cclxxv See 4 L. B. 42

104. (b) Direct the trying Magistrate to simply take down the evidence and return the records to him.—4 L. B. 42

105. (c) Direct a subordinate Magistrate to reissue the warrant for the apprehension of certain accused persons when the latter has issued the warrants but afterwards cancelled the same.—1 C. N. 659.

106. (d) Set aside the order of his predecessor in office dismissing a complaint.—2 C N. 290.

107. (A) *Dismissing a complaint*—The case now at

(8) Miscellaneous Rules.

108. Powers over all subordinate Magistrates—A District Magistrate may legally call for the record of any of the Magistrates' Courts which are subordinated to him by S 17 Cr P C and pass order therein under S. 437 Cr P C—38 P. R. 1885

109 Where case is of Civil nature—Where the case has been dismissed as being of a civil

nature, the District Magistrate is not authorised to order further enquiry. 1 B R 852.

110. Reference to High Court unnecessary.—The District Magistrate need not refer the case of an accused person improperly discharged under S. 233 Cr. P. C to the High Court as he is competent to take steps himself, should he consider it necessary to do so Rat 290, 213; Cr. R. 31 of '86

Note—If he reports for any special reason, he should do so in the first instance to the Court of Session.—Rat 499

111. Repetition of enquiry.—District Magistrate cannot properly insist on repeated fresh inquiries without fresh evidence Rat 315

IX. POWERS OF THE SESSIONS JUDGE.

(1) Powers.

112. Powers under S. 437 are concurrent with those of the District Magistrate.—Rat 525

113. Change in the Law.—Under Ss 434 and 404 Cr. P C of the Code of 1861-9, the jurisdiction of the Sessions Judge and the District Magistrate was not concurrent—See 7 B II. 73

114. Power to direct a reconsideration of the same evidence.—See VIII. Powers of the District Magistrate—(95-86) *ante*.

115. Order to be passed by Sessions Judge.—The Sessions Judge should simply direct the District Magistrate either himself or by one of his subordinates to make the further enquiry.

Cr. R. 19 of '87

116. Order of acquittal.—Where an accused person is acquitted without any charge being framed or any witnesses being produced for the defence, the Sessions Judge is not competent to set aside the order of acquittal 1 A J 415

117. Additional Sessions Judge.—An Additional Sessions Judge has jurisdiction to examine the records of a case transferred to him by the Sessions Judge, in which the accused has been discharged

and to set aside the order of discharge and direct further enquiry.—21 Cr. 293 (A)

(2) A Sessions Judge cannot.

118. Sessions Judge acting under S. 437 Cr. P. C. cannot.—

(1) direct accused persons who have been charged with offences under Ss 342 and 357 P. C. and discharged by a Magistrate, to be retried for an offence under S. 467 P. C.—10 Cr. 554 (A)

119. (2) Sessions Judge cannot entertain further application under S. 437 after similar application has been dismissed by the District Magistrate.—17 M. T. 153

120. (3) Sessions Judge cannot reject an application on the ground of delay.—See (V) Practice and Procedure (76) *above*

120A. Sessions Judge cannot refer an application—made to a Court of Session under Ch XXXII of the Cr P C to a District Magistrate whose Court is not subordinate to, but concurrent with the Sessions Court for the purposes of that Chapter—Rat 523

120B. Sessions Judge cannot refer an application

made for the records, on examining the material Criminal returns of the Magistrate—Rat 407.

X. POWERS OF THE HIGH COURT.

121. Interference purely discretionary.—It is purely discretionary with the High Court to order a further enquiry under S. 437 Cr. P. C—S S 196, 15 C 605 (F. B.), 4 A. 148.

122. When the High Court will interfere.—It is only as a Court of last resort, after application has been made to the District Magistrate or Sessions Judge that the High Court will interfere
er of
discharge
A. N.
232, 19 C
445 *Supra*.

123. High Court has a freer hand under S. 437 than under S. 439 Cr. P. C.—"It was the intention of the Legislature that the High

Court should have a freer hand in interfering under S. 437 than under S. 439 and the powers of the High Court and the Sessions Judge and the District Magistrate are co-extensive under this Section"—30 M. 220 (F. B.) at p. 238.

124. Reference to High Court unnecessary.—

decision. It, in any case, the High Court has to find that the Lower Court had set aside an order of discharge on insufficient grounds, or that while there were good grounds for setting it aside, the Lower Court has made an order

- inappropriate to the facts of the case, the High Court would be acting properly in reversing the order.—15 C. 608 (F.B.)
25. The extended powers of the High Court.—The High Court, the Court of Sessions and the District Magistrate, all have power, as Courts of Revision, to deal with an order of discharge on the merits as well as on other grounds, but only the High Court has power under S. 439 to deal as a Court of Revision with any finding, sentence or order which come under its notice.—*Ibid.*
26. Orders of discharge by Presidency Magistrate.—The High Court has power, under S. 439 read with S. 423 of this Code to revise an order of discharge passed by a Presidency Magistrate and to direct a further enquiry, if there are good reasons for doing so, although in question of jurisdiction arises in the case.—15 C. 608 (F.B.)

26 C. 746. 28 C. 652 (F.B.). 27 B. 81; 30 C. 194. But See 27 C. 129. 4 C. J. 705. 33 C. 1242.

127. Private persons. It is competent to the High Court to allow a private person to move it to exercise its powers of revision against an order of acquittal.—1 A. 139 (F.B.) 2 S. 25. See 2 A. 448.
128. High Court ought not to interfere on the grounds of misappreciation of evidence.—The High Court which has a power which a District Magistrate does not possess, viz., to order a retrial is not warranted in so doing merely because the Magistrate who has discharged an accused person, in a case he was competent to try and finally determine, arrived at a conclusion, different from that at which the High Court would have arrived as to the credit due to the witnesses S. M. 336. But See 32 M. 220 (F.B.).

XI MISCELLANEOUS,

(1) Subordinate Criminal Court.— Meaning.

129. Magistrate of the First class.—"Subordinate" to the Magistrate of the District within the meaning of S. 437 Cr. P. C. 7 A. 553 (F.B.). 10 B. 131. 12 C. 473 (F.B.). * 8 M. 15 (F.B.). 9 B. 100. 35 P. R. 1895. (72-92) L. B. 387. Contra 7 A. 134. [101]

[* It overruled.—10 C. 264. 10 C. 551.]

Note.—(1) Court of District Magistrate is inferior but not 'subordinate' to the Court of the Sessions Judge. Other Magistrates are subordinate and therefore also inferior to the District Magistrate. 12 C. 473 (F.B.)

(2) The term 'inferior' (See S. 433) as used in the Code, means "not competent to exercise equal powers" while "subordinate" means "inferior in rank" 9 B. 100.

(2) Miscellaneous.

130. Discharged accused as witness in the

further enquiry. The fact of a person's being in the position of an accused with another during an enquiry which resulted in the order of discharge, should not at all prevent his being summoned as a witness in the further enquiry ordered.—10 A. 416

131. S. 556 applies to proceedings under S. 437 Cr. P. C.—A District Magistrate who himself presided over a meeting of the Municipality which directed the prosecution of the accused who was a servant of the Municipality, has no jurisdiction to make an order for further enquiry under S. 437 Cr. P. C.—5 S. 137 [27 A. 45. *Ibid.*]
132. Further enquiry into offences forming component elements of an offence of which the accused had already been acquitted.—See Notes No. 63. 67. 90. 95 under S. 403. *Supra* and 5 C. N. 72; 27 C. 658.
133. As to interference with orders of discharge by Presidency Magistrate.—See Note No. 36 under S. 436 Cr. P. C. *Supra*.

438. (1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report to High Court. for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by the Sessions Judge.

Proposed amendment to the section.—In sub-section (2) of section 438 of the said Code, after the words "by the Sessions Judge" the words "or in respect of all cases if the Sessions Judge by general order so direct" shall be inserted.

concurrent with that of the High Court even when the Sessions Judge or the District Magistrate cannot pass a formal order but can only refer the matter to the High Court under S. 439 Cr. P. C.—3 Pat. J. 302; 14 C. 557; 20 C. 643.

15. **Powers under S. 438 not controlled by S. 125.**—There is no ground for holding that the revisional jurisdiction of a Sessions Judge or of a District Magistrate under S. 131 and 435 of the Cr. P. C. is in any way trenchd upon by the provisions of S. 125 Cr. P. C.—3 Pat. J. 302.
16. **Power of Additional Sessions Judge.**—An Additional Sessions Judge has jurisdiction to examine the records of a case transferred to him by the Sessions Judge in which the accused has been discharged, and to set aside the order of discharge and direct further enquiry. He can also if necessary act under S. 435 Cr. P. C.—21 Cr. 293 (A).
17. **Proceedings falling under subs. (3) of S. 435.**—Proceedings under Ch. XII are not proceedings with regard to which a Sessions Judge has any power of revision or reference. There is no provision of law which gives the Sessions Judge the power to call for the record in such proceedings.—25 C. 416; 4 C. N. 779; 5 C. N. 1133. But see 5 C. N. 71.

(2) Who may act under the Section.

18. **Additional Sessions Judge.**—An additional Sessions Judge has jurisdiction to exercise the powers of a Sessions Judge under Ch. XXII of the Code, only in respect of cases transferred to him by the Sessions Judge.—(103) A. N. 28; 6 Bur. B. 16.
19. **Joint Magistrate.**—A Joint Magistrate of a District has no power to make a reference to the High Court (Under S. 434 of the Code of 1861 = S. 435). Such reference can be made only by the Sessions Judge or by the Magistrate of a District [14 W. R. 25].
20. **Provincial Magistrates.**—Provincial Magistrates are not authorised to refer questions of law that may arise before them for the decision of the High Court.—O. S. 71.
21. **Jail Daroga.**—A reference to the High Court under S. 435 of the Code of Criminal Procedure should only be made for some reason specified in that Section which appears from inspection of the record. Such a reference cannot be made on the mere report of a Jail Daroga.—(91) A. N. 80.

(3) Practice and Procedure.

22. **Sessions Judge not to refer abstract points.**—See 435 Cr. P. C. empowers Sessions Judges and District Magistrates on examining under S. 435, or otherwise, the record of any proceedings to report to the orders of the High Court "the result of such examination" which means that the Sessions Judge or the District Magistrate is to report the incorrectness, illegality or impropriety, if in his opinion such exists, of the finding, sentence or order recorded or passed by the inferior Court or the irregularity if in his

opinion such exists, of the proceedings of such Court and not that he is to refer abstract points of law to the High Court.—5 O. C. 316.

How to frame the order of reference

23. (1) When a case is reported under S. 435, the order of reference should set forth the point on which orders are required.—15 S. 64.
24. (2) Where a Sessions Judge considers that a judgment or order is contrary to law, or that the punishment is too severe, he should report the High Court in the manner presented by the Circular order of 15th July 1863 which is applicable to references under S. 236 Cr. P. C. (=S. 435)—[20 W. R. 50]. There should be a definite recommendation that the sentence be reversed or altered [27 A. 25].
25. (3) When a Court of Session reports a case to the High Court, it does so under S. 435 Cr. P. C. and its report should contain a recommendation that the sentence be reversed or altered. There is no section in the Code of 1898 corresponding to the old section in Act XXV of 1861 empowering a Court of Session to send question for the opinion of the High Court.—(14) A. N. 154.
26. (4) All references submitted to the High Court under this section are to be accompanied by the record of the case and by a statement of the case

magistrate passing it. (1) the particular portion of the finding, sentence or order which is considered incorrect, illegal or improper, or the particular portion of the proceedings which is considered irregular; (4) the grounds upon which it is proposed that the High Court should exercise the powers conferred by S. 439 *infra*; (5) a statement (where appropriate) showing how much of the sentence the accused has undergone, and if he has been sentenced to fine or whipping, whether the fine has been realised or the whipping has been inflicted.—*Pun. Cr. p. 290*; See B. H. C. Cr. p. 47. See 9 Cr. 502 (N).

27. (5) More than one case should not be submitted with one letter. Each case should be accompanied by a letter and statement referred to in para (4) above. The fact of the reference and a copy of its terms should be communicated by the Court making it to the Lower Court.—B. H. C. Cr. p. 47.
28. (6) Subordinate Courts should, whenever it

(4) Powers of the District Magistrate and the Sessions Judge.

29. **District Magistrates are not to report against orders by Sessions Judges.**—The power given to the District Magistrate to make a reference to the High Court is conferred by S. 435 read with S. 435 of the Criminal Procedure Code.

But this clearly refers to a "proceeding before any inferior Criminal Court." And notwithstanding the words "*or otherwise*" in S 438, it cannot be held that the Sessions Judge is empowered to refer a case to a Magistrate.

Auth. which has been reported for orders" in S. 439 Cr. P. C. could it have been intended that such report might be made by an inferior Criminal authority with respect to a proceeding by a superior authority—[23 C 250-18 D R 796] It would be contrary to every principle to allow a District Magistrate to report against an order of the Sessions Court to which he is subordinate. The words "*or otherwise*" in S 438 were not intended to confer on a Magistrate the power to question the propriety of an order of a Sessions Court, and make a reference to the High Court upon that ground. [28 A 91]

30. Note.—In (87) 10 A 146 and (90) 2 Weir 556, the power to refer was doubted and it was laid down that such reference would be justifiable if at all in special cases. It is now well established that the only way in which a District Magistrate may challenge the decision of a Sessions Judge

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the matter before the High Court on his own initiative—23 C 249 18 C 156 8 C 675 6 C L 245 6 B R 1099 Rat 623 Rat 601. Rat 473 9 A 362 10 A 146 12 A 434 36 A 378 1 S 40-2 N 149 23 M J 732 (85) 2 Weir 565 (90) 2 Weir 566 (01) 2 Weir 565 (03) 2 Weir 565

31. Power of Sessions Judge to report against orders by the District Magistrate.—(1) In (95) 22 C 573, a ruling under the Code of 1882 it was held that if a Sessions

115 Cr. P. C. This ruling has been expressly discredited from in (00) 17 M. J. 153 (153). "After an application has been made to the District Magistrate under S 435, no further application even though it may be to call for the record and to refer the District Magistrate's order to the High Court can be entertained by the Sessions Judge. The case reported in 22 C 573 was before S 145 (1) was enacted." See also (01) 40 C. 119 (121)]

- (2) A Court of Sessions is not empowered to report to the Chief Court under S 439 Criminal Procedure Code, the order of a District Magistrate, that further enquiry to be held by an inferior Criminal Court into the case of an accused person who has been discharged by that inferior Criminal Court—10 P. R. 1112. 29 M. 177 17 M. J. 153.

32. Reference discretionary.—A Magistrate should under 296 Cr. P. C. (-S. 178) exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every

case in which he may detect an error. [20 W. R. 40] But in 25 W. R. 30 it was laid down that where a Magistrate takes up a case under S 295 Cr. P. C. (= S 435) his only proper course is to proceed under S 296 (= S 138) and report the case to the High Court

(5) Reference against orders of acquittal.

33. As a rule such references will not be accepted.—Any reference under S 435, the object of which is to induce the High Court to set aside an acquittal cannot be entertained on the revisional side [25 A 128. 24 A 346 3 N. 4 19 W. R. 55. 15 M 36 8 M T 380 13 P W 1907 But see 13 P. R. 1905] It has always been regarded as a sound rule of practice not to interfere in cases of acquittal in which Government might have appealed under S. 417 Cr. P. C. but has not done so [Per Spencer J in 26 M 160 See 2 M. 38. 14 M. 363 3 B. 150] It is against the practice of the Allahabad High Court to interfere in revision with orders of acquittal. It would amount to something very like an evasion of the provisions of the section (cl 5, S. 439 Cr. P. C.), if the High Court were to entertain references by District Magistrate under S 435 Cr. P. C. against order of acquittal. [12 A J. 253 See 16 A J 373]

34. (Note per contra.—There is no doubt about the jurisdiction of the High Court, either upon an application of a private individual or when the case is referred to the High Court by a learned Magistrate, that the Court can interfere by way of revision with an order of acquittal—4 C. 703 42 C 612)

(6) Miscellaneous.

35. When reference should not be made.—(1) The Sessions Judge is not competent to refer a case for enhancement of sentence unless he has heard the appeal filed against the conviction [6 A. J 421] (2) When an offence is tried by a Court without jurisdiction, the proceedings are void under S 530 *infra*, and the accused may be retried under S 403 *supra* by a competent Court without having the acquittal set aside [8 B 307; See 2 N. 149-31 A. 317 But See 4 L B. 49] (3) The section does not empower a District Magistrate to refer to the High Court the proceedings of a Superintendent of Police, the latter not being a "Court subordinate to" the Magistrate. [Rat 133]
36. When a reference is improper.—The circumstance that the complainant holds office as District Superintendent of Police can give him no right whatsoever to make any representation to the District Magistrate in the form of an official letter or memorandum in a case in which he is
- basis of that letter—Rat 310
37. Stay of proceedings or admission to bail pending reference.—Stay of proceedings

- A sanction to prosecute was granted and confirmed on appeal by the Magistrate of one Sessions Division, and the complaint in pursuance of the sanction was filed before a Magistrate of another Sessions Division the accused presented a revision petition before the Sessions Judge of the former place, held that the Sessions Judge was not competent to pass an order staying proceedings pending the disposal of the revision petition and reference to the High Court under S. 438 Cr. P. C.—26 M. 137.
38. Bail.—Where the reference itself is incompetent,

an order granting bail pending the disposal of the reference is without jurisdiction [18 O. 186]
A Court of Sessions acting under S. 296 (= 434) has no power to admit a convicted person to bail [3 C.L. 404 See 21 W. R. 40]

39. Meaning of the expression "or otherwise."—We think that these words being words of general importance following the particular words "under S. 435" must be construed according to the usual rule and that they mean not "in any other way whatsoever" but "in any other way provided by the Code"—10 C. 209 See 36 M. 275.

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 31, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

ARRANGEMENT OF NOTES.

S. 439—S. 297 (1872)—Ss. 404, 405 (1861)

I. Scope of the Section—

- (1) Scope of the Section
- (2) Distinction between Civil and Criminal Cases
- (3) Powers under the Charter
- (4) General Grounds on which the High Court will interfere
- (5) High Court cannot revise its own judgment whether revisional, appellate or original
- (6) High Court cannot interfere both as a Court of Appeal and a Court of Revision
- (7) When Jurisdiction is not ousted
- (8) Miscellaneous

II. Conditions precedent to interference—

- (1) High Court will not interfere unless petitioner has availed himself of the ordinary channel of relief
- (2) Delay will defeat chance of admission
- (3) When revision is barred

III. Application of the Section—

- (1) Application of the Section
- (2) Difference between the powers of the High Court under S. 215 and S. 439 Cr. P. C.
- (3) Conviction under wrong section.
- (4) Order of sanction by Small Cause Court cannot be revised
- (5) Orders under S. 195 Cr. P. C.

- (6) Orders under S. 476 Cr. P. C.
- (7)
- (8)
- (9)

IV. the Section—

V. Proceedings not within the purview of the Section—

VI. Practice and Procedure—

- (1) When the High Court may act under this section.
- (2) Right of audience
- (3) Interference at an interlocutory stage
- (4) Interference on facts
- (5) Grounds on which High Court will not interfere on facts
- (6) Grounds on which High Court has set aside findings of fact
- (7) Power to go into evidence—general rules.
- (8) Concurrent finding of lower courts no bar to revision
- (9) Interference on account of wrong exercise of discretion
- (10) General Rules of Practice
 - (a) Where a plea of guilty has been wrongly recorded
 - (a) Retrial
 - (a) High Court will be as a rule, slow to interfere.

- (iv) Rules of procedure.
- (v) Failure to exercise right of appeal
- (vi) S. 439 does not in any way affect the powers under the High Court Act
- (vii) Summary dismissal of appeal by Sessions Judge
- (viii) Practice of the Allahabad High Court with regard to conclusions on facts
- (ix) Notice.
- (x) Shewing cause.
- (xi) Miscellaneous Rules
- (1) Orders of commitment
- (2) Verdict of Jury.

VII. Grounds for interference—

- (1) As to misappreciation of evidence, questions of facts etc
- (2) What are not sufficient grounds
- (3) What are sufficient grounds.

VIII. Interference with orders of acquittal—

- (1) The prohibition in S. 439 (4) Cr P. C
- (2) A brief historical review of the case-law on the subject.

- (3) Grounds on which an order of acquittal may be set aside.
- (4) Rulings under the old Codes.
- (5) Related application by Government.

IX. Interference with Sentences—

- (1) General Principles.
- (2) Enhancement of sentences.
- (3) Mitigation of sentence

X. Reference by Magistrate and Sessions Judge—

XI. Amendment consequential and incidental order.

XII. Allied sections and Analogous Law—

XIII. Miscellaneous—

- (1) Time limit.
- (2) European British Subject
- (3) Abatement.
- (4) Right of alien enemy to move the High Court.
- (5) No power to set aside order under S. 562 Cr P C
- (6) Power of interference under S. 12 of the Lower Burma Courts Act.
- (7) Effect of loss of record

I. SCOPE OF THE SECTION.

(1) Scope of the Section.

1. The Court and not the nature of the proceeding the determining factor.—The power of revision of the High Court under Ss. 435 and 439 of the Crim. Pro. Code extends to all proceedings before any inferior Court situate within the local limits of its jurisdiction. The test is not the nature of the proceeding held by the Court but the nature of the Court in which that proceeding is held.—43 R. 607.

[Note].—The powers of revision conferred upon the High Court under S. 439 Cr. P. C. are larger than any exercised by them under S. 207 of the Code of 1872 [2 Weir 538]. Such powers under the old Code were confined to "material errors committed in judicial proceedings." The term material error was held not to include "misappreciation of evidence"—See 11 B. H. 125; 2 M. 38, though mis-reception of evidence was included in the term.—7 W. R. 7. The term "material error" was held to mean an error appearing on the face of a judicial proceeding resulting in an unjust order [2 C. 110]. A...
to constitute the High Court [2 Weir 570].
21 W. R. 84; 2.
3 A. 545]

2. S. 439 is ancillary to S. 435.—Sections 435 and 439 of the Crim. Pro. Code must be read together and if a case is outside S. 435, S. 439 cannot apply to it [21 Cr. 25 (C) 15 C. 609 (F.B.) at p. 617]. "Section 435 authorises a High Court in revision to call for the records of inferior Criminal Courts and section 437 and 439 lay down the powers which a High Court may exercise in proceedings the records of which have been called for by itself or which have been reported for orders or which may have otherwise come to its knowledge. The summoning of the record must

be a necessary preliminary to action which a High Court may take under S. 437 or S. 439 of the Code of Criminal Procedure. Sec. 435 states the grounds and provides the machinery for the exercise of the powers which the latter sections confer. Sec. 439 is not independent of S. 435, for if it were so, orders under Ss. 143, 144 and 176 and proceedings under Chapter XII which are expressly excluded from the operation of S. 435 of the Code would fall within the purview of S. 439 and the object of the Legislature in excluding them would be frustrated."—Per *Kanhaya Lal A. J. C.* in 17 O. C. 25

3. The powers under S. 439 are wholly discretionary.—The High Court is not bound to interfere even if the Lower Court has committed an illegality [5 P. R. 1906 7 P. R. 1919 4 L. B. 315 (F.B.)]. An irregularity in the conduct of an enquiry even though sufficiently serious to induce the High Court to annul a commitment is not sufficient to justify the annulment of the trial after the commitment has been made and a trial had upon it, unless the irregularity has caused a failure of justice by prejudicing the accused in his defence [Rat 177; 11 B. H. 125; 1 D. R. 656]. The Chief Court is not always bound to interfere under section 439 Cr. P. C. even if the order of the Court below is wrong in law.—[29 P. W. 1913. 19 P. W. 1910]

4. S. 439 does not lay down any inflexible rule of law.—"If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion, and whenever it is argued that judicial decision has deprived us of the power that the Legislature has given us, I recall the words of an eminent English Judge. 'I desire to repeat' he said, 'what I have said before, that this controlling power of the Court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious

attention being given to the said circumstances which vary greatly. For myself, I say emphatically, that this discretion ought not to be crystallized, as it would become in course of time, by one Judge attempting to prescribe definite rules with a view to limit other Judges in the exercise of the discretion, which the Legislature has committed to them. This discretion like all other judicial discretions ought, as far as practicable, be left untrammelled and free so as to be fairly exercised according to the exigencies of each case. These weighty words appear to me to breathe the spirit that should guide us in the exercise of our discretionary powers of revision."—*Jenkins C. J.* in 25 B. 333 at p. 556 *Fy. Gardner v. Jay* 29 Ch. D. 50 (35) See *Saunders v. Saunders* (1897) J. P. 89

(2) Distinction between Civil and Criminal Cases.

5.

Civil Procedure (1908) to act on findings of fact embodied in the judgment of the lower appellate Court. In criminal cases on the other hand, there is no such statutory restriction to the exercise of jurisdiction by the High Court. As a matter of practice, the High Court does not ordinarily interfere with the conclusions of the lower Appellate Court on questions of fact. But the High Court is competent to interfere with a finding of fact when the occasion requires it, and it will do so when it is satisfied that the finding is manifestly erroneous and a miscarriage of justice would result from it if left uncorrected.—*Per Moonjejee J.* in 16 C. J. 353

(3) Powers under the Charter.

6. The powers of High Court under the Charter Act are not affected by S. 175 [26 C. 188]. "I would hold with *Woodroffe J.* [12 C. N. 678] that there is no species of injustice which this Court would be powerless to correct under the Charter Act where its inference is called for.—27 C. 126 27 M. 223 13 M. 510 24 M. 25 21 M. J. 181 support the view that this Court has plenary powers of interference under the Charter where it is needed to correct injustice [See also 33 C. 65 (F. B.) 13 C. L. 275 24 C. 709] although a narrower view was adopted in 20 C. 512 6 C. J. 705 and some other cases"—*Per Sanjivaram Aiyar J.* in 14 M. T. 300

(4) General grounds on which the High Court will interfere.

7. Only in cases of defective investigation of failure to consider important evidence, of consideration of the evidence from a wrong point of view, of contravention of any provision of law, and of conviction upon facts which do not support the same, will the revisionary powers of the High Court be exercised [31 M. 133]. The revisionary powers though extremely wide is to be exercised only in exceptional cases and as a last resort when all other available remedies

have been exhausted [5 N. 4 (81) A. N. 293]. They will be exercised when there is a miscarriage of documentary evidence and fundamental errors in principle which vitiate the conduct and disposal of the case.—[28 B. 477]

(5) High Court cannot review its own judgments either revisional, appellate or original.

8. (1) A Division Bench of the High Court cannot review an order which they have already made as a Court of Revision, under S. 138 Cr. P. C.—[10 B. 176 (F. B.) 14 C. 12 (F. B.) 23 B. 50; Rat. 458 19 B. 372 23 M. J. 371] Having appointed a bench under S. 14 of the Charter Act to hear any particular case, the Chief Justice has no power to interfere after the disposal of the case by the Bench [5 C. 63. See 6 W. R. 61]. But the order can be reviewed before it is sealed [27 A. 92]. The High Court has no power to review the order of a Judge of the High Court by which he dismissed the application for revision made by an accused person.—[7 A. 672]

[Note—See also 8 P. R. 1909, 10 C. J. 87, 23 M. J. 371 Rat. 458]

9. Order passed by a single Judge sitting as an original Court—No application for revision under S. 439 Cr. P. C. lies against the sentence passed by a single Judge of the Chief Court in a trial held as a court of original Criminal jurisdiction (with the aid of a jury)—4 P. R. 1909 1 P. R. 1909 8 C. 63 14 C. 42 (F. B.)

(6) High Court cannot interfere both as a Court of Appeal and a Court of Revision.

10. The High Court is not competent to interfere on revision as well as to interfere on appeal. But it could not have been the intention of the Code that a person who as appellant has had the opportunity of advancing any objection he desires to take to the proceedings of a Court by which he has been convicted, should again have the opportunity of raising any points of law he may have omitted to raise by an application for revision.—[2 Weir 573]

(7) When Jurisdiction is not ousted,

11. (1) Orders purporting to be made in

authority of the Courts, such authority cannot be ousted by the mere *ipso facto* of the officer that he was acting not as a judicial officer but in his executive capacity. The High Court will interfere. 4 P. R. 1908. See 6 C. 54

12. (2) Order without jurisdiction.—The High Court will revise an order of a Magistrate made without jurisdiction in spite of a provision that an order under the particular Act shall not be open to appeal or revision.—28 B. 29 41 C. 400. 7 B. R. 463 21 P. R. 1886. See 20 A. 141 21 B. 127 24 C. 184

13. (3) Order made with consent of prisoner or where there is waiver on his part.—The principle has always been recognised that a

prisoner on his trial can consent to nothing [3 B L. (ap) 20, 15 C P. 66, 36 L J P C 51] Criminal proceedings which are substantially bad can not be cured by any amount of waiver or consent on the part of the accused not personal to the latter. [2 C 23, 6 C 96; 12 C. N. 140, 10 C. J. 452; 16 W. R. 69, 23 W. R. 59, 23 B 50 (53); 9 B R 35G; 9 A J 51; 18 M. J. 330 9 N 81. 1 S 98]

14. (4) Death of the accused, or expiry of sentence.—There is nothing in the terms of the law to prevent the High Court from interfering with a conviction even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter.—7 A. 135

(S) Miscellaneous.

15. Proper functions of a Court of Revision.—The proper function of a Court of revision is to see that subordinate Criminal Courts do conduct Criminal cases with fairness and propriety and that nothing is done on the trial of an accused person which may reasonably lead to the impression that the accused has not received fair treatment or an impartial and fair trial.—[21 Cr 240 (Pat)]
16. Interference with orders of conviction.—A High Court possesses very wide discretion under S. 139, Criminal Procedure Code, but when the Court is satisfied that a conviction as recorded in any case coming before it in revision, is bad in law, it is not necessarily bound to go further into the question, whether upon the facts established by the evidence, a conviction of some lesser offence might or might not be recorded. 41 A 357
17. Scope of subs (5).—District Magistrate should not exercise his powers of revision within the period allowed for appeal. In as much as Sec. 439 (5) Cr P. C. directs that where an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed, it

is clearly desirable that District Magistrates should not place difficulties in the way of persons entitled to appeal by calling for the proceedings and taking action upon them within the period allowed for appeal.—10 Bur T. 167.

18. Interference only in exceptional cases.—The revisionary power granted by S 439 Crim. Pro. Code, though extremely wide, constitutes an extraordinary jurisdiction, to be exercised only in exceptional cases and as a last resort, after all other available remedies have been exhausted. It is essentially a discretionary power of control, not to be crystallized by action under hard and defined rules, but to be left free and untrammelled, so as to be fairly exercised according to the exigencies of each case.—5 N 4 17 C. P. 107 19 Cr 900(N). 22 C 895 25 B 533.
19. Interference with police orders.—"Where authority but is not exercised by it, we cannot but assume that the Magistrate has acted in his general jurisdiction, and as such, his order is revisable by this Court and liable to be set aside at the instance of the party whose liberty is affected by it." *Per Inam and Chappan JJ.* 41 C 100; 21 Cr 637 (Pat)
20. Orders of discharge.—It is only as a Court of last resort, after application has been made to the District Magistrate or Sessions Judge, that the Judicial Commissioner will interfere under S 439 Cr. P. C. with an order of discharge.—21 Cr. 663(N)
21. C. 100; 21 Cr 637 (Pat)

S 386 is not open to revision by the High Court, no further proceedings in the Criminal Court being admissible.—26 P. L. 1915, 22 C 103 20 M. 85. (98) A. N. 173.

II. CONDITIONS PRECEDENT TO INTERFERENCE.

(1) High Court will not interfere unless petitioner has availed himself of the ordinary channel of relief

- 22 Before seeking the aid of the revisional powers of the High Court, recourse should be had to the ordinary channel of relief, *eg* by way of appeal to the Sessions Court if such relief is allowed by law [2 A 276 See 3 C. 573] In cases, where there is a concurrent jurisdiction of the Sessions Judge and the High Court, where the remedy which is asked for from the High Court could also have been obtained from the Sessions Judge, and the Sessions Judge has not been moved, it is the established practice of the Calcutta, Allahabad, Patna and Bombay High Courts to decline to interfere unless there are special reasons to the contrary. [11 C 447, 36 C 613, 30 A 116, 25 A 26, (15) A. N. 279 (14) A. N. 278-272 (10) A. N. 164 (45) A. N. 142 (57) A. N. 105, 14 B 311, Rat 179, 2 Pat. W. 115] Where the law provides a direct

remedy—*eg*—application to the District Magistrate under S 123 *supra* the High Court will not interfere unless such remedy has been availed of [(105) A. N. 143, Rat 826, 35 B 243; See 17 C P. 107 5 N 4]. Where the petitioner before the High Court has admittedly not approached the District Magistrate by way of appeal against the order under S 114 Cr P. C., the High Court is precluded by S 439 (5) from entertaining an application in revision which seeks to impugn the propriety of that order [8 S 229]. Without any good reason, the extraordinary power of revision should not be exercised where a convict has failed to appeal [2 P. W. 1912-5 L B 129 See 35 B. 273, 1 P. L. 1191].

Note.—The rule not inflexible.—(1) "It is not desirable to lay down an inflexible rule of law that the High Court would not interfere in revision, unless the party has exhausted his remedy by applying to the Sessions Court."

Per Kumaraswami Sastri J. in 2 L. W. 1126. (2) An application for revision made in the High Court in respect of orders to give security in

has a right of appeal and does not exercise it, the powers of the High Court under S. 439, cannot be exercised, but in such cases they should be sparingly used and save in very exceptional circumstances, not at all with reference to questions of fact [O. A. 191]

(2) Delay will defeat chance of admission.

23. "I find that the well-known practice is that an application for revision must be made within sixty days from the date of the order complained of. The Court has allowed an addition to the sixty days of the time which is necessary for obtaining copies. This is not a rule of limitation but a rule of practice of the Court to the effect that an application must be made within a reasonable time. It is not an inflexible rule and in exceptional circumstances the rule may be departed from [Per Sanderson C. J.] in 43 C

1029. See 1 Pat J. 165.] So where an application for revision was made *nine months* after the appeal had been summarily rejected, the High Court refused to interfere because of the delay [8 A 511] If there is a long delay in applying for revision Court will decline to interfere in rev A. 491]

missioners' Court, revision applications are not admitted unless presented within sixty days and the rule indicates that the court will refuse to interfere in the case of a belated application [5 S 265]

(3) When revision is barred.

24. When the right to appeal is not exercised proceedings by way of revision is barred by S. 439 (5) Rat 977 (10) A N 164 Cr R. 32 of 84 2 B R. 334 It is not the practice of the High Court to entertain an application for revision on the criminal side, where there exists a lower Court having concurrent revisional powers, unless a similar application has first been presented to the lower Court and has been rejected (104) A N 232 25 A. 268 30 A 110 110 C 687 36 C 643 See 7 C P 47

III. APPLICATION OF THE SECTION.

(1) Application of the section.

25. High Court cannot interfere unless the order has been passed in a judicial proceeding.—6 C. N. 882
26. Where the High Court has already dealt with a case as a court of appeal.—It will not afterwards deal with the same case as a court of revision except possibly to cure a very manifest injustice.—2 Weir 573
27. The word "sentence or order" is wide enough to include an order of discharge.—4 M. H. (1p) 70.
- Order made without jurisdiction under S. 144 will be quashed by the High Court.—17 W R. 37 4 A 141 But See 14 W R 41
28. Any proceeding can be revised.—The powers of revision conferred by S. 439 Cr. P. C. 1895 is larger than those given by Act V of 1872

32. Order under S. 515 Cr. P. C.—Does not take away the powers of revision conferred on the High Court by S. 439 and 423 (c) in relation to forfeiture of bonds.—6 S 170 3 C 757. 16 P. R. 1905

But the High Court cannot reduce the amount of forfeited recognizance.—3 C 757 8 C L 72.

(2) Difference between the power of the High Court under S. 215 and 439 Cr. P. C.

33. Under S. 215 of the Criminal Procedure Code, the High Court is precluded from entertaining an application for revision on a question of fact Under S. 439 however, the High Court has power to revise a commitment order made under s. 136 of the Code on points of law as well as of fact.—9 L B 208 12 C N 117

(3) Conviction under wrong section.

34. "We are of opinion that it is for the Courts below to find the facts and if they convict under a wrong section in a case in which no charge is framed, it is open to the High Court, if necessary, to revise the section under which the conviction has been recorded without any further proceedings" 3 Pat J 354

(4) Order of sanction by Small Causes Court can not be revised.

35. The order by a Cantonment Magistrate in his capacity as a Small Cause Court Judge in connection with an execution case, granting sanction for the prosecution of the decree-holder for perjury under S. 195 Cr. P. C. cannot be revised by the High Court either on the criminal side under

29. It is open to the High Court to alter any finding and confirm a conviction.—It cannot set aside the conviction merely because the view taken of the evidence by the courts below is not sustainable.—22 C 391 2 Weir 577
30. Where no appeal lies.—The petition of appeal may be treated as a petition for revision by the High Court and may be dealt with under S. 439 Cr. P. C.—9 C 513.
31. Orders for bail.—High Court will not interfere with an order for bail granted by a Sessions Judge.—10 M. J. 411

S 439, or on the civil side under S 115 of the Civil Procedure Code 16 A. J. 921

(5) Orders under S. 195.

36. Orders under S 195 cannot be revised under S 439 Cr P C. The High Court's power of interference is limited to cases in which a sanction has been granted by the Sessions Judge in which case the High Court can revise the order under S. 195(6) and (7). Where a sanction has been granted by a First Class Magistrate the High Court cannot interfere under S 439 Cr. P. C.—See 21 Cr. 746 (A). 28 A. 554. (07) A. N. 283; 23 M. 282-40 C. 37. 37 C. 714. also 37 A. 139. 22 M. J. 119. (F. B.) [Per Sundara Iyer and Spencer J.J.] 17 C. N. 91; 39 C. 774. 22 Cr. 151 (N). See 1 Pat. J. 165. S. 8. 21; 20 A. 23 P. R. 1916. 36 A. 243; 13 C. J. 216

87. **Note.**—The revisional jurisdiction of this Court can always be exercised in order to prevent a gross and palpable failure of justice. At the same time it should not be exercised as to make one portion of the Code of Crim. Procedure conflict with another, as would be the case were this Court to permit the practice to grow up of invoking its interference in revision, so as to give a right of appeal where such right is definitely excluded by other provisions of the Cr. P. C. [See 185 (6)]—Per. Piggot J in 36 A. 403.

38. *Per Mookherjee J.* The machinery for correction of possible errors in sanction proceedings is provided by cl. (6) of S 195 and consequently the party who seeks relief must have recourse thereto and cannot invoke the aid of S. 115 Civil Procedure Code or Ss 475 and 139 Cr. P. C.—41 C. 816

(6) Orders under S. 476.

39. When a Civil Court orders a prosecution under S 476 Cr P C and an application is made to this Court for revision of that order, the question arises whether the power of this Court is limited by the provisions of S. 115 of the Civil Procedure Code. I hold that the High Courts are now unanimous in holding that the revisional power cannot be exercised under S. 439 Cr P C but only under S. 115 of the Civil Procedure Code.—21 Cr. 270 (N)

Per.—40 C. 477 (F. B.); 4 C. N. 73. 26 A. 219. 24 A. 551. 31 A. 38; (07) A. N. 277. [Per *Jibhakshy Jyoti J.*] 17 M. T. 268. 9 B. E. 1317. 26 M. 139. 36 M. 72. 40 C. 191. 170 C. 27. 11 B. 138. 11 B. 339. (15) U. B. 1183-10 Bur. T. 13

Con.—51 P. R. 1895 (F. B.). 1 N. 119. 34 C. 42. 37 C. 250. 23 A. 219. 26 B. 785; 37 O. 250. 60 C. 216. 17 Cr. 181 (N); 3 L. B. 234

40. [**Note.**—In 21 Cr. 281 (N) *Kutub J. C.* lay down that the High Court has no power either under S. 115 Civil Procedure Code or under S. 439 Cr. P. C. to revise an order passed by a Revisional Magistrate under S. 176 Cr. P. C.] See also (67) A. N. 277

41. [**Note.**—"When an order under S. 476 made by a Civil or Revenue Court is sought to be revised by this Court, the Bench exercising criminal jurisdiction may do so, under S. 14 of the Criminal Procedure Code."—*Per. Piggot J.* in 36 A. 403.]

42. The High Court as a Court of Revision has power under S 439 to interfere on grounds other than want of jurisdiction, when a criminal Court has taken action under S 476 33 M. 15 (F. B.) [26 M. 98 (h)]

43. The Discretion of Court.—"It is not in every case that it is necessary for a Judge to invoke the aid of the criminal law or to take disciplinary measures upon the report of a subordinate (*e.g.* bailiff) complaining that the judgment-debtor has resisted the execution of the decree and the High Court would not interfere in revision with the discretion of the Judge in so far as it concerns the choice of taking or not taking disciplinary measures in a matter of this nature."—Stuart J. C. in 18 Cr. 3 (U)

Note.—See the chapter headed Revision under S. 476 *infra* for fuller notes

(7) Power to acquit accused who has not applied.

44. The High Court in the exercise of the powers vested in it under S 439 Cr. P. C. can act aside the conviction of an accused person who has not appealed while setting aside the conviction of a co-accused who has appealed.—5 O. N. 330; 21 Cr. 534 (C)—19 W. R. 37. 14 P. W. 1909. 12 Cr. 250 (L R) See also 2 C. 110. 7 C. 447

45. **Note.**—In 11 P. R. 1909, the Chief Court while setting aside the conviction on a revision petition, held that it was open to the High Court under S 439, to revise the conviction of all the offenders who were treated together (found guilty on exactly similar facts) though only one of them had applied for revision—See also (11) 2 M. N. 170

(8) General Rules for Application.

46. S. 439 presupposes that a sentence has been imposed.—S 439 of the Crim. Procedure Code presupposes that a sentence has been imposed. Therefore where an accused person is released on probation of good conduct under S 362 Cr. P. C. the High Court cannot substitute a sentence of imprisonment or of whipping in revision.—17 A. 31. 20 Cr. 10 (N)

47. Interference discretionary.—The High Court is not bound to interfere under Ss. 435 and 439 Cr. P. C. even if the Magistrate's order sought to be revised is an illegal order.—26 M. J. 231; 5 P. R. 1906. 29 P. W. 1913. 19 W. R. 1910. 4 B. E. 684

48. No power to allow offences to be compounded.—Neither the High Court nor the Judge of a Court of Sessions when sitting as a Court of Revision, has the power to allow an offence to be compounded S 315 (7) would be a bar to such orders 41 C. 1113. 118 C. N. 112. 29 M. J. 521. 31 Cr. 417 (A). 37 A. 127; 67 P. L.

1904 Cw 32 A 153 11 A 1 13 (97) A. N. 26
134 C 161 17 C 32 (which doubted but
followed 32 A 153) The power to sanction
composition of an offence is conferred on a Court
of appeal not by S. 123 (5) or any of the other
sections just mentioned (12—126, 127 and 128)
but by S. 345 cl (5) and that consequently S.
439 which defines the powers of the Court of
Revision does not confer on it the power to
sanction the composition of the offences. *Per*
Mukherjee J. 13 C 1143.

49A. Power to interfere with orders under
Ss. 87 and 89 Cr. P. C.—The High Court
in revision can set aside an order of attach-
ment, when there was no legal proclamation under
S. 87 Cr. P. C. [24 Cr. 210 (P)] *S. 19 M. 3*
27 A. 572 22 A 216].

49. Point taken for the first time at the
High Court.—Where a point is not urged in
the Court of the first instance or before the
Sessions Judge on appeal, the High Court will not
interfere in revision unless there has been a
miscarriage of justice—21 Cr. 186 (Pat) But see
21 Cr. 619 (Pat) 13 Cr. 152 (C)

50.

as a letter or telegram from the counsel re-
tention in the case is shown to him—2 C N
498 5 C N 110 19 M 375.

51. Grounds other than those on which the
rule is issued may be urged at the
hearing.—If one good point of law is made out,
records may be called for and the petitioner is
entitled to argue at the hearing such other points
of law and procedure as may be raised by the
petition [7 B 120] A party may raise at the
hearing a new point of law, though not mentioned
in the rule if the Judges granting the rule have
directed that it will be considered at the hearing
[11 C N 467] But see 31 C 710]

52. Discretion not fettered necessarily by
the terms of the rule.—Where a rule was
granted "to show cause why the conviction
should not be set aside and the case sent back
for retrial" and it came on for hearing before a
Bench other than that which granted it, held
that the terms of the rule did not prevent the
Bench hearing it from discharging the accused
[27 C 820 23 C 347 20 C N 81]

53. Powers of the High Court.—The High Court
may suspend the proceedings without having the
record before it [20 W B 27 22 C 131] It
may also order bail to be taken from the accused
pending the disposal of the rule [20 B 543]

54. Power to set aside order of discharge⁸⁰
by a Presidency Magistrate.—The High
Court has power in a proper case to set aside an
order of discharge by a Presidency Magistrate—
14 M. T. 200 15 C 108 (F.B.) 36 C 994, 26
C 746 20 C N 1128 27 B 81 But see 27 C.
126 33 C 1282

55. Power to alter finding.—The High Court
in the exercise of its revisional jurisdiction, has
power to alter a finding under S. 323 I. P. C. to
one under S. 325 of the same Code—21 Cr. 617
(N) See 37 M 119 27 C 660 22 C 39, 21
C 827, 16 C N 309 2 Weir 577 1 Weir 530.
1 C N 215 31. B. 212 25 A 534

(9) Miscellaneous Proceedings.

56. Orders under Chapter XII.—An order not
really within the purview of Chapter XII of the
Criminal Procedure Code and so without jurisdic-
tion can be revised under S. 439 Cr. P. Code.—
2 P R 1699 131 P L 1902 12 P R 1909.
9 P W. 1915 20 Cr. 117 (N) 20 Cr. 814 (N);
20 Cr. 445 (N) 20 Cr. 775 (N) 20 Cr. 816 (N);
See 46 C 1056 36 M 275 21 Cr. 10 (M);
31 A 150 26 C 188 24 B 527 18 M 41

The rule which is now well settled is that the High
Court will not interfere with proceedings which
are, in fact and in law proceedings under
Chapter XII, Cr. P. C. 22 Cr. 97 (A) 18 A J
171 (176) See Notes under S. 145 *Supra*

57. Orders under S. 110 Cr. P. C.—The High
Court is not a Court of appeal for cases under S.
110 Cr. P. C. and it is only in very rare cases, that
the Court will interfere with the decision of a
Magistrate when it has been upheld either on
appeal by the District Magistrate or on reference
under S. 123 Cr. P. C. by the Sessions Judge
1 U B 143 (A) See Notes under S. 110 *Supra*

58. Accused after expressing willingness
to furnish security may move High
Court.—"I do not think the fact that the appli-
cant and his co accused were prepared to give the
security demanded (under S. 107 Cr. P. C.) in
any way prevents them from moving this Court."
Eyles J. in 21 Cr. 59 (A) following 35 C 674.
37 A 39

59. Order under the Sind Frontier Regula-
tion (III of 1892).—The Court of the Judicial
Commissioner of Sind has no jurisdiction either
by express enactment or by necessary implication,
to interfere in revision with an order made by
a District Magistrate under sections 20(i) and
24(i) of the Sind Frontier Regulation requiring
a person to furnish security for good behaviour.
[21 Cr. 513 (S)]

IV. PROCEEDINGS WITHIN THE PURVIEW OF THE SECTION.

60. Presidency Magistrate.—The High Court
has under Ss. 435 and 439 read with S. 423
Cr. P. C. the power to revise the proceedings of
a Presidency Magistrate 23 C 746 27 B 84.
3 C N 601. 13 C N. 1221. 2 Weir 504. See 12 C.
N. 678 *Contra* 31 C 1282. 6 C J. 705 27 C 126

61. Proceedings under the Cantonment;
Code.—An order inflicting a fine under S. 243
of the Cantonment Code is open to revision.
9 P. R. 1909

62. Refusal to issue certificate to mukhtar.
—High Court cannot interfere in the case of a

refusal to issue a certificate to a mukhtar to practise in Criminal Court—(92) A. N. 236

63. **Order for realisation by distress and sale of movable property of a contractor of dues to a Municipal committee by him.**—534 P. L. 1903.
64. **Executive orders.**—The High Court, can, in revision, set aside an order of a Magistrate depriving a person of and giving another possession of moveable and immovable properties but not in accordance with any provision of law—10 C. N. 216
65. **Wrong order under S. 449 of the Calcutta Municipal Act.**—33 C. 287
66. **Orders under Ss. 514 and 515 Cr. P. C.**

Madras Cr. Rev. case no 77 of 1907 See cases under the old Codes—3 C. 737. 8 Ch. 72. 19 W. R. 1. 2 P. R. 1883

67. **S. 517 Cr. P. C.**—The High Court as a Court of revision can set aside an illegal order under S. 517 but cannot make a further order for the restoration of the property delivered 6 C. J. 229. 1 P. R. 1915. 2 Weir 538. 3 Weir 533.
68. **S. 522 Cr. P. C.**—The High Court has power to interfere in revision, with an order passed by a Magistrate under S. 522 Cr. P. C. 36 C. 44. 27 A. 115
69. **S. 58 of the Forest Act.**—An order made by a District Magistrate under S. 58 on appeal

from an order of a Magistrate under S. 54 of the Forest Act—4 A. 417.

70. **S. 113 of the Railway Act.**—Proceedings under S. 113 of the Railway Act (1890) is open to revision. 13 P. R. 1891.
- 70A. **Nota.**—It is to be noted that a Sessions Judge has no authority to direct a fresh trial of a charge of an offence under S. 26 of the Railway Act which has been dismissed by the Magistrate—6 M. II. (appx) vli. 6 M. II. (appx) cli
71. **Chap. VIII.**—Orders for security to keep the peace.—2 C. 110
Order for security for good behaviour—6 W. R. 18
72. **Chap.—X.** Orders passed under S. 133 Cr. P. C.—12 P. R. 1885. 9 B. 1 and 160. 7 B. L. 449. 7 Bur. T. 23; See 8 P. R. 1894. 10 Cr. 210 (C). 13 C. N. cclxxiii. 14 C. N. cxiv.
73. **Touts.**—Order passed under Punjab Courts Act XVIII of 1884 declaring a person to be a tout.—17 P. L. 1901.
74. **S. 488 Cr. P. C.**—High Court has power to revise an order for maintenance under S. 488 Cr. P. C. and to direct a further enquiry on the ground that the rate fixed is beyond the means of the persons ordered to pay it—2 Weir 575
75. **Orders under S. 344 Cr. P. C.**—8 P. W. 1911
- 75A. **Appellate orders under S. 488** *infra* 23 P. W. 1912
78. **Orders under S. 495 Cr. P. C.**—permission to conduct Prosecution—2 Weir 655.

V. PROCEEDINGS NOT WITHIN THE PURVIEW OF THE SECTION.

77. **Proceedings under Ss 143, 144 or 178 Cr. P. C.** (92) A. N. 202. 18 M. 402. 22 W. R. 52. 18 W. R. 22; Cr. R. 14—8—90. 6 N. P. 16. 4 H. R. 552.

Memorandum issued by a District Magistrate for the instruction of his subordinates in respect of the route to be followed by a certain procession (91) A. N. 178. 7 H. R. 81

78. **Proceedings under S. 143, 144 or 178 Cr. P. C.** (92) A. N. 202. 18 M. 402. 22 W. R. 52. 18 W. R. 22; Cr. R. 14—8—90. 6 N. P. 16. 4 H. R. 552.
79. **Proceedings of public bodies**—under powers vested in them by law.—9 B. R. 176
80. **Order passed by a District Magistrate under the rules framed by Government under S. 45 (3) Cr. P. C.**—29 A. 563.
81. **Illegal order passed by a Collector as such, under the Penal Code**—10 C. L. 14
82. **Order under Ss 4, 8 and 16 of the Reformatory Schools Act**—20 A. 169. 24 C. 121. 20 A. 179. 24 M. 13. 20 A. 160. 30 C. N. 576. 21 A. 391 (F. B.) But the order does not affect the jurisdiction to consider the legality of the conviction or sentence.—5 C. N. 210. 24 C. 421
83. **High Court as a Court of Revision can.**

not reduce the amount of recognizance that may have been forfeited.—3 C. 737.

84. **Order passed under S. 278 Cr. P. C.**—1872.—4 B. 101.
85. **Executive Orders**—Order for appointment of special constables under Ss 17, 18, 19, and 29 of the Police Act, V. of 1861.—10 C. N. 322
86. **Order striking off a person's name from a list of petition writers.**—(being an executive order)—(92) A. N. 175.
87. **Uncertificated pleaders.**—A circular by a District Magistrate prohibiting uncertificated pleaders from practising in criminal courts is not open to revision.—19 M. J. 566.
88. **Distribution of fine under the Opium Act. (VIII of 1887.)**—16 W. R. 65.
89. **Proceedings under the workmen's Breach of Contract Act**—18 W. R. 53;
90. **Regulation IV of 1873.**—Order of a District Judge referring a case before a jury under Regulation IV of 1873 and the sentence of the jury are not Judicial proceedings and can not be revised. 13 P. R. 1880; 11 P. R. 1879
91. **Order expelling Prostitutes.**—Order expelling a prostitute from a certain locality 26 P. R. 1880
92. **Proceedings under S. 578 of the Cr. P. C.** 1872.—2 P. R. 1880. 31 P. R. 1878.

93. Orders under the Press Act 1910.—(1) An order passed under S. 8 of the Press Act (1 of 1910) is not open to revision by the High Court 17 C. N. 1245

- (2) The High Court is barred under S. 22 of the Act from questioning the legality of the forfeiture which a notification under S. 12 of the Press Act purported to declare.—14 Cr. 497 (C)

VI. PRACTICE AND PROCEDURE.

- (1) *When the High Court may be set in motion under this Section. Meaning of "which otherwise comes to its knowledge."*

94. (1) The words in S. 439, 'the record of which has been called for by itself,' are not used in contradistinction to, 'which otherwise comes to its knowledge,' but as contrasted with 'which has been reported for its orders,' and it has reference only to the recognised channels, by which the High Court, becomes seized of the case, that is to say, either by calling for the record itself, or by having the case reported to it under S. 438 by a Sessions Judge or District Magistrate who has himself called for the records under S. 435. In both these cases the High Court is acting of its own motion and on petition. The words "otherwise comes to its knowledge," cannot have reference to petition.—21 M. J. 499

95. (2) The High Court has got ample power under S. 439, which empowers the Court to deal with a case which has been reported for orders or "which otherwise comes to its knowledge." It does not matter in whatever way the record comes to the High Court. As soon as the record comes the Court has seized of the entire case. It cannot therefore be contended that because the matter came up in revision at the instance of the complainant, the Court cannot deal with the case of the accused who have not moved the Court or that because only some of the accused have appealed, the case of others who have not, cannot be dealt with in revision.—1 Pat J. 435. See 19 W. R. 67 (G) 5 C. N. 330.

96. (3) So where the accused not having exercised his right of appeal, would be debarred under S. 439 (5) from taking the matter up to the High Court in revision, the matter having been referred by the Sessions Judge of his own motion, the High Court had jurisdiction to interfere.—14 A. J. 215

97. (4) The High Court might exercise its power of revision upon information in whatever way received.—2 M. 34.

98. (5) High Court may act *Suo motu*.—On the revision side, the High Court has power to quash conviction of the accused who have been dealt with by the appellate Court under S. 502 Cr. P. C., even if the convicts have not moved the High Court to exercise that power. [67 P. L. 1912] The Code has made no provision for the continuance of an appeal either by the heir or devisee or executor of the deceased convict or by any other person. The appeal abates on the appellant's death. But the High Court has the right to call for the record *ex mero motu* and make such order thereon as it may deem to be due to justice [2 B. 564]

99. (6) High Court may act on reliable private information.—It may act not merely on matters coming before it in the ordinary way, but also on matters coming to its knowledge on reliable information. [2 M. 34 2 Weir 534. Cr. R. 32 of 98]

100. (7) Improper reference under S. 438.—Where a District Magistrate referred a case to the High Court in which his predecessor had ordered a retrial, the High Court held that the reference exceeded the jurisdiction conferred by S. 438 but the fact did not prevent it necessarily from acting under S. 439 Cr. P. C. [See Rat 652; 14 W. R. 25 9 C. N. 640 But See 1 S. 40]

101. The ordinary practice.—Although S. 439 gives the High Court power to call for cases not only on judicial information but also "which otherwise comes to its knowledge, yet in most cases, it is the right practice that Judges should be moved in open Court; publicity is thus secured and a fuller hearing of the reasons which moves the Government in the interests of the public order or a private party in his own. It is therefore desirable that such motions should be made in the usual manner, however wide the powers of the Judges may be to interfere on knowledge otherwise required.—10 B. 580 (582) See Rat 577 2 B. 561. 2 M. 38

- 101A. Mere official communication.—The power to interfere under S. 439 Cr. P. C. can be exercised on an application by the Government in an official communication instead of through the law officers of the Crown. ('87) A. N. 144.

- 101B. Reference by Sessions Judge.—Where four persons were jointly tried and the sentence against the three Judges accused others was wrong and referred their cases to the High Court, held the High Court had jurisdiction to consider their cases in revision under S. 439.—(91) A. N. 149

(2) Right of audience.

102. On a report by Court of Sessions.—The High Court is not bound to hear the accused personally or even by agent ('81) A. N. 63.

103. Right to be heard.—The revisional power of the High Court is exercised at its own discretion and no petitioner has a right to be heard. 23 M. J. 371

104. In case of a reference under S. 438 Cr. P. C. by a District Magistrate for enhancement of sentence.—The provisions of S. 439 (2) Cr. P. C. cannot be said to be sufficiently complied with, if the accused is not given an opportunity to show cause before the

upon a witness to show cause why his prosecution should not be directed—14 A. J. 831 (42) A. N. 102: 22 Cr. 81 (A)

Grounds on which the High Court has interfered.

(3) Interference at an interlocutory stage

105. **The General Rule.**—The general rule as to interference at an interlocutory stage may be summed up in a sentence. The High Court will not interfere unless there is some manifest and patent injustice on the face of the record, calling for prompt redress, and will only do so when the Lower Court after having had an opportunity to use its discretion has failed to do so or abused the same. The following rulings will help to elucidate this proposition:

106. (1) The High Court will not interfere before the Sessions Judge had had time to exercise a discretion vested in him by law and had failed to exercise or abused that discretion—See (16) 2 M. N. 179.

107. (2) **Interference with interlocutory orders.**—There is no doubt that the High Court can interfere with interlocutory orders. But the power is to be exercised with great care and only in the most exceptional cases. It is inadvisable to interfere in a pending case unless there is some manifest and patent injustice apparent from the face of the proceedings and calling for prompt redress. 22 C. 131: 25 C. 233: 26 C. 786: 33 C. 68: 0 C. 551: 3 C. N. 491. 20 W. R. 23. 39 M. 561. 20 B. 543. (59) A. N. 212. (05) A. N. 238. 21 Cr. 379 (A). 10 A. J. 144. 20 Cr. 704 (N.). 21 Cr. 343 (N.). 3 L. B. 104: 130 P. L. 1901: 257 P. L. 1904. 8 P. L. 1904: 17 P. W. 1910: 18 P. W. 1910. 1 S. 90, 21 T. 85. Con. 45 P. R. 1885

108. [Note.—One test for finding out whether any particular case is of an exceptional character, is that a bare statement of the fact of the case without any elaborate argument should be sufficient to convince the High Court that it is a fit one for its interference at an intermediate stage—25 C. 233. 2 S. 25.]

109. (3) The High Court will not ordinarily interfere with a preliminary order under S. 145 Cr. P. U. except where such order is manifestly illegal—21 Cr. 73 (M.). See 21 Cr. 134 (C.): See 13 Cr. 195 (A).

110. (4) **Cases under S. 110.**—The Chief Court

to P. W. 1910 because none of the necessary formalities had been observed.]

111. (5) The High Court in the exercise of the wide powers conferred by S. 439 Cr. P. C. would interfere with a pending case and quash the proceedings if it is shown that a deliberate abuse of the Criminal Procedure Code is contemplated and that the real object of the complainant is to subject the accused to heavy financial loss and very serious and long continued annoyance by the very process of the trial itself.—8 S. 113.

112. (6) The High Court can interfere in its revisional jurisdiction with an order of a Magistrate calling

113. (1) That the accused person has been subjected for over two months to the harassment of an illegal prosecution—25 C. 233.

114. (2) That the accused person has been subjected to harassment for over two months to the harassment of an illegal prosecution—25 C. 233.

115. (3) That the accused person has been subjected to harassment for over two months to the harassment of an illegal prosecution—25 C. 233.

116. (4) That the case is *prima facie* vexatious and the proceedings amounted to an abuse of process—1 P. W. 1909

117. (5) That although the acquittal in the former trial was technically no bar to the second trial, it was inexpedient that further proceedings should be taken—(05) A. N. 238

118. (6) That the Magistrate had arbitrarily overruled an objection that the prosecution was barred by limitation—20 B. 543.

119. (7) That the Magistrate had arbitrarily refused to summon certain witnesses for the defence—130 P. L. 1901. 2 S. 25. 503 P. L. 1901.

120. (8) That the Civil Court has already adjudicated upon questions of right—33 P. L. 1901.

121. (9) That proceedings were initiated upon the Complaint of an unauthorised person. 35 P. W. 1909. See 3 P. W. 1909. 8 P. L. 1904. 14 C. N. 419. 121 A. (10). To prevent an abuse of process 30 P. L. 1909

122. **Proceedings *mala fide* or manifestly illegal.**—If it is established to the satisfaction of the High Court that the proceedings under S. 110 of the Criminal Pro. Code are not *bona fide* and that in substance their continuance would mean an abuse of the statutory provisions on the subject, it is not only competent to the High Court but it is its obvious duty to interfere with the proceedings at the initial stage—17 C. N. 278

122B. **The rule in Sindh.**—High Court can quash proceedings pending before a Magistrate or Sessions Judge but such powers should be gradually used.

122C. **Refusal to grant copies.**—The High Court declined to interfere where a Presidency Magistrate had refused to grant copies of the police charge sheet before the trial commenced—19 N. 14

(4) Interference on facts.

123. **Change of Law.**—Under the Code of 1861 the High Court, as a Court of Revision, could not interfere with any finding of fact unless it arrived at a conclusion that there was no evidence whatever to support it. [5 M. N. (1994) x. See 13 W. R. 78. 12 W. R. 47]. It was repeatedly held under the Code of 1872 (S. 207) that the words "material error" (justifying interference)

did not include error in the appreciation of evidence. Under that section the High Court could not set aside findings of facts (except upon an appeal in the case of conviction, [2 M. 39 5 M. 10, 11 B. R. 125; 9 B. R. 451; 2 B. R. 395; 8 W. R. 40; 15 W. R. 86; 20 W. R. 40; 23 W. R. 61; 24 W. R. 60; 25 W. R. 61; 25 W. R. 74; 25 W. R. 10; 1 C. L. 486].) A contrary view to the above was taken no doubt in 2 A. 330; 5 A. 161; Cr. R. 31-5-81 and 14 P. R. 1877, but the weight of opinion was overwhelmingly against the power to interfere on pure questions of fact. "Where a Sessions Judge, after a careful and deliberate weighing of the evidence, comes to a conclusion that the evidence is not sufficient to support the conviction, the High Court is not competent to interfere on pure questions of fact." (Per *Beaman J.* in *D. B. R. 706*.)

as to the value of the evidence [11 B. R. 125]. The practice was to confine interference to cases of misapprehension of evidence.—7 W. R. 7, 24 W. R. 60, 11 B. R. 166, 6 B. R. 47, 2 B. R. 395. A glance at the present state of the case-law analysed below will show that it is now well-settled that the High Court may in a proper case, set aside a finding of fact, on the ground of misappreciation of evidence.

124. **The Bombay High Court.**—It is unusual for the High Court in criminal cases to interfere in revision with a finding of fact, unless it is one so manifestly erroneous that a miscarriage of justice would result from its remaining uncorrected (6 B. R. 1099, 9 B. R. 1385, 11 B. R. 166, 6 B. R. 47. See *D. B. R. 451*.) "It is an well established rule of this Court that, in exercising the powers of revision it interferes on questions of fact only in very exceptional circumstances. The jurisdiction of the High Court to interfere on questions of fact has often been affirmed, and that in very exceptional cases, this power should be exercised is obvious, such as where there has been a conviction of a clearly innocent person, and, but for the powers given to the High Court, to interfere as a Court of Revision, the only remedy would be by petition to the Government to exercise its powers of prerogative."—[*Per Aclon J.* in 8 B. R. 851. See *Rat* 244.] The law as laid down in the Criminal Procedure Code gives the High Court the power to go into evidence in revision. But the Bombay High Court has as a matter of practice held that it will not go into evidence as a rule, but will interfere only where there is an error of law. [*Per Chundrabhaskar J.* in 25 B. 533. See also 14 B. 331, 14 B. 115, 12 B. 377, 10 B. 131, 8 B. 197, 12 B. R. 21, 20 B. 543 (505). *Rat* 905, 826.] "There is nothing in the statute law, which precludes the High Court from interfering in the exercise of its revisional powers with conviction and sentence, whether the ground of that interference be what is commonly called a question of fact or whether it be a question of law. The obvious crime drawing a distinction between grounds of the former and grounds of the latter sort rests rather upon a principle of convenience than of law. The true rule is that the High Court will not interfere in the exercise of revisional powers, unless it is satisfied that it is necessary to do so to prevent an otherwise

irreparable injustice."—[*Per Beaman J.* in *D. B. R. 706*—19 B. R. 912. See *Rat* 177—*Con.* 4 B. R. 656.]

125. **The Madras High Court.**—The Madras High Court is not limited to matters of law, but it is fully competent to the High Court to enter into matters of fact if it thinks fit. The mere application of a party to examine the evidence in any case would not be sufficient ground for doing so. There must appear on the face of the judgment or order complained of, or of the record, some ground (which need not always be a ground of law) to induce the High Court to think that the evidence ought to be examined in order to see that there has been no failure of justice. It is neither easy nor desirable to lay down any hard and fast rule for regulating the discretionary powers of the High Court. Each case will have to be dealt with according to its own circumstances. "The High Court has no doubt the power in revision to enter into questions of fact, but it is a power which, in my opinion, should be sparingly exercised, for there is danger that the sense of responsibility of the subordinate Courts, or ultimate Judges of facts will be blunted, if our powers are freely exercised, and we ought only to interfere in revision with findings of fact when it is demonstrated very clearly that they are wrong." [*Per Beachcroft J.* in 18 Cr. 437 (C).] "Although the High Court will not, as a rule, in the exercise of its revisional jurisdiction, go into the evidence and examine the validity of the conclusions of the Court below, it may in exceptional cases, enter into matters of fact, if it thinks fit. In cases in which the judgment of the Courts below is manifestly defective and the findings contained therein are insufficient to support the conviction, it is the practice of the High Court to examine the evidence in order to see whether the conviction may not be sustained."—[*Per Mookerjee J.* in 33 C. 295. See 2 C. J. 101, 4 C. J. 232, 2 C. N. 72, 17 C. N. 291, 17 Cr. 460 (C), 21 C. 931, 14 C. 169, 14 C. 361.]

126. **Allahabad High Court.**—The High Court in dealing revisionally with an appellate judgment of a Criminal Court will not, ordinarily speaking, enter into questions of fact, but it has power to do so, and in dealing with such questions require that there should be distinct and definite

5 A. 161, 2 A. 336, 2 A. J. 53

127. **Madras High Court.**—"It has now been settled by a series of decisions of this Court and of the Bombay and Calcutta High Courts that in revision it is open to the High Court to consider whether there has been any misapprehension of evidence and if the Court has power to do so, and if a convicted person claims to be heard to show that the lower courts have misapprehended the evidence in the case and he has been unjustly convicted, it is not in my opinion open to a Judge to say that it is within his discretion to permit

or refuse him to do so or not. No doubt the sections only say that the High Court may interfere in revision, but I think the word "may" is the only word that could be used in the section.—*Per Sankaran Nair J.* in 15 Cr 235 (M). See 14 M 334 (F.B.), 32 M 220 (F.B.), 30 M 224. But see 31 M 133. The power of the High Court to exercise its powers of revision on the ground of misappreciation of evidence is a discretionary power.—*Per Ayling and Miller J.* in 15 Cr 335 (M). "It is well that Courts will not interfere when there is no clear error or defect in the proceeding of the lower Courts which has resulted in grave injustice but the question is one as to the appreciation of doubtful evidence."—*Per Kupuramami Sastri J.* in 20 Cr 101 (M). See 39 M 505, 38 M 1028, 26 M 160, 5 Cr. Law Review 78; 25 A 128, 42 C 612, 9 B. R. 156.

128. **Patna High Court.**—Although the High Court in revision is entitled to enter upon an investigation of the facts it will not do so, where the lower Court has carefully and cautiously analysed the evidence. The power to do so no doubt exists as a general principle, but the general proposition must be qualified by the rule that each case must depend upon its own facts.—4 Pat J 259, 5 Pat W 157, 21 Cr. 335 (Pat).

129. **The Punjab Chief Court.** (Lahore High Court).—The Punjab Court has never hesitated in revision to interfere with concurrent findings of the Lower Courts on facts.—106 P. L. 1909, 25 P. W. 1910, 13 P. W. 1911, 22 P. L. 1912, 8 P. W. 1912, 28 P. W. 1912, 22 P. W. 1912, 12 P. W. 1913, 98 P. L. 1913, 108 P. L. 1914, 113 P. L. 1914, 28 P. W. 1915, 1 P. W. 1916.

130. **Other Courts.**—"It is not usual for a High Court in revision to interfere with any finding of fact, so far as it is a finding of fact pure and simple based on an evidence on the record, but it will do so, when both the lower Courts erred in their inference from facts as found, and have found applicants guilty of offences which are not constituted by such facts" [8 S 199]. The High Court will not interfere in revision on the ground that several inferences not warranted by the evidence has been drawn to the prejudice of the accused [18 Cr 116 (L. R.) See 61 B 234; (07) U. B. 1].

(5) *Grounds on which the High Court will not interfere on facts.*

131. (1) **Merely because the High Court might be disposed to take a different view on facts.**—The Revisional Court has to see whether the evidence is of such a character that it is possible to come to only one conclusion upon it, namely that the accused has been guilty. The Court must satisfy itself that there has been a miscarriage of justice consequent upon the one-sided or perverse view taken by the Magistrate but the mere fact that the Appellate Judge if he had heard the case he himself would have come to a different conclusion upon the facts would not justify interference in revision.—10 L. W. 630, 14 M. 314 (F. B.), 32 M 230 (F. B.) explained [1 Pat 177, 39 P. W. 1908. See also Pat 157, 2 B R 344, 18 W. E. 7, 18 W. R. 39, 2 B R 314].

132. (2) **Contrary view on evidence.**—The rule may be summed up as follows: "Where a Sessions Judge after a careful and deliberate weighing of the evidence on the record, comes to a conclusion unfavourable to the accused the High Court is not justified in interfering under S. 297 [=S 439] however much it might hold a contrary opinion as to the value of the evidence.—[12 B L 219] See also 8 P. R 1809, 18 P. R 1902, 2 P. R 1901; 8 P. R 1900. The High Court will not exercise its revisional powers where the judgment of the Appellate Court though informal, has appreciated the points which the prosecution had to establish and expressed opinion thereon.—20 C 333.]

(6) *Grounds on which the High Court has set aside findings of fact.*

133. (1) **Misappreciation of evidence.**—See Notes no 123 to 130 above. Where the lower Court has clearly failed to appreciate the points pro and con in the evidence, the High Court will interfere. See 13 C N. cxviii, 13 C N. cxviii, 14 C N. xviii.

134. (2) **Onus improperly placed on the accused.**—The High Court is reluctant to interfere in revision on a matter of fact. But where the subordinate Court has taken a wrong view of the facts through an error in law, e.g. where it places the burden of proof on the accused contrary to the provisions of S. 101 of the Evidence Act, it will interfere.—[Pat 794]

135. (3) **Rule as to evidence of accomplices not properly observed.**—The High Court will not interfere on the mere ground that the rule of practice that an accomplice is unworthy of credit unless he is corroborated in material particulars has been overlooked.

See 2 C N 762, 3 P W 1911

136. (4) **That the evidence is defective for the following reasons.**—"Weak, suspicious and inconclusive"—[20 P. R 1907; 13 C N. cxlviii] "Serious discrepancy"—[113 P. L. 1912, 111 P. L. 1912, 2 Weir 573.]—"Improbability on account of enmity between the parties"—[28 P. W. 1914, 28 P. W. 1912] "Insufficient to sustain the charge"—33 C 295, 12 P. W. 1913, 152 P. L. 1913, 43 P. W. 1913]—"Merely circumstantial and not conclusive"—[25 P. W. 1910]

137. (5) **No attempt made to scrutinize evidence.**—When in the judgment of the lower Court, no attempt has been made to scrutinize the oral evidence of the complainant and his witnesses and the necessity of finding expressly that all the ingredients to make up the offence charged were proved, has been overlooked, the High Court will interfere in revision to set aside the conviction.—21 Cr 140 (N)

138. (6) **Refusal to allow accused to exercise his rights.**—Where the accused was entitled to have the witness examined for the production of called for further cross examination, but the Judge declined to accede to the request of the counsel appearing on behalf of the accused to be permitted to do so,

the High Court set aside in revision the conviction and ordered a retrial.—21 Cr. 249 (Pat)

139. (7) Failure to deal with the case with impartiality.—A Magistrate fails to deal with the case before him with judicial care and impartiality when he lays great stress on all considerations that might affect the credibility of the prosecution witnesses but fails to appreciate or even to correctly cite in his judgment the points in favour of that evidence. In such a case the High Court set aside an order of acquittal and directed retrial to take place in another District.—18 C N. 1244.

140. ...

misread it.—See 25 B 479 12 P. R. 1906 20 P. W. 1907; 13 P. W. 1909

141. (9) Introduction of irrelevant matter.—When the real issues have been obscured by the introduction of a mass of irrelevant matter, so as to seriously affect the chance of the lower Court being able to arrive at a correct finding.—1 B R 656; 14 C 361 See 20 W. R. 40; 15 W. R. 86 25 W. R. 74

(7) Power to go into evidence—general rules.

142. Power to go into evidence in revision of orders under S. 436 Cr. P. C.—Where a District Magistrate, acting under S. 436, Criminal Procedure Code, disagrees with an order of discharge by a Magistrate and directs the commitment of the accused to the Court of Session, the High Court has jurisdiction to go into the evidence in order to ascertain whether the order of the District Magistrate is or is not justified, and if it finds no justification for the order, it will direct the discharge of the accused.—21 Cr. 328 (Pat)

143. Duty to examine the evidence when non-appealable sentence is passed.—There is ample precedent for a High Court as a Court of Revision re-examining the evidence, if there are *prima facie* good grounds for doing so more especially in this case where the accused has been given a non-appealable sentence and has no means of vindicating his character except in revision.—*Per Batten O J. C.* in 19 Cr. 666 (N) See 23 C. N. 488

144. Absence of evidence.—The absence of evidence necessary to support an order, is regarded as a question of law and not of fact.—5 C N 411 9 C N. 829 9 L. B. 295 See 34 C 840 25 M. T. 175 94 P. L. 1915, 2 A J. 53

145. Power to direct Sessions Judge to hear appeal after obtaining additional evidence.—“In our opinion both under the Criminal Procedure Code and under S. 107 of the Government of India Act the High Court has power to direct a Sessions Judge to rehear an appeal after obtaining additional evidence.”—*Per Mulla and Thomson JJ.* in 3 Pat J. 632.

Note.—It is improper for the Appellate Court when it thinks it was necessary to have some further

evidence in the case to remand it to the lower
first instance,
the evidence
recorded to
—31 B 381;

20 Cr. 826 (Pat).

146. Power to investigate facts.—“I have followed my usual practice, viz, that when a revision is brought from the decision of an Appellate Court and the Appellate Court has not gone into the questions dealt with at the trial by the first Court with any great thoroughness, I make a point of investigating the original trial and seeing whether the nature of the procedure and the decision arrived at were such as to leave no doubt that the accused had a fair trial and that the decision was given according to law.”—*Malch J.* in 20 Cr. 370 (A)

(8) Concurrent findings of lower Courts as bar to revision.

147. (1) The fact that a complaint of an offence has been dismissed by two Courts, will not of itself prevent the High Court from setting aside the order of dismissal and directing that the complaint be proceeded with according to law. 21 Cr. 338 (Pat)
148. (2) In a revision of the concurrent findings of conviction of the Magistrate and the Sessions Judge, the High Court will have to see not merely whether it disagrees with such findings but whether there is something in the way in which the trial Court has looked at the law or in the method by which it has dealt with the evidence which makes it so doubtful whether the conviction is right, that it would amount to a miscarriage of justice to allow it to stand.—21 Cr. 552 (A)
149. (3) The concurrent findings of fact by the lower Courts were set aside on the ground that “there was such very great doubt about the case,” in 95 P. L. 1914 see also 25 P. W. 1914 113 P. L. 1914 1 P. W. 1916
150. (4) It is not usual for a High Court in revision to interfere with any finding of fact, so far as it is a finding of fact pure and simple based on the evidence on record, but it will do so when both the lower Courts erred in their inference from facts as found, and have found applicants guilty of offences which are not constituted by such facts. 8 S. 199 See 17 Cr. 460 (C)
151. (5) In 25 P. W. 1915 the Punjab Chief Court set aside the concurrent findings of the two lower Courts on the ground that in any case the prosecution witnesses are unreliable and it was improper for the Magistrate to convict the petitioner on their evidence.—25 P. W. 1915.

(9) Interference on account of wrong exercise of discretion.

152. The general principle on which the High Court will interfere by reason of a wrong exercise of discretion.—By a subordinate Court may be summed up in the words of *Marbury J.* as follows “The High Court has the power to interfere in revision, where the

exercise of discretion being required by law, the lower Court exercised no discretion at all or exercised its discretion in a wholly unreasonable or improper manner."—[2 G 110] For example the High Court quashed the proceedings for security for good behaviour taken by a Magistrate because there was "an utter and fatal want of discretion" on the part of the Magistrate.—[1 G. L. 268]

Instances of wrong exercise of discretion.

153. (1) Omission to take very material evidence.—offered by the accused—24 W R. 60
154. (2) Omission to examine all the witnesses produced—by the complainant before declaring the accused not guilty—[24 W R. 62]
155. (3) Refusal to recall witnesses—for the prosecution for cross-examination—[19 W. R. 53]
156. (4) Refusal to summon certain witnesses for the defence—505 P. L. 1901 24 W. R. 18
157. (5) Failure to give the accused the benefit of the doubt.—106 P. L. 1909
158. (6) The wrong exclusion of an important question.—which a party wished to put to the witnesses—9 B. R. 1335.
159. (7) Rejection of a surety on wholly unreasonable grounds.—See 2 G 110-13 C. N. civ. 14 C. N. xxxviii; 14 C. N. xix. 35 C 400; 37 C. 91

(10) General Rules of Practice.

(i) Where a plea of guilty has been wrongly recorded.

160. The High Court would set aside the conviction upon such plea and order retrial. 21 Cr 547 (C); 11 W R. 33

(ii) Retrial.

When retrial should or should not be ordered.

161. (1) The High Court has full power as a Court of Revision to order a retrial when necessary—24 W. R. 24
162. (2) Where the District Magistrate has disposed of an appeal in a very summary manner without discussing the evidence, and coming to findings on essential facts, the High Court will set aside his appellate order acquitting the accused, and direct that the appeal be retried—18 Cr 519 (C).
163. (3) "Where a competent Court, has dismissed a case after considering the evidence and giving thorough and careful reasons, I do not think unless there is clear evidence of a miscarriage of justice, that an accused party, who has stood his trial ought to be ordered to run the risk again. The general principle of the criminal law is that a man is entitled to the benefit of the doubt and if he has been properly tried and acquitted by a competent Court, the least that you can say is that there is a reasonable doubt about his guilt and I think the usual practice is not to encourage the prosecution to have a second shot unless there is some very strong reason in the public interest"—Per Walsh J 14 A. J 1075.

163A. Where a person charged with murder is culpable homicide not amounting to murder convicted for the latter offence and acquitted the former, the High Court in revision cannot direct a retrial for murder.—5 M. H. (app) 10

163B. Lower Court cannot travel beyond findings accepted by the High Court. When a case is directed to be retried with reference to the observations of the High Court the Judge retrying cannot go behind findings of fact which have been accepted by all the Courts and which were the basis on which a retrial was ordered—15 Cr. 619 (N)

163C. Omission to record evidence of previous conviction may be a ground for the High Court revision to order a new trial 36 P. R. 188 But See 21 P. R. 1922.

(iii) High Court will be as a rule slow to interfere.

164. (1) High Court will not interfere in revision merely because the Sessions Judge takes a different view of the evidence to that taken by the Magistrate [Bat 977].
165. (2) The High Court will be slow to interfere with the exercise of the very wide discretion with which Sessions Judges have been invested under S. 4 Cr. P. C.—13 A. J 111.

(iv) Rules of Procedure.

166. The High Court in revision could exercise powers of a Court of appeal under S. 423 Cr P. ('83) A. N. 61; 27 B. 84; 27 A. 415. It has therefore the powers of making any amendment or any consequential or incidental order 27 A 415 See 30 C 44; 5 C J. 224
167. The High Court in its revisional jurisdiction has power to decide matters in respect of which a rule was prayed for but not granted—27 C 8
168. Single Judge.—A Judge sitting as a Single Bench has power to entertain *ex parte* applications for revision. ('87) A N 800

No Appeal lies from an order under S. 439 Cr P. by a single Judge in revision of proceedings under Chapter X Cr P. G. ('15) M. N. 240

169. Sessions Judge's application for revision of order of Sessions Judge. (A N 1)

170. *Prima facie* irregularity or illegality. A fair *prima facie* case of irregularity of proceedings or the illegality or impropriety of sentences or order must appear before the Court will interfere.—1 M. H. 135

171. More statement of the petitioner supported by evidence.—That the Magistrate did not require the whole of his defence cannot be acted on—5 W. 57.

(v) Failure to exercise right of appeal.

172. It cannot be laid down as an inflexible rule that when either the Government or the accused on the one hand or the accused on the other has a right of appeal and does not exercise it, the powers of the High Court will be exhausted.

Court under S. 131 cannot be exercised but such powers should be used sparingly and in exceptional cases, not at all in reference to questions of fact.—6 A 481 See 22 Cr. 313 (S), 8 S 229

Note.—Where an error cannot be set right in appeal,—the High Court may act as a court of revision after it has acted as a court of appeal.—5 W. R 15 (F. B.)

(vi) S. 439. does not in any way affect the powers under the High Court Act.

173. S 439 does not in any way limit the powers of the High Court, as a Court of Revision, vested in it by the High Court's Act.—13 C. L. 275 See 2 N. P. 117.

(vii) Summary dismissal of appeal by Sessions Judge.

174. Where a Sessions Judge summarily dismissed an appeal against an order of conviction, the High Court instead of remanding the case, itself decided the case on merits and set aside the conviction.—10 C N 416

(viii) Practice of the Allahabad High Court with regard to conclusions on facts.

175. It is usual for the Allahabad High Court, unless very strong grounds for an opposite conclusion can be found to exist, to take the findings of the lower Appellate Court, and not of the Court of the first instance as the facts of the case.—18 Cr. 435 (A)

(ix) Notice.

176. Under S 439 (2) Cr P C the accused person would be entitled to notice, if an order S 250 Cr P C passed by a first class Magistrate is taken to the High Court for Revision. It stands to reason therefore he should be entitled to a hearing, when an appeal is preferred under the provisions of S 250 (3) Cr P C.—34 M 1001

177. When no notice is necessary.—A warrant for arrest issued under S 427 Cr. P C is not an order to the prejudice of the accused within the meaning of S 439 (2) and can therefore be issued without previous notice.—8 Bur T 246

(x) Showing cause.

178 (1) Rule issued against order of the Sessions Judge.—Rules issued by the High Court are addressed to the District Magistrates as a matter of convenience and in accordance with the practice for appeals followed under S 422 Cr P C, the Local Government having under that section appointed the District Magistrate as the officer to receive notice of appeals. If a rule is granted against the order of a Sessions Judge, he is the proper person to show the cause.—7 C. N. 80

179. (2) Rules to other Cases.—Although it is open to a Magistrate called upon to show cause to submit his remarks in answer to the ground urged by the petitioner who obtained the rule it is not open to him to submit observation with a view to supplement or add to his judgment [7 C. N. 851 But See 3 C. J. 377] A Magistrate

called upon to show cause against a rule issued by the High Court must apply to the Legal Remembrancer to cause an appearance to be made for him (Magistrate) in Court, and must not address the Registrar by letter [4 C 20] See also 25 C 795. 31 C 511.

(xi) Miscellaneous rules.

180. Correction of record.—The Chief Court, Punjab in revision ordered the Magistrate's adverse remarks on the accused (not supported by evidence) to be expunged from the judgment.—610 P. L. 1001

181. Non-appealable cases.—Where notes of evidence taken by the Magistrate failed to show sufficient materials for conviction, the High Court set aside the conviction (and did not order a retrial).—13 C 272.

182. Orders made in default.—The Court has power to re-open and dispose of a criminal case

any time before the order for the discharge has been drawn up, signed and sealed [7 C N. VII]

183. Abatement of revision application.—By

sentence of fine a revision application against a sentence of fine does not abate and the principle applies to a case in which a compensation has been awarded under S 250 Cr P C [21 P R. 1908]

184. Interference after sentence is served out.—The High Court in revision is competent to interfere with a conviction even after the sentence has been served out.—7 A 133

185. Application for revision of an order passed in appeal must be by way of a motion.—16 W R 62.

186. Case of accused who has not applied.—can be dealt with under S 479 while considering the application of other accused.—5 C N 370

187. Interference in cases where the accused has been tried under two sections of P. C.—It is doubtful whether High Court in revision can change a conviction under 379 I P C to one under S 295 I P C when the lower Court has acquitted the accused of the latter offence.—2 Weir 577

The High Court can, as a Court of Revision in the case of an accused convicted of two offences and sentenced separately for each of them to set aside the sentence in respect of one charge and enhance the sentence in respect of the other.—2 Weir 577

(11) Orders of commitment.

188. Quashing commitment.—The High Court is competent in the exercise of the powers of revision to quash a commitment.—2 A 334 10 W. R. 29

189. Ordering commitment.—(1) The High Court has powers to direct an accused person who has been improperly discharged to be committed for trial—6 A. 40 27 B 84 10 W R 56
190. (2) Or when the accused has been erroneously convicted of a minor offence, the High Court as a Court of Revision may direct the accused to be committed to the Court of Session—I O L 515. 30 P R 1880
191. (3) S. 423 gives an Appellate Court the power to order an accused person to be committed for trial, when it considers that that was the proper

procedure to be adopted. That power can, under the provisions of S 430, be exercised by the High Court as a Court of Revision—16 B 560

(12) Verdict of a Jury.

192. The High Court as a Court of Revision cannot reverse the finding of a Jury.—5 W R 45 13 W R 33, notwithstanding the fact that the verdict is vitiated by misdirection—10 W. R. 14. 11 W. R. 29 (F. B.). 15 W. R. 68. But when there is no evidence to go to the Jury, the High Court can interfere.—[16 W R 19]

VII. GROUNDS FOR INTERFERENCE.

(1) As to, misappreciation of evidence, questions of fact etc.

193. See VI. Practice and Procedure (4) to (6)

(2) What are not sufficient grounds.

194. (1) The omission to record *in extenso* the statement made by a prisoner—6 M H 45 Sec. 3 B L 59
195. (2) Examination of a prosecution witness after the defence was over, where the prisoner has not been prejudiced—13 W R 15 13 W R 36
196. (3) Omission to examine a complainant and failure to reduce his examination into writing.—17 W. R. 37
197. (4) Dismissal of a complaint owing to the absence of complainant and his witnesses—7 B L 8 (N)
198. (5) Omission to require accused to produce his witnesses, where the accused has not his witnesses in attendance and does not apply for summons—11 W R 15
199. (6) Admission of evidence of witnesses at a previous trial at the express request of the prisoners—13 W. R. 40.
200. (7) Refusal of the Sessions Judge to allow cross-examination of witnesses whose depositions had been recorded by the Magistrate but not admitted at the trial at the Sessions—5 B. H 85
201. (8) That a Magistrate has acted without proper discretion in ordering a prosecution—9 W. R. 18.
202. (9) Where the Magistrate has acted without jurisdiction but the accused has not been prejudiced thereby.—14 W. R. 41.
203. (10) Alteration of the charge and the omissions to record a separate defence when no prejudice.—17 W. R. 52

204. (11) The fact that the Appellate Court took a different view of the facts from what the first Court did—2 B R 334.

205. (12) The fact that a superior Court is disposed to take the view that the Magistrate has discarded the prosecution evidence for insufficient reasons—2 Weir 551—2 Weir 555

206. (13) The fact that the Magistrate has illegally treated a warrant case as a summons case—2 Weir 572

(3) What are sufficient grounds.

207. (1) Omission to record evidence in the manner provided by the law—20 W. R. 14.

208. (2) Omission to examine all the complainant's witnesses before declaring the accused not guilty 24 W. R. 62

209. (3) Refusal to recall witnesses for the prosecution for the purposes of cross-examination by the accused.—19 W R 53

210. (4) The fact that the complainant's statement was not on oath and there was no statement of charge or evidence of any kind—20 W. R. 55

211. (5) Order of acquittal passed by an assistant Sessions Judge without taking any evidence—5 B. H. 69

212. (6) Acquittal based on evidence not taken by the trying Magistrate but on evidence in another case before another officer—15 W. R. 23.

213. (7) When the order made by a Magistrate is beyond his powers and jurisdiction—17 W. R. 37 4 A 141

214. (8) Defective investigation by the Magistrate—2 Weir 570

215. (9) That the rate of maintenance fixed under S 488 Cr. P. O is beyond the means of the person ordered to pay it—2 Weir 575.

VIII. INTERFERENCE WITH ORDERS OF ACQUITTAL.

(1) The prohibition in S. 439 (4) Cr. P. C.

216. "Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction," refers to a case where the trial has ended in a complete acquittal, not to a case in which the trial has ended in conviction, albeit on a minor count.—37

(2) A brief Historical Review of the case-law on the subject.

217. The almost uniform practice of the High Courts

revision is not contemplated by the Code, and it should, on public grounds, be discouraged. In cases of acquittal the law allows an appeal only on behalf of the Government. [See 19 W 55 (80) 6 C L 245 (82) 8 C 895. (79) 1 A 139 (F.B.) (79) 2 A 336 (339). (79) 2 A 276. (86) 9 A. 134 (F.B.). (74) 11 B 11. 117 (79) 3 B 150; (84) 8 B 307; (81) 2 Weir 570.] Under "Act X of 1872 provision is made for an appeal by Government in cases of improper acquittal. From this, and from the circumstance that S. 297 of the Criminal Procedure Code 1872, while it expressly gives power to the High Court to correct error in cases of improper discharge, conviction and sentence, says nothing of improper acquittal, the intention of the Legislature seems to have been that there should be no interference with

the whole fabric of law and justice—viz—the principle embodied in the maxim of "*nemo debet bis vexari*" will be swept away. Such interference is likely to impair seriously the sense of responsibility of Subordinate Courts as ultimate Judges of facts, and may place in the hands of the unscrupulous litigant a powerful instrument for harassing and humiliating their victims. See 2 M. 38 14 M 363 8 M T 380 26 M J 160 3 B 150 15 B 349 12 A J 253 2 A 346 25 A. 128. 13 P. W 1907 18 P. R 1853 2 O J 190.] While there is no doubt that the High Courts have always discouraged such practice, the right of the private party to move the High Court in revision has been recognised from the earliest times [See (79) 2 A 448.] "There is no doubt about the jurisdiction of the High Court either upon an application of a private individual or when the case is referred to the High Court under S 438 Cr P O to interfere by way of revision with an order of acquittal. [41 C 703. 42 C 612. (90) 23 C 975 (99) 27 C 172 (02) 7 C N 301 (03) 2 Weir 485 (486) 12 P R 1904 (01) U B (97-01) 191. 2 S 25.] It has however been laid down with equal emphasis that the practice should be discouraged and that "the Court should interfere only when it considers that interference is urgently required in the interests of public justice." [42 C 612 38 C 786 22 C 164 18 C N 1244 18 C N 554 7 C N 521 11 C J 113 5 C J 452 24 M J 692. 28 M J 690 2 L W 1244 27 A 359 25 A 128 21 A 346 20 A 459 G A 494 2 A 448 41 B 560 15 B 349 8 B. 197. See 8 P L 1906 18 P. R 1853 16 P R 1884 10 P R 1900 157 P L 1908 6 C P. 15 (01) 1 U B 91 6 S 120 "To set down a hard and fast rule that application by private parties against orders of acquittal should be discouraged is for High Court to abdicate its function and in the present conditions in India, must necessarily result in denial of justice."—Per Tawon J. in 42 C 612

NOTE.—A study of the following precedents will, it is hoped, be of considerable use in arriving at a proper understanding of the law on the subject—

218. (1) The High Court has jurisdiction to interfere in revision, even in the case of an order of

acquittal, but such interference will only be called for where serious injustice has been caused by an error of law.—42 M 109; 15 M. J. 225. 9 B R 156 4 B R 686 22 C. 895; 6 S 120.

219. (2) "In the case of revision petitions against orders of acquittal, courts have been either unwilling or very reluctant to interfere in revision at the instance of private parties [14 M. 363. 15 B 349. 21 A 346. 25 A. 128. 42 C. 612 (Per Huda J.)]. It is well settled that Courts will not interfere when there is no clear error or defect in the proceedings of the lower Courts which has resulted in grave injustice but the question is merely one as to the appreciation of doubtful evidence.—[38 M 1028 39 M 505; 26 M J 160 5 Criminal Law Review 78. 25 A. 128. 42 C 612. 9 B R 156]—Per Kumaraswami Sastri J in 20 Cr 101 (M)

[Note.—See 4 Cr 37 12 P R 1906. 13 P. R. 1905; (ovd. by 13 P W 1907), 5 M T 238]

220. (3) "It may be taken as a well settled view of all the High Courts that as a general rule it is not expedient to interfere in revision at the instance of a private person with an acquittal after trial by a competent tribunal, and that applications for such interference should be discouraged on public grounds. The practice of this Court is in accordance with this view. On the other hand S 439 undoubtedly confers power to set aside an order of acquittal at the instance of the private prosecutor, and interference is called for when the offence is of so essentially personal character, that the Local Government would seldom be willing to appeal from acquittal"—Per Drake Brockman J O. in 20 Cr 708 (N) See 5 N 4

221. (i) "It has been urged upon me that it is contrary to the practice of this Court to interfere in revision with a judgment of acquittal, but where it is plain that the learned Judge for reasons outside the merits of the dispute has really declined to decide the controversy, and has dealt with matters which really do not decide the complaint before him,

564 (A)

222. (5) "By a long established practice of the Bombay High Court revisional applications against orders of acquittal are not entertained from private petitioners except on some very broad ground of the exceptional requirements of public justice.—Butcher J. in 41 B 560

223. (6) Where a trial has ended in complete acquittal of the accused person, it is not open to the High Court in the exercise of its revisional jurisdiction to convict him of any offence. The utmost that it can do, in the absence of an appeal against acquittal by the properly constituted authority is to order a new trial.—10 A. J. 918. 9 A 134 (F.B.) (83) L. B (93-00) 41 6 C P. 15; 12 P. R. 1904 157 P. L. 1908 23 C 975

5 W. R. 2-32; 15-15 W. R. 23-21 W. R. 21-
Sec 1 A. 1 (F. B); 5 B. II. 68; 27 B. 84 3 B.
150; 22 Cr. 312 (P); 1 P. L. 1904; 6 S. 101;
37 M. 119; See O. S. 191; Con 21 W. R. 21; 11
W. R. 14.

[Note.—But a retrial should be ordered only when there is a failure of justice.—6 C. P. 15; 5 N 4 See 2 Weir 572]

224. (7) The High Court is loth to take up in revision cases of acquittal where the matter is one of public interest and the Local Government has not exercised its right of appeal under S. 417 Cr P. C.—40 A. 84.

225. (8) "In revision it has always been regarded

has not done so" [2 M. 38; 14 M. 363; 25 A. 129 3 B 150]—"Per Spencer J. in 26 M. J. 160.

226. (9) The High Court has power to interfere in revision with an order of acquittal but application by private parties should be discouraged and the Court should interfere only when it considers that interference is urgently demanded in the interests of public justice.—23 M. J. 690; 28 M. J. 632, 2 L. W. 1244. (1917) 3 U. B. 19.

227. Some rules of practice.—The mere fact that the High Court, if it were sitting as a Court of Appeal, would come to a different conclusion on facts, is no ground for exercising revisional jurisdiction in petitions against orders of acquittal [28 M. J. 692] Upon a proper interpretation of S 439 subs (4) Criminal Procedure Code 1898, a High Court, acting as a Court of Revision, is not competent to question an order of acquittal upon the merits thereof;

as the High Court has no power to interfere [5 M. T. 216]

228. Some cases in which the High Court Judicial ce under has not 18 Cr.

732 (O) the High Court interfered on the ground that the lower Court had clearly fallen into a mistake of law.

229. High Court cannot convert a finding of acquittal into one of conviction.—See

Subs. (4). After setting aside the order of acquittal it can only direct a retrial—16 A. J 918: See Note No. 223 above.

(3) Grounds on which an order of acquittal may be set aside.

230. (1) That upon the evidence in the case which was not contradicted, and upon the facts admitted, the accused were clearly guilty under S 504 I. P. C and one of them also under S 342 I. P. C (neither offence being a summons case)—2 Weir 572.

231. (2) That the accused were acquitted without taking the evidence of witnesses present, and upon the result of local inspection—39 C. 931.

232. (3) That the trial was wrongly held to be barred by S. 403 Cr. P. C.—12 B. R. 226

233. (4) That the acquittal proceeded upon a mistaken view of the law. (The complainant agreed to receive money which the accused, charged with criminal misappropriation, promised to pay in three days. The Magistrate thereupon acquitted the accused)—6 A. J. 758.

234. (5) That the Magistrate acquitted the accused summarily without hearing all the witnesses cited.—24 W. R. 62; 2 C. L. 389.

(4) Rulings under the Old Codes.

235. It was held in several cases under the Code of 1861 that the High Court could, as a Court of Revision set aside a finding of acquittal. (5 W. R. 45; 15 W. R. 23; O. S. 191; 4 M. II (Ap) 40 Con. 1 W. R. 14] Under the Code of 1872, however, the High Court either refused to or was very reluctant to interfere. It was held for instance in 13 B. L. (Ap) 22 on a reference that

(5) Belated application by Government.

236. Where the Government applied for revision of an order of acquittal by the Sessions Judge nearly ten months after the Sessions trial and upwards of 12 months since the commission of the alleged crime, held that as there was no error of law in the judgment of the Lower Court, and as it was not appealed against on a question of fact, the High Court could not, after so long an interval from the date of its delivery and of the alleged crime, enter into it at large upon the merits under a petition for revision.—6 A. 491.

IX. INTERFERENCE WITH SENTENCES.

(1) General Principles.

237. Legal sentence.—High Court sitting as a Court of revision will not interfere if the sentence, is a legal one and is not contrary to law.
15 W. R. 83; See 5 W. R. 32; 7 P. R. 1889.

238. Conviction for minor offence.—Where

the evidence shows that an offence of a graver nature than for which the accused has been tried Court w trial B II.

But it will not interfere if under the circumstances

the sentence is not manifestly inadequate—4 B. H. 1; See 4 R. H. 2; or when substantial justice has been done.—18 W. R. 8; 18 W. R. 23; 18 W. R. 38

239. **Inadequate sentence.**—There must be material on the record showing that the charge has been improperly framed or that the sentence passed is clearly inadequate.—20 W. R. 22; 7 P. R. 1889.

240. **Improper sentence.**—Where the sentence is improper and unjust, the High Court will set it aside.—25 W. R. 1.

241. **Error of procedure**—is not sufficient to vitiate the conviction so long as the punishment awarded does not exceed the legal penalty

15 W. R. 48; 15 W. R. 49; 17 W. R. 60.

242. **Mere ground that case is of civil**

matter and has come to the conclusion that the accused is guilty of the offence alleged.—27 C. J. 226.

243. **Conviction under a wrong section.**—The High Court ought not to interfere, because the

R 50.

244. **Sentence partly legal and partly illegal.**—The High Court will in revision set aside the illegal portion of the sentence and retain the legal portion.—(72) L. B. 362.

(2) Enhancement of Sentence.

245. **Principles upon which a Court should act.**—"The principles upon which this Court habitually acts as a Court of Revision in relation to the enhancement of sentences where the law allows a discretion to the Court whose sentence is impugned, are that it should not interfere if the sentence passed involves substantial punishment, and should interfere if the sentence is manifestly inadequate. The Court is, in particular, slow to interfere where interference would involve the imprisonment of persons already discharged from jail, though the circumstance is no insuperable obstacle. The Court also declines to interfere in order to enhance a sentence, on the mere ground that it would itself have passed a heavier sentence, contenting itself with pointing out that the sentence is so far light that a heavier sentence would have been maintained."—*Floden J* 7 P. R. 1889 19 W. 1910 7 P. R. 1919

[**Note.**—The High Court will not interfere, particularly when the accused has already undergone the sentence of imprisonment or has paid the fine.—313 P. L. 1913.]

246. **Condition precedent**—Sentence passed must be manifestly inadequate—17 P. R. 1895. 20 W. R. 22; 10 S. 207.

247. **High Court will not interfere to enhance sentence.**—(1) Because owing to the negligence of the prosecution, the previous convictions of the accused were not proved and taken into account [21 P. R. 1902; 43 P. R. 1905] or because the evidence of the previous conviction was discovered only after the trial had been concluded and sentence passed [Bat 457; 461; See Bat 458; 19 P. R. 1905; 2 Weir 574; 21 W. R. 47.]

[**Note.**—But where the omission is due to the failure on the part of the Magistrate himself to perform the duty imposed on him, the High Court will direct a new trial.—36 P. R. 1884]

248. **High Court may acquit the accused of one charge and enhance the punishment for the other.**—Where the accused has been sentenced separately for two offences, the High Court can set aside conviction in respect of one charge and enhance the sentence in respect of the other.—2 Weir 577. See 2 Weir 35

249. **High Court may act in whichever way the proceedings come up before it.**—It is not necessary that Government should

The High Court has under its revisional powers, jurisdiction to enhance sentence, howsoever the case comes to its notice.—13 B. R. 1185

250. **Revisional powers widened by the Code of 1882.**—The power of revision conferred upon the High Court under S. 439 of the Code of 1882 are larger than any exercised by it under the old Act [2 Weir 538]. The powers of the High Courts under Ss. 435 and 439 have been extended by the Code of 1882. They can call for records to satisfy themselves of the correctness and propriety of the proceedings. The infliction of an inadequate punishment is an impropriety which the jurisdiction in revision is intended to remedy.—16 B. 580

251. **Sec. 439 Cr. P. C. only refers to legal sentences.**—A sentence for a period already undergone is not a legal sentence. A High Court cannot therefore enhance a sentence which has already been undergone.—4 P. W. 1907 14 P. W. 1909 27 P. R. 1919 See 7 P. R. 1889 29 P. W. 1913. 24 W. R. 71 (12) 1 M. N. 50

252. **Power to enhance not limited by the status of the trial Court.**—"The power of enhancement of sentence conferred upon the High Court by S. 439 Criminal Procedure Code is limited only by clause (1) of that section, which clause does not regard the difference in the powers of the trying Magistrate under S. 32 of the same Code, but lays down the general rule that in cases of sentences passed by Magistrates not empowered under S. 34, the limit of enhancement shall be the sentence that may be inflicted by a Presidency or first class Magistrate."—21 Cr. 557 (Pat); 9 S. 82

253. **Change in the Law.**—Under S. 240 (of the Code of 1872), the Appellate Court had power, "if it saw reason to do so, to enhance any punishment that has been awarded." This power was

taken away from Courts of Appeal by S. 423 of the Code of 1882 which was re-enacted in the Code of 1899. The High Court, however, when

stance presents no insuperable difficulty—1 L. R. 1889-29 P. W. 1913 But See Note No 251 above.

253. Conviction in ignorance of previous conviction.—The fact of the prisoner being an old offender not having been brought to the notice of the Magistrate, is no reason why the High Court should order a retrial with a view simply to enable the Magistrate to correct his mistake and take steps for the enhancement of the punishment—2 Weir 574.

259. Procedure.—When it is necessary to ask Government to apply for revision of sentence, on account of the insufficiency of punishment awarded, this should be done immediately after the punishment is notified. Superintendents of Police should report all strikingly inadequate punishments at once to the District Magistrate—Bomb. Pol. Man. p. 88.

260. Notice.—When the proceedings are called for on appeal, solely with a view to enhance the sentence, notice to that effect should be given to the appellant and to the District Magistrate—[Rat 179]

261. Application by private complainant, enhancement after a great lapse of time.—In 4 S. 86, the Sindh Court enhanced the sentence at the instance of a private complainant, and enhanced the sentence of a fine of Rs 400, to one of Rs 1000, remarking that it refrained from passing a substantive term of imprisonment in view of the lapse of over 3 years after the commission of the offence.

(3) Mitigation of sentence.

262. High Court as a Court of revision has power to mitigate a sentence.—4 M. H. (1p) 36.

263. Severity of sentence.—is not of itself a sufficient ground for interference—4 M. H. 212

X. REFERENCE BY MAGISTRATE AND SESSIONS JUDGE.

264. District Magistrate.—The proper and only course for a District Magistrate in the case of improper discharge is to report the same for orders to the High Court. He cannot himself order a new trial—2 C 105 1 C 252 6 C 647: 2 B 531

But he cannot do so in respect of proceedings of a Sessions Court—2 Weir 565 2 Weir 566: 23 M. J. 732

205. Sessions Judge.—A Sessions Judge has no power even in a fit case (case of improper discharge) to order a retrial. He ought to re-

port the matter to the High Court for orders—1 C L. 83- See Practice and Procedure

266. What is not a proper ground of reference.—A necessity of altering a conviction from one section to another for cognate offences, when the accused has not been prejudiced by such error—9 C 847.

267. Order for bail.—The District Magistrate cannot interfere with an order for bail granted by a subordinate magistrate. If he considers the order wrong, he should refer the matter to the High Court—22 B 519

XI. AMENDMENT CONSEQUENTIAL AND INCIDENTAL ORDERS.

208. The High Court in revision has powers of making any amendment or any incidental or consequential order.—27 A 115 36 C 41 6 L. R. 89 But See 5 C. J. 229

269. Order for costs.—cannot be made in revision in reference to a proceeding under S. 115 Cr. P. O.—O. S. 227.

270. Illegal order under S. 250.—In settling

aside such an order, High Court can direct repayment of money paid as compensation under S. 547 Cr. P. C.—20 P. R. 1855

271. Order for bail.—High Court in revision may suspend proceedings at an interlocutory stage. It may also in such a case grant bail to the accused.—20 W. R. 23

272. Permission to compound an offence.—See Note No. 45 above.

273. Deletion of objectionable passages in the Lower Court's judgment.—There is no express provision in the Code of Criminal Procedure empowering a High Court to direct a subordinate court to delete any passage in a judgment which has been duly signed and delivered.—19 B. R. 912

[Note.—The two learned Judges Beaman and Heaton both refrained from expressing any definite opinion]

XII. ALLIED SECTIONS AND ANALOGOUS LAW.

274. Special jurisdiction under S. 437 should be exhausted before the general jurisdiction under S. 439 is resorted to.—32 M. 220 (F. B.) See 6 M. T. 157.

275. S. 622 Civ. P. C.—High Court can take action under S. 622 C. P. C. in an application for revision under S. 439 Cr. P. C. of an order passed by a Civil Court under S. 476 Cr. P. C. (O.) A. N. 170 See 'Revision' under S. 476 *infra*

276. S. 15 of the High Court's Act.—The general power of Superintendence of the High Court under S. 15 of its Charter Act is not affected by the

provision of S. 439 which limits interference to judicial acts only. 8 C. 580, 22 W. R. 78 See 19 C. 127, 13 C. L. 275 2 N. P. 117

277. Sec. 25 of the Provincial Small Cause Courts Act.—An application to revise an order under S. 476 Cr. P. C. of the Judge of a Provincial Small Cause Court lies under S. 25 of Act IX of 1857 and not under S. 439 of the Cr. P. C. High Court will interfere only when some substantial injustice has directly resulted from a material misapplication or misapprehension of law or from a material error of procedure. 6 Bar. T. 144.

XIII. MISCELLANEOUS.

278. When the accused is dead.—Where a complainant applied to the High Court under Ss. 435 and 439 of the Criminal Procedure Code, to revise an order of a first class Magistrate ordering payment of compensation to the accused, the High Court refused to pass any order where it appeared that the accused was dead and could not therefore be served with notice.—Rat 634

279. Time limit.—It is inadvisable to take action in a case in which the term for appeal has not expired. O. 2.

280. European British Subject.—High Court as a Court of Revision, has no jurisdiction over European British Subjects in criminal cases. 3 W. R. 64

281. Revision
[6 P. R.
Cr. P. C.
ons, and
to on the
death of the applicant except in so far as it relates to a sentence of fine. [8 P. R. 1919: See 24 P. R. 1904]

282. Review of an order of the High Court.—In a criminal proceeding is not allowed by the Code—2 Weir 573; 23 M. J. 371 14 O. 42-10 B. 176 (F. B.); See Rat 791.

But it can do so if the order has not yet been sealed. 27 A. 92.

283. Right of alien enemy to move the High Court.—When an alien enemy resides in the country by the license of the King and under his protection, he stands on the same footing as an alien friend or as an ordinary subject so far as the right of maintaining actions is concerned.

He has therefore the right to apply in revision against the order of a Magistrate discharging the accused in a case in which he was the complainant. 35 M. J. 518. See *Porter v. Frendenberg* (15) 1 K. B. 857, *Polli v. Rotunda Hospital* (14) 2 K. B. 543 *Princess of Thurn and Taxis v. Moffitt* (15) 1 Ch. D. 58 *Re v. Vine Street Police Superintendent* (16) 1 K. B. 268.

[Note.—The internment of the complainant after the filing of the criminal revision petitions does not necessarily stay the hands of the Court.—35 M. J. 515]

284. No power to set aside order under S. 562 Cr. P. C.—The High Court in revision acting under Ss. 439 and 423 Cr. P. C. cannot set aside an order under S. 562 Cr. P. C. and of its own authority substitute for that order a sentence of whipping or of imprisonment.—37 A. 31.

285. Power of interference under S. 12 of the Lower Burma Court Act. (VI of 1900).—By the Chief Court, the section having given the power to pass "such judgment, order or sentence as it thinks right," is wider than those conferred by Ss. 423 and 439 Cr. P. C.—9 L. B. 60 (F. B.).

286. Effect of loss of record.—"The loss of a record after conviction is no ground for the acquittal of the accused, for the logical conclusion from such an argument would be that in the event of a wholesale destruction of records by fire or earthquake, all accused persons whose records had been lost and who sought relief in appeal or revision would be entitled to acquittal. There is no authority in law for such a proposition."—*Per Mellick J.* in 18 Cr. 737 (Pat)

440. No party has any right to be heard either personally or by pleader before any Court Optional with Court to hear parties. when exercising its powers of revision :

Provided that, the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

Notes.

1. S. 440 does not contemplate *ex parte* hearing in cases of revision of orders of discharge.—Sec. 437 does not compel the issue of notice to the accused. There is abundant authority however, that where a man has been discharged after full enquiry by a competent Court, a Revisional Court will exercise a proper discretion in allowing him an opportunity of showing cause, before directing the case against him to be reopened. No such *ex parte* hearing against an order of discharge is contemplated by S. 440 Cr. P. C., it being contrary to principles of common fairness—8 Bur. T. 133 : 11 C. N. 816.

[Note.—As a matter of strict law, the accused is not entitled to be heard by the District Magistrate before an order for further enquiry is made by the latter.—10 C. 268 : 15 C. 608 (F. B.).]

2. Scope of the rule.—The rule enacted by S. 440 is the general rule provided by the Legislature and it must be taken to be a legislative revision of the general principle that persons are entitled to be heard before any order affecting them to their prejudice can be made.—10 C. 208.
3. In reference proceedings.—In a reference under S. 290 (=435), a counsel is not entitled to appear under the Code—[1 B. 64]. A private prosecutor cannot be allowed to appear on a reference to the High Court under S. 434 Cr. P. C. (=S. 438). If he is heard at all, he can be heard only by the permission of the Court. [6 B. L. (appx) 46 : 5 B. L. (appx) 70].
4. Power to dispose of a rule without hearing counsel should he used with discretion.—The Court may, under S. 440 Criminal Procedure Code, determine the questions raised, without hearing counsel or pleader on

either side, but where it has not done so, but merely disposed of the case in default of appearance, the Court has power to restore the case and hear and determine it. [10 C. J. 80]. But in matters of importance, the High Court though it acts as a Court of Reference and revision, always hears counsel.—[19 C. 880].

5. S. 440 does not apply to application under S. 195 (8).—An application under S. 195 (8) ought not to be summarily rejected without giving the applicant a reasonable opportunity of being heard in support of the same. S. 440 does not apply to such a case—12 C. N. 248 : See 31 C. 811.

6. Difference between the appellate and the revisional jurisdiction.—As has been held in 12 B. 377 "it is only in exceptional cases"

"that the High Court has jurisdiction to revise the order of the District Magistrate."

of the proceedings [2 B. 564].

7. Cases in which High Court refused to hear counsel.—In 14 M. 303(304) the High Court declined to hear counsel who appeared to support an application to revise an order of acquittal. In 5 P. W. 1910 the District Magistrate having refused to appoint a legal practitioner to represent the Crown in revision, the Chief Court declined to hear him. See also 14 W. R. 51.

441. When the record of any proceeding of any Presidency Magistrate is called for by the Statement by Presidency Magistrate of grounds of his decision to be considered by High Court. High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue ; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

Notes.

1. Scope of the Section.—Mere omission by a Magistrate to record his reasons, before referring a case under S. 202, for inquiry by the police, and for dismissing a complaint under S. 203, is an irregularity. But a statement filed under S. 441 Cr. P. C. supplies the omission. So after filing of such a statement, there is really no

omission calling for the interference of the High Court.—5 M. T. 79.

2. The statement as against affidavits.—A statement submitted by a Presidency Magistrate under S. 441, must be regarded as a completion of the record and possesses a conclusive character as against affidavits—12 B. 377

442. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was

recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall there upon make such orders as are conformable to the decision so certified; and, if necessary the record shall be amended in accordance therewith.

Notes.

1. **Scope of the Section.**—The provisions of the section do not enable a High Court to certify to itself. It is therefore clear that the High Court cannot revise the judgment and sentence passed by a single Judge as a Court of original criminal jurisdiction—4 P. R. 1809.
2. **Procedure.**—The result of every application

for revision of a sentence under which the applicant is in confinement shall be notified, direct to the officer in charge of the jail in which the applicant is confined, by the Court from whose order the application for revision was preferred.—C. P. Cr. Cir. Pt II no. 47; *Bomb Bl. Cir.* pp 50-51

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

GENERAL NOTES ON CHAPTER XXXIII.

1. **Legislative History of the Chapter.**—Although the old East India Company had power under the Charters of Charles II to make laws affecting British-born subjects, yet this power ceased in 1709 A. D. when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3rd and 4th Will IV. c. 123 (with the exception of a limited power of legislating as regards the local limits of the Presidency town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects, can be found. With the exception of offences made punishable by the 53rd Geo III. c. 155 s. 103 by Justices of the Peace, the Recorder's Court had, by virtue of the 37th Geo III. c. 142 s. 10, exclusive criminal jurisdiction over British born subjects throughout the (Bombay) Presidency.—[7 B. II 6] The jurisdiction of a Magistrate (also a Justice of the Peace) was governed and limited by 53rd Geo III. c. 155, s. 175 and Act VII. of 1853 [6 B. II 14]. A Cantonment Magistrate had no jurisdiction to try a European British subject for an offence under s. 48 of the Police Act (Act XXIV of 1859) [5 M. II. (app) XXV]. It was held by *Morgan and Seton-Karr JJ* in 3 W. R. 64 that the High Court as a Court of Revision under s. 404 Cr. P. C. had no jurisdiction over European British subjects in criminal cases. The Criminal Procedure Code (Act XXV. of 1861) however, was held to be applicable to the trial of European British subjects.—[See 10 P. R. 1871 and ss. 323, 326 and 349 of that Act.] The special provisions with regard to such trials however was for the first time clearly and elaborately incorporated in the Code of 1872

(Act X of 1872) vide Sections 72 to 84. It was held in 22 W. R. 54 that the provisions in the 'new' C. P. C. (Code of 1872) giving jurisdiction to Magistrates over European British Subjects do not come within the words in the 24 and 25 Vic. c. 47 s. 22 "affecting the provisions of any Act." "No Magistrate who is not a Justice of the Peace and also a European British Subject has jurisdiction to enquire into a complaint and try a charge under Act I of 1859, against a European British Subject [7 M. II. (appx) xxxi]. 4 M. II. (appx) xxiu]. It is worthy of note that under the Code of 1872, an European or American *not* being an European British subject had an absolute right to be tried by a Jury. No such right is recognised by the present Code. (See S. 463).

2. **Object of the Chapter.**—(1) Chapter XXXIII lays down the special rights and privileges of European British Subjects. An European British Subject when tried by a District Magistrate, enjoys the following privileges—*Firstly*, that the Magistrate's powers of punishment are restricted and, *secondly*, that the accused can claim trial by jury.—27 A. 397.
- (2) Criminal proceedings against European British subjects are regulated by Chapter XXXIII Criminal Procedure Code, and provision is made in that Chapter for the tribunal before which a person answering that description can be tried and as to the sentences that may be passed. [37 C. 467]
3. **Application of the Chapter.**—This Chapter only bars an *enquiry or trial* by a Magistrate other than a Magistrate who is a Justice of the Peace etc.—[See S. 443] A Magistrate authorised to

take cognizance of complaints can take cognizance of a complaint against an European British Subject and summon him. He may dismiss the complaint under S. 203 Cr. P. C. but he cannot try the case.—[10 G. N. cel.]

4. **Offences committed by European British Subjects in Indian foreign territory.**—A European British subject is liable to be tried in the High Court of Bombay for an offence against the Penal Code committed in the territories of a Native prince in alliance with Government.—[8 B. II. 92] Similarly although the Civil and Military station of Bangalore is not British territory, but a part of the Mysore state, a European British subject charged with offences punishable under the Penal Code, is subject to the jurisdiction of the Madras High Court [2 M. H. 444; 26 M. 607; 12 M. 38; 5 M. 33] Under Statute 28 and 29 Vic. c. 15 and Notification No. 178 J of 23rd Sept. 1874, the High Court of Bombay has jurisdiction to decide whether an accused person, an European British Subject residing at the Residency Bazaar, Hyderabad, is an European British subject and also to decide whether the accused has waived his privilege to be dealt with as such and what is the legal effect of such waiver, if any. [5 B. R. 569; 9 B. 333]
5. **Definition of "European."**—The word "European" in S. 451 means a person born in Europe.—[16 A. 88]
6. **"European" as defined by the European Vagrancy Act (IX of 1874).**—In this Act "Person of European extraction" includes.—(a) Persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony; (b) the sons and grandsons of such persons; but does not include persons commonly called Eurasians or East Indians. [S. 3]
7. **Proof of Nationality.**—(1) Where a prisoner pleaded that he was a British-born subject and that he ought therefore to be tried before the High Court, and where the evidence showed that the prisoner was the legitimate grandson of a person said to have been a serjeant in the service of the King or of the East India Company and there was no sufficient evidence to establish a valid marriage between that grandfather and a native Christian woman through whom he traced his descent and there were also doubts about the nationality of the said grandfather, held that there was no evidence to show that the prisoner was a British born subject.—2 Weir 11—6 M. II. 7. See 12 B. 361.
(2) The mere fact that the accused, the son of an Indian subject of His Majesty was born at Constantinople, does not make him an "European British Subject," when it is not proved that the accused or his father or his grandfather was domiciled in the United Kingdom or in any of the European, American or Australian colonies or possessions of His Majesty.—6 P. II. 1912
8. **Duty of Magistrates.**—Where a plea of being a European British Subject is raised by the accused, the Magistrate is bound to enquire into and determine that plea.—[3 N. P. 125; 4 A. 141] Whether or not an accused is a European British

Subject is a matter of fact to be determined judicially by the Court, on the evidence, in the event of the prisoner raising that question.—[19 W. R. G. See 6 W. R. 13] A Magistrate is not bound to ask an accused person categorically whether he claims his right as a European British Subject nor to explain to him his rights such.—[5 P. R. 1885]. But as a matter of practice, where either the name or the personal

accused is a European British Subject, he must be informed of his right under the law to be tried according to the procedure laid down for the trial of European British subjects. An omission to do so vitiates the trial.—[18, C. N. 353]

9. **Condition precedent to special proceedings under Chapter XXXIII.**—If the accused wishes to avail himself of the provisions of this Chapter, he is bound to make a claim and to establish it. [12 B. 561; 6 P. R. 1912] Failure to make a claim amounts to a relinquishment of the alleged right to be dealt with as an European or an European British Subject. [6 P. R. 1912]
10. **The law as to waiver of the special rights.**—If an European British Subject does not claim to be dealt with as such before the Magistrate before whom he is tried or committed, he shall be deemed to have waived his privilege as such European British Subject [6 C. 83; 6 P. R. 1912; See 12 B. 561; 17 P. R. 1878; 16 M. 308; 7 N. 93] In that case he will lose all the benefit of the special procedure in Chapter XXXIII [16 M. 308; 12 B. 561; 27 A. 397; 5 P. R. 1885]. But a waiver is not irrevocable. If the withdrawal of the waiver is made promptly, i. e. shortly after it has been made, and if substantially nothing has been done in the interval on the abandonment of the privilege, the withdrawal of the waiver should be allowed [1 P. R. 1908; 24 A. 511]. See also Note No. 4 under S. 443 infra
11. **Chapter XXXIII in relation to Miscellaneous Proceedings.**—The expression "enquire into and try any charge" in S. 443 of the Code of Criminal Procedure applies to proceedings under S. 107 Cr. P. C. [36 C. 163]. The provisions of S. 451 however do not apply to the proceedings under Chapter VIII (S. 106) as they are limited to trials only. [4 Bar T. 84] A Magistrate proceeding under S. 107 Cr. P. C. against a European British Subject has no power to commit him to the Court of Sessions. [1 L. B. 275]
12. **Upper Burma.**—The provisions of S. 8 (1) (i) and (b) of the Lower Burma Courts Act 1900 do not mean that all commitments that are made of European British Subjects must be made to the Chief Court in Lower Burma, but that where under the Cr. P. Code, a commitment is made to a High Court, it is to be made to the Chief Court of Lower Burma. The power to try the case or to commit to a Sessions Court is not taken away from Magistrates. The fact that an European British Subject claims in Upper Burma to be

tried by jury does not in itself form a ground for commitment to the Chief Court. The commitment in the case either should not have been made at all or should have been made to a Court of Sessions S 417 (1).—1 L B. 154.

13. **Sindh.**—The definition in S. 4 must be read with reference to the "special proceedings" against European British Subjects contemplated by Chapter XXXIII and not with reference to proceedings generally against Europeans, including proceedings in which they waive their rights under that Chapter. If therefore in any particular case, the special rules contained in Chapter XXXIII ceases to have any application, the definition of "High Court" in S. 4 (j) ceases to have any application to such a case. The definition in the latter part of S 4 (j) then prevails; and the case falls within the category of "other cases" to which that part of the definition applies. If the case is one tried in the Province of Sind, the High Court, in reference to the proceedings in it, would be the Sadar Court in Sind—12 B 561.
14. **Nagpur.**—The jurisdiction of the Judicial Commissioners' Court at Nagpur, not being a

High Court within S 4 (j) Criminal Procedure Code, is not ousted, unless and until, the accused have definitely claimed to be tried as European British Subjects, and that Court can exercise its powers of revision in the case.—7 N. 91.

15. **Special exceptions provided in the Code.**—"Nothing in Section 443 or S. 444 shall be deemed to apply to proceedings under this Section" (S. 480).—See sub cl (2) of S 480 Cr. P. C. "The provisions of S 109 and 110 do not apply to European British Subjects in cases where they may be dealt with under the European Vagrancy Act, 1874"—[See S 111 *Supra*]
16. **Vagrants not entitled to special privileges.**—"Any European British Subject who, upon the summary enquiry mentioned in S 5, has been determined to be a vagrant or who has been convicted under S 22 or S. 23, shall so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter VIII of the same Code) applicable to an European not being a British Subject"—S 30 of the European Vagrancy Act No IX of 1874

443. No Magistrate, unless he is a Justice of the Peace and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject

Magistrates who may inquire into and try charges against European British subjects.

Notes.

1. **Jurisdiction of District Magistrate of Bangalore.**—The District Magistrate of the Civil and Military station Bangalore, has jurisdiction to take cognizance of, and try offences committed by European British subjects in accordance with the provisions of the Cr Pro Code—34 M 346.
2. **Jurisdiction of First class European Magistrates over European British subjects.**—"In inviting the attention of His Honour the Lieutenant Governor to the provisions of Act III. of 1884 amending the Code of Criminal Procedure 1882, I am directed to request that it may be clearly pointed out to all District Magistrates, that the jurisdiction over European British subjects conferred by Ss 443 and 446 of the Code upon Magistrates of the first-class, who are themselves Justices of the Peace and European British Subjects, has in no respect been taken away by the amending Act. It is obviously desirable that, as far as possible, charges of the less heinous offences brought against European British Subjects should be disposed of under these sections. It is believed that in most districts, the District Magistrate will have little difficulty in arranging that this should be done, and I am to request that His Honour the Lieutenant Governor will issue such orders as His Honour may think advisable with this view."—Letter from Government of India No 6715 of 1884 to the Punjab Government.
3. **Justice of the Peace who is not a Euro-**

pean British Subject.—A Magistrate who is a Justice of the Peace, but not a European British Subject has no jurisdiction, according to this section, to try a European British subject, although the offence is one under a special law and he may have jurisdiction under the special procedure prescribed in that special law—7 M II (appx) xxxi

4. **When there is a relinquishment of the special rights.**—A person can relinquish his right to be dealt with as a European British subject (S 454 Cr P Code), and where a Magistrate asked under S. 454 Cr P C. an accused person who was a European British subject whether he claimed to be dealt with as a European British Subject, explaining Ss 447 and 450, and where the accused did not claim the right, held that he had relinquished his right—[37 C 467: 6 C 53 12 B 561 16 M 304 2 Pat W. 79: 7 N 91] See Note No 10 under General Notes under Chapter XXXIII *Supra*]
5. **Provisions of S. 443 apply to proceedings under S. 107 Cr. P. C.**—See Notes No. 11 under General notes under Chapter XXXIII. *Supra* Where a proceeding under S 107 Cr. P. C. was instituted against a European British subject by a Magistrate not competent to try a European British Subject, on application to the High Court the proceeding was directed to be transferred to the file of a Magistrate competent to try him under S. 443 Cr. P. C.—[13 C. N. 151]

444. No Judge presiding in a Court of Session, except the Sessions Judge, shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years and has been specially empowered in this behalf by the Local Government

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a District Magistrate or Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both, and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.

Notes.

1. Powers of the District Magistrate of a Notifications and No 732.

reference to European British subjects, with all the powers under the Code, of a District Magistrate not limited by the special provisions applicable to European British Subjects. He has therefore power to try a European British Subject and sentence him to a term not exceeding 2 years. [34 M. 343 R.] The term "ordinary powers which may be conferred" in Notification No 680-I-B has

reference to S. 36 Cr. P. C. [34 M. 343 R.]—4 L. W. 405.

2. Right of appeal in case of waiver.—Where the District Magistrate explained to the accused the procedure which would be followed if the European British subject was to be tried by a Magistrate, and the result that the accused would have no right of appeal to the High Court. He should appeal to the Court of Session.—2 Pat. W. 79

447. (1) When an European British subject is accused of an offence before a Magistrate and when commitment is to be to Court such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

(2) When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court

Notes.

1. S. 447 does not exclude operation of S. 340 *Supra*.—There is nothing in Chapter XXXIII of the Crim. Pro. Code which excludes the application of S. 340 of the Code to European British subjects.—7 N. 83

2. Offence punishable with death or transportation for life.

—(1) A. N. 12.

3. Commitment should be to the High Court.—Where in a case of a grave nature,

(death resulting from violence), commitment was made to the Court of Session instead of to the High Court. It should not be in such cases. *Gregor's Case*. 12-71. 12-71.

4. See Notes No. 12-14 under General notes on Chapter XXXIII above.

5. **Sonthal Porganas.**—The Court of a Magistrate in the Southal Porganas is, as regards the trial of an European British Subject, subordinate to the High Court.—18 C 247.
6. **Judicial Commissioner of Mysore.**—The

Judicial Commissioner of Mysore has no jurisdiction, either as a High Court or as a Sessions Court over European British Subjects, being Christians, when the commitment to his Court is made by a Justice of the Peace.—5 M. 33

448. Where any person committed to the High Court under section 447 is charged with several Trial or offences of which one is, offences of which one is punishable with death or transportation and the others are not punishable for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

449. (1) Notwithstanding anything contained in section 31, no Court of Session shall pass Sentences which may be passed by on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year or fine, or both

(2) If, at any time after the commitment and before signing judgment, the presiding Judge Procedure when Judge finds his thinks that the offence which appears to be proved, cannot be powers inadequate adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Note.

1. **Resident's Court at Aden not controlled by S. 449 Cr. P. C.**—The Resident at Aden, to whose Court a case has been committed under S. 447 cannot transfer it to the High Court of Bombay under S. 449 of the Code, on the ground that the accused, being a European British subject, cannot be adequately punished by him. The

powers of the Court of Sessions conferred upon the Resident by S. 20 of the Aden Courts Act (Bomb Act II of 1864) are not merely such as are defined in the Cr. P. C. but as are provided by the Act itself, and S. 449 of the Cr. P. C. cannot affect those provisions.—20 B. 575.

450. (1) In trials of European British subjects before a High Court or Court of Session, if Jury or assessors before High Court before the first juror is called and accepted, or the first assessor or Court of Session. is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans

(2) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects, accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans

451. (1) In trials of European British subjects before a District Magistrate for any offence, Right of European British subject to any such subject may, in a summons-case before he is heard in his claim jury before District Magistrate. defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 450

(2) If a claim is made under sub-section (1) in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

(5) The provisions of sections 211, 216, 217, 219 and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused has been committed to this Court for trial.

(7) All Courts may construe any of the provisions referred to in sub-section (6) or sub-section (6), in so far as they are made applicable by those sub-sections, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.

(9) If an accused person claims to be tried by jury under this section and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 450 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of transferring the case for trial to such judge as the High Court may from time to time by the Local Government, or by special order, direct.

(10) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under this section.

Notes.

S. 151=S. 451 A and S. 451 B (1892)

1. **Meaning of "Europeans."**—The word "Europeans" in S. 451 of the Code of Criminal Procedure means persons born in Europe—16 A. 88

2. **Provisions of the Section imperative.**—When proceedings have reached the stage set forth in S. 451 Cr. P. C. : e when a claim for jury has been duly made, the District Magistrate is bound forthwith to proceed in the manner provided by the section. He cannot deprive the accused of his right to a trial by jury by transferring the case to another Court.—2 P. R. 1896

3. **Right to claim mixed jury is absolute.**—If a European British subject, before the first

mixed jury is absolute and is not subject to any qualification—11 P. R. 1896

4. **Effect of section 451 A.**—

case be by jury, he cannot claim to be tried with the aid of a mixed set of assessors. All that he can claim is to be tried by a mixed jury.—11 P. R. 1896

5. **Scope of subs (6).**—The effect of cl. 6, S. 451 A, Cr. P. C. is that the District Magistrate has the same powers as the Sessions Judge has under S. 347 Cr. P. C. of referring cases to the High

Court when he disagrees with the verdict of a jury.—0 A. 420 : See 29 C. 124.

6. **Claim to be tried by jury may be made at any time within the period specified**

jury, and a re called for further cross examination, he asked that he might be tried by jury, held that the mere fact that the accused before the trial had begun, stated that he did not wish for a jury, did not prevent him from altering his mind afterwards and claiming a jury within the time allowed by S. 451 (1)—21 A. 511 : 1 P. R. 1908

7. **Disobedience of Government Notification makes the trial a nullity.**—Where the Local Government has issued a notification, that

trial is a nullity.—26 A. 211

8. **Magistrate's powers not affected by the waiver.**—"I am to draw your attention to the fact that nothing in S. 451 A—the new section declaring the right of European British Subjects to claim a jury before the District Magistrate—affects the power of the Magistrate to dispose of a case as at present, should the prisoner not demand jury, or in any case to commit an accused

person for trial under S 347 or S 417 of the Code. If the Magistrate at any stage of the proceedings thinks the case to be one for the Sessions Judge or High Court, he should stay further proceedings before himself and commit the accused for trial. Letter no 6318 dated 27.2.84 from Secretary Govt. of Ind. Home Dept. to Secy to the Government of the Punjab.

D. S. 451 does not apply to proceedings under S. 108 Cr. P. C.—S 451 of the Crim Pro Code applies only to trials, and an enquiry under S 108 (b) is not a trial. A Magistrate, who is a European British subject and a Justice of the Peace, is competent to hold an enquiry under S. 108 against a European British subject.—4 Bar T. 84.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately :

Provided that, if the European British subject requires under section 450 to be tried by a mixed jury or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII,

Notes.

- 1. Person not jointly charged cannot claim a Jury.**—A prisoner not being a European British Subject, who is not charged jointly with a European British Subject, is not entitled, under the provisions of the High Court's Criminal Procedure, (Act X of 1875) to be tried by a jury the majority of which shall not be Europeans or Americans or both, this right only belongs to a European British Subject—1 D 232
- 2. Appeal.**—A British Subject but not a European British Subject, jointly tried with a European

British Subject, is not entitled under S 432, to appeal to the High Court on a conviction by the District Magistrate, the right of appeal to the High Court being given only to European British Subjects—14 B 160

- 3. Where a European British Subject relinquishes his claim**—to be tried under Chapter XXXIII, his co-accused (not European British Subjects) cannot claim any right under this section—36 C 467

453, (1) When any person claims to be dealt with as an European British subject he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial, and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him

(2) When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

(3) When the Court before which any person is tried, decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

Notes.

1. Magistrate bound to decide the question whether the accused is a European British Subject or not.—Where a Magistrate tried an accused person as being other than a European British Subject, notwithstanding the fact that the accused raised the plea, and convicted him without deciding the question, and sentenced him to a punishment which, if the accused was a European British Subject, the Magistrate had no right to award, the High Court remanded the case to the Magistrate in order that he might decide in the manner prescribed by S. 83 (= S. 453), whether the accused was or was not a European British Subject.—A. 141.
2. Opportunity to plead.—An accused person ought to have an opportunity of pleading that he is a European British Subject. But the plea

must be raised and decided before the trial has been completed, for after the completion of the trial, the Court is *functus officio*—[5 W. R. 53]

3. Proof of European Extraction.—See Note No. 7, under "General notes on Chapter XXXIII" *Supra*

4. Proceduro when claim is made.—For this purpose the accused should produce the evidence of a credible person who knows the

person make such plea.—C. H. C. Cr. 5 of 6.5.61

454. (1) If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject and shall not assert it in any subsequent stage of the same case.

(2) Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Notes.

1. Effect of omission to ask the accused—subs (2).—In 18 C. N. 385, it was held by *Imam and Chapman J. J.* that an omission to inform the accused, a European British Subject, of his right under the law to be tried according to the procedure laid down in Chapter XXXIII vitiated the trial. On the other hand, *Ayling and Tynby J. J.* held in 16 Cr. 616 (M.) that the omission to ask the accused if he were a European British Subject under S. 454 (2) Cr. P. O. is an error.
2. Note No. 2 under S. 446 *Supra*.

3. Application for revision is not a 'subsequent stage'.—An application for revision is not a subsequent stage of the same case, within the meaning of S. 454 Cr. P. C. It is a totally independent matter giving a right of appeal to a superior court independently of any proceedings necessarily subsequent to or consequent upon the hearing of the original case. The Allahabad High Court has power as a Court of Revision, to reverse an order under S. 250 Cr. P. C. made against a complainant who is a European British Subject (irrespective of whether he has made a claim to be dealt with as such) by the City Magistrate of Lucknow 21 Cr. 767 (A)

455. Where a person who is not an European British subject, is dealt with as such under this Chapter and does not object, the enquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Trial under this Chapter of person not an European British subject.

Chapter and does not object, the enquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing,

be invalid.

456. When any European British subject is unlawfully detained in custody by any person, such

Right of European British subject unlawfully detained to apply for order to be brought before High Court

European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Notes.

1. S. 456 applies to European British Subjects only.—European British Subjects alone are entitled to apply under this section, when they are detained in custody and such detention is illegal.—1 A 1 (F.B.) For others an application would be under S. 491 *infra*

[Note.—The order which may be issued by the High Court under this section corresponds to the common law writ of *Habeas Corpus*.]

2. Appeal against order of refusal by single Judge.—An application under S. 456 Cr P O or S. 491 Cr P C for release from an alleged illegal custody may be made to a single Judge exercising ordinary original Criminal jurisdiction of the High Court. An order refusing such an application, not being an order made in any Criminal trial is a 'judgment' within the meaning of cl 15 of the Letters Patent and is therefore appealable to the High Court.—29 C 286 (F. B.)

3. Original and appellate criminal jurisdiction is exercised by the High Courts at Madras and Bombay and for the North-Western Provinces over European British subjects in outlying provinces and places in British India as follows —

High Court	Places
Madras	Coorg The Upper Godavari District of the Central Provinces (now part of the Chanda District, see Central Provinces List of Local Rules and Orders)
Bombay	The Nagpur, Narbada and Chhattisgarh Divisions of the Central Provinces The Pargana of Manpur in Central India

High Court
North-Western
Provinces

Places.

Oudh
The Jubbulpur Division of the Central Provinces.

The line of railway, from Allahabad to Jubbulpur, and the lands and buildings appurtenant thereto, other than the station at Satna

The Cantonment of Morar (since ceded to the Gwalior State—see Notification No. 2357-I, dated the 29th July 1896, Gazette of India, 1896, Pt I, p. 453).
Ajmer and British Merwara.

[See Notification No. 1203, dated the 23rd September 1874, Gazette of India, 1874, Pt I, p. 484]

The High Court at Port William exercises original and appellate jurisdiction and has all the functions of a High Court under the Code in all criminal proceedings against European British subjects and persons charged with European British subjects in the Andaman and Nicobar Islands—see Notification No. 77, dated 15th March 1878, Gazette of India, 1878, Pt I, p. 132

Original and appellate jurisdiction is also exercised by the High Courts at Port William, Madras and Bombay and for the North-Western Provinces over European British subjects, being Christians, resident in certain Native States, territories and chiefships—see Notification No. 178-J, dated 23rd September 1874, Gazette of India, 1874, Pt I, p. 485 No 215 J, dated 18th December 1874, Gazette of India 1874, Pt I, p. 612. No 119-J and No 120-J, dated 9th August 1875, Gazette of India, 1875, Pt I, p. 401.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for and grant or refuse such application; or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary

Procedure on such application

458. The High Court may issue such orders throughout the territories within the local limits of Territories throughout which High its appellate criminal jurisdiction, and such other territories as the Court may issue such orders. Governor General in Council may direct.

Notes.

1. Local Jurisdiction of High Courts over European British Subjects.—*See Government of India (Home Department) Notification No. 1203 dated 23rd September 1874*
2. Jurisdiction of Bombay High Court over the Nizam's Dominions.—The Criminal Procedure Code applies to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad. The Court is subordinate to the High Court of Bombay in all Criminal matters relating to European British Subjects, and the High Court must deal with such cases as if they were cases arising in British India.—*Per Sergeant C. J. [9 B 268 (F. B.): See 9 B. 333].* By Notification No 178 J of 23rd September 1874, the High Court of Bombay has jurisdiction to decide whether an accused residing at the Residency Bazaars,

Hyderabad, is a European British Subject [5 B R 868] But neither the Criminal Procedure Code nor any other law in force in British India, confers on the High Court of Bombay an appellate Criminal jurisdiction over persons, not European British Subjects, convicted in the territories of the Nizam [14 B. 160]

3. Jurisdiction of Madras High Court over Mysore.—Inasmuch as the High Court of Madras has been duly constituted a Court of Original Criminal Jurisdiction to take cognizance of offences committed by European British Subjects (being Christians), it may be that in the absence of any special direction, a commitment to the High Court of such person charged with an offence not punishable with death or transportation for life, committed in Mysore Province, would be a good commitment.—5 M. 39

459. (1) Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer Application of Acts conferring jurisdiction on Magistrates or Courts of Session, on Magistrates or on the Court of Session, jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this Chapter as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session, not being a Justice of the Peace.

Note.

1. **Quaero.**—Whether Local Legislature has the power to render European British Subjects punishable by a Magistrate on a summary conviction for an offence newly created by them—

5 M. II. 277. See 7 M. II. (19px) xviii.

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors, shall, if practicable, and if such European or American so claims, be Europeans or Americans.

461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American and in compliance with a claim made under section 460 is tried by a jury or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

462. (1) When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury under section 450, 451 or 460, constituted under the provisions of section 450 or section 460, or before the Court of a District Magistrate or Sessions Judge proceeding under section 451, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

(2) The Court shall also, at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list unless such number of such other persons has been already summoned for trials by jury at that session.

(3) From the whole number of persons returned the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained.

Provided that, in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

463. Criminal proceedings against European British subjects Europeans not being European British subjects, and Americans before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

CHAPTER XXXIV

LUNATICS

464. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

Proposed amendments to the section.—In section 464 of the said Code—

(i) After sub section (1) the following sub section shall be inserted, namely —

"(1a) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466"

(ii) In sub-section (2), after the word "he" the words "shall record a finding to that effect and" shall be inserted.

Notes.

1. Magistrate cannot acquit the accused.

—It is not the business of the Magistrate to determine under this Section whether the accused was insane at the time of committing the

offence. He has to find whether the accused is of unsound mind at the time the enquiry or the trial is being held. Once he comes to the latter conclusion, he must hold his hands and postpone

further proceedings. He cannot proceed to try and argue the accused, but must pass orders under Ss 464 and 466 Cr P C (00) A N. 47 (82) A N 106; 3 W. R 57; 3 W. R 70 G W R 54 4 W R 23 10 W. R 37 (92-93) L B 150 "Where the Magistrate is of opinion that the accused is of unsound mind and therefore incapable of making his defence, he cannot legally acquit him. He is bound to postpone further proceedings in the case and either release him on bail or report the case to the Government" [2 Weir 581 See 1 W R 11. 11 M. T. 21].

2. **Magistrate cannot act on his own responsibility.**—A Magistrate cannot consign a lunatic to an asylum or a jail on his own mere unprofessional opinion. He must have before him the *deliberate statements of a medical officer related to writing*—1 Bur 87

3. **Mere written certificate of medical officer not sufficient.**—A mere written certificate of a medical officer that a prisoner is of unsound mind, and incapable of making his defence, is not sufficient evidence of the prisoner's insanity. The medical officer should be called as a witness and be personally and carefully examined—9 W R 23; 2 Weir 580. See 1 S. 53 2 Weir 582

4. **Procedure where medical opinion is not decisive.**—Where the evidence of the Medical officer cannot be considered as decisive on the

5. **When the enquiry is to be made.**—Where a charge of an offence to which Ch. XVIII Cr. P. C relates, is made before a Magistrate he ought in the first place to make an enquiry into the truth of the charge; it is only when he is satisfied after such enquiry that there is *prima facie* case against the accused, that he can make an enquiry prescribed by S. 464 Cr. P C into the question of the unsoundness of the mind of the accused.—11 P. R. 1894

6. **Object of S. 464 Cr. P. C.**—The provision of S 464 Cr P C certainly contains a sound sense as appears to be sound law, for the Legislature can never have intended that a person should be liable to be treated as a lunatic by the executive Government on the report of a criminal court after a summary inquiry into the state of his mind alone, merely because some body has chosen to make a charge against him, possibly a groundless charge before a Magistrate—*Per Plowden*, in 11 P. R. 1894

7. **Distinction between unusual conduct and insanity.**—Where the evidence of a ple of insanity consisted of (a) a Civil Surgeon's evidence that the prisoner was a person of weak intellect (b) the fact that the accused's conduct from sometime before the trial had been unusual and (c) the fact that the prisoner's father was insane, held, that these facts taken together did not justify the conclusion that the accused was person of unsound mind—See Rat 10.

8. **The test.**—If on examination, an accused person appears to be insane and unable to understand questions and to return intelligible replies, the Magistrate should not proceed under Ss 464 and 466 Cr. P. C. and not under S 341 *Supra*. [Rat 632]

9. **Postponement should be *sine die*.**—The postponement contemplated by this section is to be *sine die*, and as postponement is caused by circumstances over which the Court has no control, cases postponed under this section may be excluded in preparing the annual statement of the average duration of cases in the Criminal Court—Ordh No 70 of 1898

10. **Medical officer to whom reference is to be made.**

Bombay City.—The Police Surgeon—See *Bombay Gaz* 1877 p 339.

Madras City.—The officer in medical charge of the Penitentiary [*Pl. St. G Gaz*, 20th August 1878, Pt. I, p. 474]

465. (1) If any person committed for trial before a Court of Session or a High Court appears

Procedure in case or person committed before Court of Session or High Court incapable of making his defence, the jury or the Court with the being lunatic.

...nil of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Proposed amendments to the section.—In sub-section (1) of section 465 of the said Code, for the words "and if satisfied of the fact, shall pass judgment accordingly and thereupon the trial shall be postponed," the following words shall be substituted, namely—

"and if the jury or Court is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged"

Notes.

1. **The issue as to unsoundness of mind should be tried first.**—Having regard to the

provisions of S 425 of the Code of 1872 (—S 163) where an accused person at his trial appears to

the Sessions Judge to be of unsound mind, the fact of such unsoundness must be tried by the jury and not by the Sessions Judge personally— [10 B. L. (ap) 10 See 13 B. L. (ap) 20: 1 B. II 33] The issue is a preliminary issue and must first be submitted to the jury. [19 W. R. 45 10 W. R. 37 (82) A. N. 106] Where a prisoner appears to be of unsound mind, the Sessions Court should enquire into the fact of unsoundness before calling on him to stand his trial [(105) A. N. 2] A Sessions Judge has no power to stay proceedings and to direct an enquiry into the state of an accused person's mind, because it appears to him to be "problematic" whether the accused is capable of making a defence. In such cases, the proper procedure to be followed is provided for in S. 465 [2 Weir 137 See 3 W. R. 57]

2. **Doubtful cases.**—Where a Sessions Judge had expressed the opinion that "the accused without being actually insane, so as not to be aware of what he was doing, appeared to be decidedly a man of weak intellect," the Chief Court on appeal, remanded the case for an enquiry under this section before retrial on the charge of murder—54 P. R. 1905 See 2 W. R. 63
3. **In cases tried with the aid of assessors.** Where it is doubtful as to whether the accused is or is not of unsound mind, the fact whether at the time when he pleads, the accused is capable of making his defence, should first be tried with the aid of assessors. If as the result of such trial, the Court is satisfied that the accused is capable of making his defence, the trial shall proceed upon the charge on which the accused stands committed [15 A. J. 239: (105) A. N. 2 1 B. II, 33 19 W. R. 20]
4. **Scope of subs (2).**—Subs 2 of S. 465, provides that the trial of the fact of the unsoundness of mind and incapacity of the accused shall

accused's guilt were regarded by the Legislature as one trial. We think that the sub-section was merely an enabling enactment giving the Court, if any, which should subsequently try the accused, power to take into consideration the earlier proceedings as if they were part of the record in the trial without the necessity of formal proof. It was contended however, that subsection (2) makes it necessary to regard the preliminary enquiry and the subsequent trial as one for all purposes, with the consequence that the personnel of the Court must remain throughout as originally constituted. We are unable to accept the view.—*Per Dawson Miller C. J. and Chapman and Atkinson J. J.* in 3 Pat J. 291 (F. B.)

5. **Omission to decide the issue vitiates the trial.**—"We notice that counsel who represented the accused at the Sessions trial • • invited the attention of the Court to the fact that the accused seemed to be incapable of making a proper defence, at any rate to the extent that the learned counsel was unable to obtain any instructions from him, under these circumstances

we are of opinion that the provisions of S. 165

accused person, as he stood before him, was of unsound mind and consequently incapable of making his defence • • • In the absence of a clear holding on this point, we are of opinion that the entire proceedings in the Sessions Court are vitiated and ought to be set aside"—*Piggott and Dalal J. J.* in 1 U. P. 174 (A.) = 21 Cr. 83

Test of Insanity.

6. (1) **The presumption in law is that every person at the age of discretion is sane, unless the contrary is proved.** [See Mayo's Criminal Law. 3rd Edition para 192 R. v. Oxford 4 St. Tr. (N. S.) 497, R. v. Stokes 3 C. and K. 185, 20 W. R. 70: 1 W. R. 19 (101) A. N. 132; Rat 172 6 M. J. 95] The test of insanity at the time of the commission of the offence is, whether the prisoner knew at the time that he was doing wrong. [24 W. R. 5: 12 M. 439 10 B. 512]
7. (2) **Absence of Motive.**—Although the absence of all motive for a crime when corroborated by independent evidence of the prisoner's previous insanity is not without weight [1 W. R. 19] it is not *per se* sufficient as a proof of unsoundness of mind. The remark of Baron Rolfe in R. v. Stokes 3 C. and K. 185 that it is dangerous ground to take to say that a man must be insane because the man failed to discern the motives for his act" should be borne in mind. [See Rat 818: 34 C. 686 10 C. N. 725: See also 7 N. 185: 14 Cox C. 363 1 Halst 32]
8. (3) **Impairment of cogitative faculties of the mind.**—It is only unsoundness of mind, which materially impairs the cogitative faculties of the mind, that can form a ground of exemption from criminal responsibility, the nature and extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law—*H. P. L.* 1809: 21 C. 604: See 3 W. R. 9
- Note.**—Persons who are in fact insane, whether they have become so from *perverse indulgence in intoxicating drugs*, or from brain disease, must be judged by the ordinary rules of law affecting insane persons. (104) A. N. 163: 29 C. 481: 14 B. 564
9. (4) **Sudden insane impulses.**—When the prisoner is proved merely to be subject to insane impulses notwithstanding that his cogitative faculties, so far as they could be judged from his acts and words, are left unimpaired, he is not entitled to the benefit of S. 841 P. C.—23 C. 604: 22 C. 817 10 B. 512 12 M. 439: See also 14 B. 564: 17 C. P. 111: 1 W. R. Cr. R. 1 1 S. 97.
10. (5) **Mental delusions.**—Partial delusions or the mere existence of mental disease does not necessarily exempt a person from criminal responsibility though mental weakness caused by disease may be an extenuating circumstance— [Rat 224 See 1 W. R. 1: 7 W. R. 42: 7 W. R. 64:

8 W. R. Cr (Let) 19 : 8 P. R 1889 : 12 P. R 1887] The general rule has thus been laid down in 23 C. 613 : If a person labours under a delusion, he must be considered to be in the same situation as to responsibility, as if the facts with respect to which the delusion exists is real—See also Rat 698 : *Hadfield* 27 St Tr. 1281 : 15 O. C 321 2 Weir 582

11. **Note by the Editors.**—It is worthy of note that the Indian law on the subject (S 84 I. P. G.) embodies for all practical purposes the decision of the House of Lords in the well known *McNaughten's Case* 1 Car & K 130 which arose out of the murder of the private secretary of Sir Robert Peel by McNaughten under an insane delusion. The decision was based on the answers given by fifteen Judges to the questions put to them by the House of Lords. The first question and the answer to the same are appended below.

Question 1.—What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons, as for instance, when at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some supposed public benefit

Answer.—"Assuming that your Lordship's enquiries are confined to those persons who labour under such partial delusion only and not in other respects insane, we are of opinion that notwith-

standing the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime, that he was acting, contrary to law, by which expression we understand your Lordships to mean, the law of the land."

12. **Procedure after postponement.**—After a case has been reported to Government under S. 466, it should not be struck off, but should be kept on the register of pending cases—[6 W. R. 3] When the trial of an accused person, who was remanded to custody on the ground of insanity, was resumed upon receipt of a letter from the Zillah Surgeon at the point at which it had been stopped, *held* that the trial should have been commenced *de novo* after finding with the aid of assessors that he was capable of making his defence. [(69) 2 Weir 582]
13. **Onus on the prosecution.**—When a jury is impanelled (and a plea of insanity is taken) the onus is on the prosecution to prove the sanity of the defendant. *R. v. Davies* (1853) 3 C & K 328 But See Rat. 816
14. **Jury may act without formal evidence of insanity.**—The Jury may form their own judgment of the defendant's sanity by his demeanour without any evidence being given—*R. v. Goode* (1837) 7 Ad and El 536 : Halsbury's Laws of England Vol. IX, p 354.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making

Release of lunatic pending investigation or trial, his defence, the magistrate or Court as the case may be. if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required, before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which bail may not be taken, or if sufficient security is not given, Custody of Lunatic the Magistrate or Court shall report the case to the Local Government, remanding the accused to custody pending orders, and the Local Government may order the accused to be confined in a lunatic asylum, jail or other suitable place of safe custody and the Magistrate or Court shall give effect to such order.

Proposed amendments to the section.—In section 466 of the said Code—

(1) In sub-section (1), for the words "if the case is one in which bail may be taken," the words "whether the case is one in which bail may be taken or not" shall be substituted

(iv) For sub-section (2) the following sub-section shall be substituted, namely—

"(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Local Government.

Provided,

(a) that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with the rules as the Local Government may have made under the Indian Lunacy Act, 1912, and

(b) that the Local Government may vary any order of detention made under this sub-section, and may direct any person in respect of whom such order has been made to be detained in a lunatic asylum, jail or other place of safe custody."

Notes.

- 1. Jurisdiction ceases after transmission of the accused.**—The authority of the criminal Court over an accused, declared under S 426 (=S 466) to be of unsound mind, ceases after the transmission of such accused to the place of safe custody appointed by the Local Government and such authority can be revived under the circumstances mentioned in S 432 (=S 473) 2 C 536
- 2. Proceedings against a person of unsound mind.**—Where a Magistrate is of opinion that the accused is of unsound mind and therefore incapable of making his defence, he cannot legally acquit him. But he is bound to postpone further proceedings in the case and either release him on bail or report the case to Government—(83) 2 Weir 581

467. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Resumption of inquiry or trial Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence

Note.

- 1. Case cannot be struck off.**—Where a Magistrate has kept in custody an insane prisoner and reported the case to Government, his successor instead of striking off the case is bound to resume investigation under S. 391 Cr. P. C. (=S. 407) 6 W. R. 3 See Note No. 12 under S. 463 above.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, Procedure on accused appearing before Magistrate or Court as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465 as the case may be

Proposed amendments to the section.—In subsection (2) of section 468 of the said Code the word "person" shall be omitted, and the following words shall be added, after the words "as the case may be," namely:—

"and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466"

Notes.

- 1. Note.**—See Note No. 12 under 465 *Supra*
- 2. Proceduro.**—A person who is incapable of making a defence is not according to Ss 423 to 426 to be tried. Ss 427, 428 and 432 (Ss 467, 468 and 473 of the Code of 1898) provide for the trial of such person as an accused person, when he is found to be capable of making a defence, and if tried under the former of those sections, he might be acquitted under S 424 (S 470)—(70) 2 Weir 581.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the When accused appears to have been insane, Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act

allow the question to be put in that general form, though the same cannot be insisted on as a matter of right.

6. Whore High Court will set aside a conviction. — For case in which the prisoner, notwithstanding that he had been convicted by the

Sessions Judge, was acquitted by the High Court on the ground of insanity under S. 363 of the Code of 1861 (S. 470), and directed to be kept in safe custody pending the orders of the Local Government, to be applied for by the Judge. — See 7 W. R. 12

471. (1) Whenever such judgment states that the accused person committed the act alleged, the Person acquitted on such ground to be kept in safe custody. Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit,

(2)	•	•	•	•	•
(3)	•	•	•	•	•

(1) The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector General of Prisons under section 473 or section 474.

Proposed amendments to the section.—(1) In sub-section (1) of section 471 of the said Code —

- (i) For the words "such judgment," the words "the finding" shall be substituted,
 (ii) For the word "kept" the word "detained" shall be substituted; and
 (iii) After the words "Court thinks fit," the words "and shall report the action taken to the Local Government" shall be inserted.

(4) After sub-section (1) of the same section, the following provisos and sub-section shall be added, namely:—

"Provided that the Magistrate or Court may on the application of any relative or friend of the accused, in lieu of ordering him to be detained under this sub-section, order him to be delivered to such relative or friend on his giving security, to the satisfaction of such Magistrate or Court, that the person delivered shall be properly taken care of and prevented from doing injury to himself or to any other person, and be produced for the inspection of such officer, and at such times and places, as such Magistrate or Court directs.

Provided further that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.

"(2) The Local Government may vary any order of detention made under sub-section (1), and may direct any person in respect of whom such order has been made to be detained in a jail, lunatic asylum or other suitable place of safe custody."

(3) Sub section (1) of the same section shall be re-numbered (3).

Notes.

1. **Duty to report.**—Where a deaf and dumb person who was unable to understand the proceedings of the trial was found guilty of murder, the proper course to be taken is to treat him as a lunatic and to report his case under S. 471 Cr. P. Code for orders of the Government. —13 P. R. 1901 : 37 P. R. 1889 : See 27 C. 368 [For the English practice—See R. v. Prichard 7 C. and P. 303. R. v. Dyson 7 C. and P. 305 : R. v. Hatfield 3 C. and K. 121 : also R. v. Terry 1 Q. B. D. 417 : *Ex parte Emery* (1899) 2 K. B. 81.
2. **High Court will not set aside verdicts of acquittal.**—The High Court will not, in the absence of the very clearest proof that the jury were mistaken, and unless the interests of justice imperatively required it, will not interfere with their verdict of acquittal on the ground that the

accused was of insane mind at the time he committed the offence. 19 W. R. 45.

3. **Powers under the Lunacy Act (IV of 1912) S. 24 and Act X of 1914.**—Under Lunacy Act IV of 1912 and Act X of 1914 the Magistrates or Courts are no longer required to report cases under S. 471 (1) Criminal Procedure Code, for the orders of the Local Government, but are themselves competent to direct the reception of a criminal lunatic into an asylum which is prescribed for the reception of criminal lunatics.—8 Bar T. 256 : 21 Cr. 46 (O)
4. **Order under S. 471 (1) a consequential order under S. 423 (d).**—An order under S. 471 (1) Cr. P. C. is clearly the acquitting Court whether

not only has power to make but is bound to make under S. 423 (d)—8 Bur T. 286 [39 C. 157 E.]

5. **Change of Law.**—Subsections (2) and (3) and part of subs (1) of S. 471 of Cr. P. C. have been repealed—the former by Act IV of 1912 and the last twelve words of subs (1) by Act X of 1914. "I am at the same time to invite your attention to letter No 2060 C dated the 28th March 1913 from the Government of India printed in the preamble of Government Resolution No 6484 dated the 16th of September 1913, which points out that Courts are competent to pass final orders in such cases."—Chief Secretary to Government of Bombay to the High Court of Bombay.—43 B. 134 See 8 Bur T. 286 21 Cr 46 (C)]
6. **Courts should direct criminal lunatics to be kept in safe custody.**—"In order to accelerate the process of transferring a criminal lunatic from a jail to a more proper place of

custody, it is desirable that the Court passing an order under S. 471 Criminal Procedure Code, should direct that the criminal lunatic in question shall be kept in safe custody in a particular jail and shall then be transferred, after the arrangements have been made to a particular asylum or to such other asylum as may have accommodation for him."—Circular No. 76 B. [Bombay High Court Criminal Circular Order Book]

7. **Practice in England.**—The usual practice in England is to order the person in question to be kept in custody as a criminal lunatic till His Majesty's pleasure is known. See Halbury's Laws of England Vol. IX p. 242 (S. 515) Trial of Lunatics Act 1883 [46 and 47 Vic C. 381; Sec 2 (2) and Criminal Appeal Act 1907 (7 Edw. VII C. 23), Sec 5 (4)]. In England the prisoner has to be formally found guilty. In India he is formally acquitted under S. 84 I, P. C and S. 470 Cr P. C.

472. Lunatic prisoners to be visited by Inspector General. [Rep. by Act IV of 1912.]

473. If such person is confined under the provisions of section 466, and such Inspector General Procedure where lunatic prisoner is or visitors shall certify that, "in his or their opinion, such person reported capable of making his defence. is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence

Proposed amendments to the section.—In section 473 of the Code, for the word "confined," the word "detained" shall be substituted, and for the words "such Inspector-General or visitors" the words "in the case of a person retained in a jail the Inspector-General of Prisons, or in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them," shall be substituted.

474. (1) If such person is confined under the provisions of section, 466 or section 471, and such

Inspector General or visitors shall certify that, in his or their Procedure where lunatic confined under section 466 or 471 is declared fit judgment, he may be discharged without danger of his doing to be discharged injury to himself or to any other person, the Local Government may

thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit

Proposed amendments to the section.—In section 474 of the said Code, for the word "confined," the word "detained" shall be substituted; for the words "discharged" and "discharge" wherever they occur, the word "released" and "release," respectively, shall be substituted, and the words and figures "section 466 or" shall be omitted.

475. (1) Whenever any relative or friend of any person confined under the provisions of section Delivery of lunatic to care of relative. 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and, on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

(2) Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs

(3) The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section, and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

Proposed amendments to the section.—For section 475 of the said Code, the following section shall be substituted namely —

"(1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Local Government may upon the application of such relative or friend and on his giving security to the satisfaction of such Local Government that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person, and

(b) be produced for the inspection of such officer, and at such times and places, as the Local Government may direct, and

(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1) clause (b) certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court and upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence "

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

476. (1) When any Civil, Criminal or Revenue Court is of opinion that there is ground for Procedure in cases mentioned in section 195 inquiring into any offence referred to in section 195 and committing it before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial

(2) Such Magistrate shall thereupon proceed according to law, and as if upon complaint made and recorded under section 200, and may, if he is authorised under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

Proposed amendments to the section.—For section 476 of the said Code the following sections shall be substituted, namely:—

"(1) When any Civil, Revenue or Criminal Court is of opinion that it is expedient, in the interests of justice that an inquiry should be made into any offence referred to in section 193 (1) (b) or (c) and alleged to have been committed before it or brought under its notice in the course of a judicial proceeding, such Court shall make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to the nearest first class Magistrate

having jurisdiction, and may, if the alleged offence is non-bailable, send the accused to custody to, or in any other case may take sufficient security for his appearance before such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

For the purposes of this sub-section, a Chief Presidency Magistrate shall be deemed to be a first-class Magistrate.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made and recorded under section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks it expedient, in the interests of justice, at any stage adjourn the hearing of the case until such appeal is decided.

476 A A complaint under section 476 (1) may be made by any of the Courts referred to in section 195, sub-section (1) or sub-section (3) either of its own motion, or upon the application of any party to the judicial proceeding out of which the matter has arisen, and no Court shall be precluded from making such complaint only by the fact that the Court subordinate to it has refused so to do.

Explanation.—For the purposes of this section, the word "party" shall, in the case of any criminal proceeding, include the Crown.

476 B Any person being either a party to such proceeding or a person against whom a complaint has been made under section 476 or section 476 A, who is aggrieved by the action taken by any Court under either of the two preceding sections, may apply within one month thereafter to the Court to which appeals from the former Court ordinarily lie as defined by section 195 (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of a complaint already filed, or may itself make a complaint in respect of any of the offences referred to in section 195 (1) (b) or (c), and may take any other action which might have been taken by such subordinate Court under section 476 (1).

The expression "action taken" in this section shall include the making of a complaint and the refusal so to do.

ARRANGEMENT OF NOTES.

S 476=Ss 471, 477 (1872)=Ss 171, 178 (1861)

I. Object and Scope of the section.

- (1) Object of the section.
- (2) Meaning of terms
 - (a) Scope of the expression "any offence referred to in S 195"
 - (a) Scope of the words "as if upon a complaint made and recorded under S 200"
 - (a) Meaning of "brought under its notice"
- (3) Difference between Ss 195 and 476.
- (4) Nature of proceedings under S 476
- (5) Powers under S 476 to be used cautiously.
- (6) S 476 is complete as it stands
- (7) Does S 476 apply to Presidency Magistrates?
- (8) Prosecutions for perjury
- (9) Application of the section
- (10) When action should be taken and when not
- (11) Mutual relations between Ss 195 and 476

II. Procedure.

- (1) Preliminary enquiry.
- (2) Scope of the preliminary enquiry.
- (3) Procedure in preliminary enquiry
- (4) Omission to hold preliminary enquiry not material to the result
- (5)
- (6)
- (7)
- (8) Simultaneous proceedings under Ss 195 and 476
- (9) Simultaneous proceedings under Ss 200 and 476
- (10) Can the Court to which the case is referred under S 476 proceed against persons other than those named in the order?

- (11) False complaints.

- (12) Miscellaneous rules of practice.

III. "Court"—meaning and scope.

- (1) Does the term include successor-in-office?
- (2) The test
- (3) Revenue officers
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IV. Judicial Proceedings.

- (1) General Principles.
- (2) Magistrate acting on Police Report does not act judicially.
- (3) Preliminary enquiries under S 202 Cr. P. C.
- (4)
- (5)
- (6)
- (7)
- (8)

Cr. P. C.

- (9) Offence committed before the Police.
- (10) Miscellaneous

V. Stage at which an order under S. 476 can be made.

VI. Delay in instituting proceedings.

- (1) Action must be taken promptly
- (2) Case-law.

VII. Stay of proceedings.

- (1) The General Rule.
- (2) Drying pendency of civil suit.

- (3) Pendency of civil Appeal
- (4) Sessions Judge cannot stay proceedings of a Civil Court
- (5) Effect of setting aside original proceedings

VIII. Powers of the Magistrate to whom the case is sent for trial.

- (1) Effect of change of law
- (2) Meaning of "nearest Magistrate"
- (3) Powers.

IX. Powers of Courts generally.

- (1) Powers of Courts acting under S. 476
- (2) Superior Court.
- (3) Appellate Court

X. Complaints.

- (1) General Rules
- (2) Contents of the complaint.

XI. Revision.

- (1) Order cannot be quashed because civil suit filed

- (2) Who may apply for Revision
- (3) Orders by Civil and Revenue Courts.
- (4) Order by a Small Cause Court
- (5) ..
- (6) ..
- (7) ..
- (8) ..

XII. Miscellaneous.

- (1) Offence under S. 225 I. P. C. (Contempt of Court)
- (2) Presidency Magistrates
- (3) Further enquiry cannot be ordered
- (4) No appeal against an order refusing to take action under S. 476 Cr. P. C.
- (5) Power of Civil Bench to revise orders under S. 476 Cr. P. C.
- (6) No power to review order
- (7) Cognate Sections
- (8) Witnesses

I. OBJECT AND SCOPE OF THE SECTION.

(1) Object of the section.

1. S. 476 was enacted with the object of avoiding the inconvenience which might be caused if a Munsiff or a Subordinate Judge or a Judge were obliged to appear before a Magistrate and make a complaint on oath like an ordinary complainant.—7 A 671 (F. B.); See 31 C 664 33 M 48 (F. B.)

(2) Meaning of terms.

- (1) Scope of the expression "any offence referred to in S. 195."

2. There has been a great divergence of judicial opinion as to the exact significance of the expression "any offence referred to in S. 195". Are they words of description or limitation? The conflict is due to the fact that the offence described in S. 463 or punishable under Ss. 471, 473 or 476, of the Penal Code must have been committed by a "party to any proceedings in any Court" in S. 195 Cr. P. C. [See e] (e). It is therefore a moot point whether the jurisdiction under S. 476 Cr. P. C. with reference to those offences, is limited to those cases only, in which they have been committed by a party to the proceeding, or not. In a recent Full Bench case, [42 M 540 (F. B.)] a Bench of three Judges after a review of the case-law on the subject has definitely held that the words in S. 476 of the Code of Criminal Procedure "any offence referred to in S. 195" incorporate the conditions laid down in S. 195 for taking cognizance of the offence by a Court. The ruling purports to follow 40 M 110 and 15 M 224. See also 15 M. T. 489 17 Cr 388 (M). Below is given the views taken by other Courts—

- 2A. (1) The expression "any offence referred to in S. 115" means "any offence punishable under any of the Sections of the Penal Code, mentioned in S. 195, and has no reference to the manner in which the offence might have been committed. 50 C 46.

3. (2) The words "referred to in S. 195" which have a place in S. 476 Cr. P. C. are merely descriptive of the class of offences with which a Court can deal. They do not mean that S. 195 governs S. 476 in any other respect.—40 A 116 40 A 24. But See 32 A 74

4. (3) S. 476 Cr. P. C. is a self-contained section and the reference to S. 195 Cr. P. C. in it is only made for the sake of brevity and refers not to the conditions enumerated in S. 195 Cr. P. C., but merely to offences enumerated in that Section. It therefore confers jurisdiction on the Court to order the prosecution of a person other than a party to the proceedings if the offence committed is brought to the notice of the Court in the course of such proceedings. 1 Pat J 299 (1916) Pat 352 20 Cr 202 (Pat) 20 Cr 630 (Pat) 21 Cr. 619 (Pat)

5. (4) The qualifications mentioned in S. 115 Criminal Procedure Code are to be treated as incorporated in the provisions of S. 476 Cr. P. C.—19 Cr 638 (c) 43 C 1152 37 C 250 15 C N 565 12 C N. 575 5 C N 106 22 C 1004

6. (5) The power given to a court under Chapter XXXV of the Cr. P. C. to take action regarding "any offence referred to in S. 195" is not ordinarily restricted, in regard to offences relating to a document to such offences only when committed by a party to the proceeding.—18 B 581 14 B 963

7. (6) The words "referred to in S. 195" which occur in S. 476 of the Criminal Procedure Code, are merely words descriptive of the class of offences with which a particular Court can deal. They do not mean that S. 195 governs section 476 to any extent other than this. 20 Cr 426 (N)

[Note.—It is immaterial whether the persons concerned appeared before the Court or not.—*Ibid*]

8. (7) The words "offences referred to in S. 195" in S. 476 mean the offences covered by the sections of the Indian Penal Code mentioned in

S. 195, committed under the qualifying circumstances described in S. 195.—10 P. R 1917: See 12 P. R 1905.

9. **Note.**—"There are many cases falling within S. 195, which do not fall within S. 476, as the latter section is confined to judicial proceedings while the former is not. Conversely there are cases falling within S. 476, but not within S. 195 as the offence in cl (c) must be committed by a party to a proceeding, while the scope of S. 476 is not so restricted."—*Per Sankaran Nair J.* in 32 M 49 (F. B.) at p. 57.

(ii) Scope of the words "as if upon complaint made and recorded under S. 200 Cr. P. C."

10. These words constitute a legislative confirmation of the dictum of *Straight J.* in (85) 7 A. 871 (F. B.) that "the language of S. 476 indicates that where a Court is acting under S. 195, a complaint, in the strict sense of the Code is not required, and the procedure therein laid down constitutes the complaint mentioned in S. 195" [See 32 M. 49 (F. B.)]. The effect of this addition to this section and of the addition to S. 200 of the words "subject to the provisions of S. 476" is that the order of the Court under Subs (i) is to be regarded as a complaint and is to be treated as having been recorded under S. 200—33 M. 48 (F. B.). [20 M. 88 (F. B.) held to be erroneous] See also 26 A. 249 (F. B.) at p. 262. 3 L B 234 (F. B.).

Note.—A Civil Court acting under S. 171 (S. 476) need not specify the court—13 W. R. 45. *Can* 4 N P 86

(iii) Meaning of "brought under its notice."

11. (1) The words are wide enough to cover an offence which may have been committed in another forum and on some previous occasion but it must be an offence brought under the notice of the Court holding an enquiry.—6 A. J. 392. 33 A. 396. 29 P. R 1916. 12 Cr. 521 (U. B.) *Con* 40 M. 100.
12. (2) But a Court cannot proceed under S. 476 in respect of an offence under S. 411 P. C. if he comes to think that it has been committed in the course of hearing a case. He should proceed under Chap XVI Cr. P. C.—*Rat* 515
13. (3) Where offences under Ss. 476, 471, 193, 209 and 210 of the Penal Code committed in Bengal was brought to the notice of a *Munsif* in *Agra* in the course of a judicial proceeding, held that the *Munsif* had jurisdiction to proceed under S. 476 Cr. P. C. and commit the accused for trial before the *Agra* Court of Session.—40 A. 116. See 1 Pat J. 298. (1918) Pat 352. 1 Pat J. 546

(3) Difference between Ss. 195 and 476.

14. (1) S. 195 is not confined to judicial proceedings while S. 176 is so restricted. (2) A complaint may be made under S. 195 when the matter requires investigation but an order under S. 476 can be passed only when a *prima facie* case is made out. (3) The complaint under S. 195 must be made before a Magistrate having jurisdiction under

the ordinary provision of the Code while S. 476 confers an exclusive jurisdiction on the "nearest first class Magistrate who may not have any power to try if a complaint were laid under S. 195"

(5) A first class Magistrate cannot order an investigation into a case sent to him under S. 476 as there is no examination of the complaint. (6) The High Court has power to revise the orders passed under S. 476 at least by civil or criminal courts, but it has no power to reject or to direct the Magistrate to reject a complaint preferred under S. 195.—[*Per Sankaran Nair J.* in 32 M. 49 (F. B.) at pp. 57-58.] Other points of difference are—(7) Order under S. 195 is appealable while that under S. 476 is not so. [34 C 551 (F. B.)] (8) A sanction or complaint under S. 195 may be granted or made at any time after the close of the case but an order under S. 476 should be made "as far as possible, promptly and expeditiously" [37 C 642 (S. B.) 34 C. 551 (F. B.) 32 M. 49 (F. B.)].

(4) Nature of proceedings under S. 476.

15. A proceeding under S. 476(h) is a judicial proceeding and is covered by S. 439 Cr. P. C.—31 C. 42. (82) A. N. 229. 37 C. 52. 17 Cr. 316 (L. B.) see *Rat* 59 (F. B.) [4 B. H. (O. C.) 120 *unreported*]
- 15A. Nature of the order under S. 476, Cr. P. C.—"It seems to me that an order properly passed under S. 476 is both a complaint and more than a complaint. It is a judicial proceeding and an order of the Court, but it is not in my opinion a sanction within the meaning of S. 195 Cr. P. C." *Per Pundarik. A. J. C.* in 20 Cr. 770 (N) 17 Cr. 316 (L. B.) 37 C. 52

(5) Powers under S. 476 to be used cautiously.

16. (1) Necessity for caution.—"Judges should bear in mind that criminal prosecutions are frequently suggested by successful litigants merely to prevent an appeal in the civil suit; and they should not be careful not to lend themselves to such suggestions readily. They should also recollect that when they proceed under S. 476, the responsibility for the prosecution rests upon the Judge entirely; such a prosecution being a very different thing from a prosecution instituted on the complaint of a private party and merely sanctioned by the Court under S. 195 cl. (b)"—*Per Macpherson J.* in 1 C. 450
17. (2) An order for prosecution under S. 476 must be made with great care and caution. The Court must be satisfied that there is a reasonable foundation for the charge in respect of which the prosecution is directed.—10 C. J. 564. 11 W. R. 171 (Civ.)
- 17A. (3) In acting under S. 176 Cr. P. C. the Court should always bear in mind the Principles underlying S. 487 Cr. P. C. *infra* [3 A. 62]

(6) *S. 476 is complete as it stands.*

18. "I have little doubt that the provisions of S 476 of the Criminal Procedure Code are complete as they stand, and that it is sufficient to bring those provisions into operation if the offence in question be of one of the kind referred to in S 195 of the Criminal Procedure Code and if it be either committed before the Court which takes action under S 476 or brought under the notice of that Court in the course of a judicial proceeding.—40 A 24 See 32 M. 49 (F. B.)

(7) *Does S. 476 apply to Presidency Magistrates?*

19. "We have considered the course which we should take in the matter. S. 476 of the Criminal Procedure Code does not appear to provide for the case of an offence before a Court in a presidency town. It empowers a Court to send a case for enquiry

R. 1100: not one is C. etc.

(8) *Prosecution for perjury.*

20. **Prosecution for perjury should not be left to private person.**—In a summary trial there is no record of evidence. In the absence of any record of the evidence, it would be difficult indeed to secure a conviction. There are many ways of explaining the fact that the applicant made a statement which was incorrect. In such a matter as this, if the Court thought that perjury had been committed it would have been better advised if it had taken action itself instead of placing in the hands of a private person the right of vindicating the law.—16 A. J. 992

[Note.—For Procedure—See *X complaints* (188) *infra*]

21. **Offence under S. 193 P. C.**—cannot be tried by the Court before which it has been committed. The Magistrate is bound to proceed under S 476.—1 A 625 (F. B.) [overruling 1 A 129, 1 A 162] 10 B 11 73 1 B 311 7 M 11. 17 18 W R 15 See 22 W R 19

- 21A. **Prosecution for perjury.**—An order directing a prosecution for perjury merely upon materials arising out of cross-examination is a very unsafe proceeding, especially in the case of a protracted cross-examination.—2 Pat W 99

22. **Prosecution of party making a false statement with reference to a document in his possession.**—Before any proceedings can be taken against a person (not a party to the proceeding) who is present in Court but being called upon to produce his title-deed falsely states it is not in his possession, it would be necessary to determine whether the document in question was one which he could be compelled to produce and if the requirements of ss. 130 and 131, Evidence Act were fulfilled.—14 C. J. 120 See 11 Cr 20 (A)

23. **Order under S. 476 Cr. P. C. should be made in only clear cases of perjury.**—

fear would frustrate the object of cross examination. Prosecution therefore should be ordered only, if the contradiction was made not to correct a bona fide error, but with a dishonest intention.—9 S 202.

(9) *Application of the section.*

24. **The fact that no sanction is required does not prevent action under S. 476.**—The mere fact that no sanction of the Court is required for a prosecution under S. 182 I. P. C. does not deprive the Magistrate of jurisdiction to order prosecution under S 476 Cr. P. C.—8 S 179

25. **Prosecution for perjury.**—

prosecution of a witness on the basis of such evidence.—20 Cr. 823 (Pat) See 6 S 277, 8 A. J. 674 6 A. J. 963 32 A 30 See 8 B R 587, 9 C N. 1030

26. **S. 476 does not apply to a charge under S. 421 I. P. C.**—[21 Cr 50 (A) 6 L W. 283], or to an offence under S 424 I. P. C. [6 L W. 283] or to an offence under S 225 B. I. P. C. [21 C N 125] or to an offence under S 411 I. P. C. [Rat 515]

27. **S. 476 cannot be used in evasion of S. 195 Cr. P. C.**—It was argued by the learned Assistant Government Advocate that the Court has independent power under S 476 Cr. P. C.

In my opinion S 476 must be read consistently with S 195. This is well known rule of construction. Each part of a statute must expound every other part. It is not without reason that the Legislature has said definitely and positively that no sanction shall remain in force for more than six months from the date on which it was given. If the argument of the learned Advocate be a good argument, then the clear intention of the Legislature is in every case liable to be defeated by the simple device of drawing up proceedings under S 476 Cr. P. C. (after the expiry of the sanction).—*Per Dutt J.* in 5 Pat J 54 Con 21 Cr 543 (Pat)

28. **Court which should grant sanction cannot itself try a case.**—The trial of an offence by a Court which should only have either granted sanction or taken action under S 476 Cr. P. C. is irregular and the irregularity cannot be remedied by an application of S 447 Cr. P. C.—40 J 492

(10) *When action should be taken and when not.*

29. **Action under S. 476 to be taken when.** If the Court thinks that in the interests of the public welfare sanction should be given, it is

to take action under S 476 Cr. P. C. A sanction should not be given under S 195 when it is likely to be used as a means of revenge or extortion 11 A J 113

30. Order should not be made without reasonable probability of conviction.—“The principle which should guide Courts in taking action under S 195 or 476 is now well-settled. No sanction should be granted unless there is a reasonable probability of conviction.”—*Per Mookerjee J* in 37 C 250. See 14 C N, 300 12 C N 3 (1918) Pat 352, 20 Cr. 818 (Pat) 7 A 871 (F. B.) 22 Cr 151 (N.) 10 N 177. 10 N 184. *Can* 13 A J, 1111. 2 Weir 567 7 W R 482 (Civ.) Marshall 270

31. Order must be based on clearly defined grounds.—“The Court must be *prima facie* satisfied that the offence has been committed by a definite individual or individuals [23 C 532] It will not be sufficient to hold that either the plaintiff or the defendant has committed forgery [163 F L 1903]. The charge must be specific [23 W R 39]

32. Proceedings under S. 476 should not be taken till the close of the case.—Proceedings under S. 476 Cr P C should not be taken until the very close of the case, in which false evidence has been given, in as much as if taken earlier such action is likely to intimidate subsequent witnesses and defeat the object of the trial. As a rule, a Magistrate should not make up his mind to start proceedings under S 476 of the Criminal Procedure Code against a witness before he has heard all the evidence in the case—31 M J 440 (F. B.) 18 M T 591 11 M T 191 4 B R 778 16 B 729 3 C J, 302-21 Cr 29 (Pat) 1 Pat W 545 9 S 176

Note.—“It is the duty of a Judge, trying a civil or criminal action and engaged in investigating issues of fact, to hear all the evidence which the parties may have to adduce, before coming to a final decision and to refrain from any action which would be calculated to hamper any party in proving his case. If a Judge on the other hand, prematurely, takes criminal proceedings for perjury or for a like offence against a party or his witnesses giving evidence before him, the inevitable result would be to keep away other witnesses who might be in a position to give valuable evidence.—*Per Abdul Hakim J* in 18 M T 591

33. When the Court should proceed under S. 476 instead of granting sanction under S. 195.—“It seems to me that if the trial Court was of opinion that, in the interests of public justice, proceedings should be taken, it could and should have acted under S 476 Cr P C I am very loath to give sanction to private individual, specially in a case where he and the opposite party are actuated by enmity.”—*Per Bates J* in 21 Cr 64 (A.) See 13 C 542 18 Or 180 (A.) 11 A J 127.

34. Prosecution cannot be ordered after the Court is *functio officio*.—A subdivisional Magistrate after making an order of transfer (the application for transfer having alleged *inter alia* that the Magistrate had received a bribe in the

presence of A. and B.) recorded the statement of A. and B. on oath. He then made an order under S 476 Cr. P. C directing their prosecution under S. 103 1 P. C.—*Held*—that the Magistrate having already disposed of the application for transfer, the statements of A. and B. were made *coram non iudice*. The act of the Magistrate was not a magisterial act and he had no jurisdiction to administer the oath. The order was therefore illegal.—7 N G5. See 2 M. H 43 and 27 C 455

35. What amounts to a review of a former order.—If Magistrate after remarking in his order, that he would leave it to the accused to prosecute the complainant if he liked, subsequently on the latter's application, makes an order under S. 476, his latter order amounts to a review of the former and is illegal.—(11) 2 M N 431.

36. Order passed in accordance with the direction by a Superior Court.—The rule as laid down by *Judge David J.* in 20 Cr 274 (Pat) is this.—(1) if the lower Court merely acts at the suggestion of the Superior Court, not upon its own knowledge or information but upon those of the latter [as in 6 A J, 924] or (2) if the lower Court had refused to act under S 476 previously to the Superior Court's direction to proceed under S 476 [as in 32 B 184], an order in accordance with such direction will not be upheld. But if it is apparent from the lower Court's judgment that it was clearly in its mind that an offence had been committed in relation to the proceedings, and action was not taken as the matter was appealable, and the Appellate Court's direction to proceed under S 476 is merely an endorsement of the lower Court's opinion, the order will be upheld. [See also 21 Cr. 349 (Pat) See 2 O J 546, 10 M T 333; 6 A J, 924]

- 36A. The bar of acquittal.—A Magistrate who has acquitted the accused in a trial under S 211 as joint Magistrate cannot, as District Magistrate prosecute him under S 476—1 A. J. 339

(11.) Mutual relations between Ss. 195 and 476.

37. Court should not drop proceedings under S. 476 on receiving application under S. 195 by private party.—Where a Court proceeded to take action under S. 476 Cr P C but dropped the proceedings, upon the private party applying for sanction under S 195, Cr P C *Held* that it was usually inadvisable to grant sanction to a private person and the Court was directed to take up the proceedings at the stage at which it had dropped them, if it thought fit to do so—17 A. J. 431

38. Infructuous order under S. 476 no bar to action under S 195 Cr. P. C.—After action has been taken under S 476 Crim Pro Code and an order has been made, which proves infructuous because it has not been made in ac-

tioned the position would be different. — order under S 476 was set aside on the merits—11 Cr 327 (C)

[Note.—The fact that the Court may have given sanction under S. 195, prima facie to a person, to complain of an offence specified therein, does not affect its power to act under this section, should it deem it necessary.—14 B 354 24 B. 88 29 M 331]

38A. Power to convert proceedings under S. 195 to proceedings under S. 476.—When a case of perjury or forgery is brought to the notice of the District Court under S. 195 Cr. P. C., that Court has power to convert the proceedings and take action under S. 476 Cr. P. C.—1

Pat. J. 607 17 Cr. 1 (C); see 34 A. 602 *Con.* 2 Weir 596 13 C. N. 1018

39. Previous sanction under S. 195 is no bar to the jurisdiction of the Court to proceed under S. 476, [When the sanction has not terminated in a trial].—29 M 331

39A. When action should be taken under S. 195 and not S. 476.—When the offence has not been committed in the presence of the Judge, the proper procedure is to sanction criminal prosecution under S. 195. The Court cannot proceed under S. 476.—14 B 31

II. PROCEDURE.

(1) Preliminary enquiry.

40. When preliminary enquiry is unnecessary.—Where an order under S. 476 Cr. P. C. directing the prosecution of a witness under S. 193 of the Penal Code is made upon the very day on which or the day after the cross-examination of the witness is finished, upon a clear statement by him, and after an opportunity given to explain the inconsistencies in his statements in chief and in cross-examination, it is not incumbent upon the Court to institute a fresh enquiry or to give any notice to the accused.—4 Pat W 44

41. Review of the case law.—Under the old codes, a preliminary enquiry was considered necessary [See O W R 3 1 C. 450 5 C 184 (187) 2 C L 315 23 W R 39 5 A 62 7 M 189 4 Oudh 96 (82) A N. 229 29 F R 1886] In 9 W. R. 3 and 4 A 182 it was held that such enquiry need not be made in the presence of the accused. It was however laid down in a number of rulings under the old Codes that the enquiry was optional with the Court [See 6 O 308 7 C 208 5 W R 24. - B L (Sup) 426 9 W R 3 O S 284 15 O N 691] This latter view was also taken in the new Codes. It was cause or the result of a case.—15 C

Rat 701 and 891 7 B R 84 14 B R 567 15 A 392 34 A 267 26 M J 486 12 Cr 85 (LB)] but in 10 C 730 20 C 349 23 C 332 1 C J 620 Rat 701 2 Weir 587 the Courts were inclined to hold that an enquiry should be made in every case. The Allahabad High Court in 10 A J 247 held that a notice should always be given to the persons concerned

42. Note.—The matter has no doubt been set beyond doubt if the amendment proposed is enacted. The words "after making any preliminary enquiry that may be necessary" are to be deleted. The result therefore will be that no preliminary enquiry need be made at all. As the offences mentioned in S. 195 (1) (a) are also proposed to be taken out of the provisions of S. 476, the necessity of a preliminary enquiry, if any, will no longer exist

43. Preliminary enquiry cannot be delegated.—The preliminary enquiry required to be held under S. 476 Cr. P. C. cannot be directed to be held by a Magistrate other than the officer

who has called upon the delinquent to show cause why he should not be prosecuted for an alleged offence against public justice (e.g. offence under S. 211 I P C)—20 Cr 245 (Pat)

44. Notice not necessary.—"It has been held, I have no doubt correctly, that notice is, on the face of the section, not legally necessary. [See 10 A J 247; 15 A 392, 20 C. 474] But notice, although not legally necessary, is desirable, more especially where the matter has not been already judicially dealt with [6 A. 98]."—*Per Pritchard* 1 J C in 20 Cr 777 (N) See 17 O C 25 6 O. J 477 21 Cr 276 (A)

Preliminary enquiry though not essential, must be real, when held.

45. (1) "The holding of a preliminary enquiry is no doubt discretionary, and the learned Magistrate might well have sent the case to the nearest Magistrate without holding a preliminary enquiry but that was not the course adopted by the learned Magistrate. He clearly thought that it was necessary in the interests of justice to hold a preliminary enquiry. If that was his view, he should have given ample opportunity to the petitioner to show cause why he should not be prosecuted. . . . In my view the preliminary enquiry, whenever it takes place, is intended to be a real one.—*Per Das J* in 21 Cr 29 (Pat) 21 Cr 718 (Pat) 21 Cr 276 (A)

46. (2) When a plaintiff is called upon to show cause why he should not be prosecuted under S. 209

Where preliminary enquiry is essential.

47. (1) "It is quite true that under S. 476 Cr. P. C. as has been laid down in many rulings of this Court, a preliminary enquiry may be unnecessary, that is to say, it is not absolutely necessary to justify an order under that section, but in all those cases the person against whom an order was made, had always been before the Court and the evidence in the proceedings recorded in his presence. . . . The present case is very different and I do not understand how the Magistrate can come to any conclusion against the accused under S. 476 without giving him an opportunity

to cross-examine the witnesses whose evidence has been taken behind his back * * I therefore direct the record to be returned to the

in 22 Cr 143 (A) : See G C 440 : 19 C. 345 : 8 C. L. 148 : 12 P. R. 1897. 2 P. R. 1888. 6 A. 99 6 A. 101

48. (2) Although no notice is essential in a proceeding under S. 476 of the Criminal Procedure Code, yet in the circumstances of each case it is to be seen whether the party affected by the order was entitled to any notice. Where A. filed a civil suit based on a handnote against R. and L. and subsequently withdrew his claim against L. and obtained the goods the handnote, held that the Munsif acted illegally in directing the prosecution of A. merely upon the report of the Controller of Government papers, without deciding the genuineness or otherwise of the document in the presence of A. and R. who were parties to the decree—22 Cr 233 (Pat). See 14 B. R. 587.

49. (3) When the incident, in respect of which an order under S. 476 Cr. P. O. was made, took place outside the Court, the Judge ought to have held a preliminary enquiry to enable him to determine whether there was any case fit to be sent to the nearest Magistrate—21 C. N. 123.

50. (4) Where the order for prosecution arises out of an affidavit written in English and sworn to by a person unacquainted with that language, the Court should make a preliminary enquiry before making an order under S. 476 Cr. P. C.—15 A. J. 517

51. (5) Where the identity of the offender is uncertain a preliminary enquiry ought to be held—23 C. 532. 20 C. 474. 20 C. 349. 16 C. 730. or where the offence itself is uncertain.—1 C. 450.

(2) Scope of the preliminary enquiry.

52. The authority which is called upon to take action under S. 476 Cr. P. C. need not and should not decide the question of guilt or innocence of the party, against whom proceedings are to be instituted; but great care and caution are required before the criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which prosecution is sanctioned or directed.—10 N. 177. 2 Weir 587.

(3) Procedure in preliminary enquiries.

53. Person called upon to show cause cannot be examined as a witness.—Proceedings in enquiries under S. 476 Cr. P. C. are judicial proceedings and the person against whom they are directed is in the position of an accused person [37 C. 52 Fd.] Therefore to examine such a person as a witness in the course

of such proceedings is *ultra vires* [2 Weir 598 Fd.]—17 Cr. 316 (L. B.)

- 53.A. Position of the person proceeded against.—In proceedings under S. 476 of the Criminal Procedure Code, the person against whom the proceedings are instituted is not an accused person—1 Pat W. 65 : 8 A. J. 237.

54. How to record evidence.—There is no provision in the Cr. P. O. with regard to the manner in which the evidence in an enquiry under S. 476 Cr. P. O. is to be recorded. But we are of opinion that for further reference a summary of the statements should have been made.—[Per *Sharfuddin and Tenson JJ*] in 42 C. 240.

55. Mode of holding the enquiry.—The enquiry need not be held in the presence of the accused [9 W. R. 3 : 4 A. 182]. Oath may be administered to the suspected person [8 B. R. 389 : See 17 C. 872 : But See note above] It is not necessary to cross-examine the witnesses.—[34 A. 267]

- 55A. Court not bound to observe special formalities.—It is perfectly competent to the Judge making an enquiry under S. 476 Cr. P. O. to make the formal order under that section without taking any evidence at all, and if he chooses to

from imposing any special formalities to hamper the discretion of the Court—[11 B. R. 1164 14 B. R. 587 relied on]—Per *Batchelor J.* "If a witness be examined in the case of an enquiry under S. 476 Cr. P. O. it is the right of the Court to make to the effect that the Court and it is optional with the Court to make a preliminary enquiry"—[Per *Shah J.*]—18 B. R. 281

56. Order to show cause should be in conformity with S. 195.—An order under S. 476 Cr. P. C. requiring the accused to show cause why he should not be prosecuted should comply with the requirements of S. 195 Cr. P. O. It must specify the Court or the place and the occasion on which the offence was committed—21 Cr. 409 (A)

57. Successor not bound to hold fresh enquiry.—A successor of the officer before whom the original trial took place is not bound to hold an independent investigation before making an order under S. 476 Cr. P. O.—15 C. N. 691. See 37 C. 632 (F. B.). See 9 C. N. 859. 34 C. 651 (F. B.). 35 C. 114.

(4) Omission to hold preliminary enquiry not material in the absence of prejudice.

58. The holding of a preliminary enquiry in a proceeding under S. 476 Cr. P. C. is discretionary, and a person against whom an order for prosecution has been passed without such an enquiry cannot complain unless he has been prejudiced by the omission.—15 C. N. 691.

(5) *Order may be made by successor.*

59. Order may be made by successor.—The dictum of the Full Bench in 31 C. 551 that the powers conferred by S. 476 can only be exercised

case.—S. 476 Cr. P. C. vests jurisdiction in a Magistrate to try a case if one is sent to him for trial by a Court mentioned in that section. All that is required to give jurisdiction to the Magistrate to try the case is that he should have been the nearest Magistrate. The section has nothing at all to do with local or territorial jurisdiction.—20 Cr 202 (Pat) See 16 M 161. Rat 88 32 M. 49 (F.B.) at 57 Con 1 S. 84 10 B R 28.

(8) *Simultaneous proceedings under Ss. 195 and 476.*

64. There cannot in the same proceeding be a sanc-

as being more appropriate, a compliance with such direction is not fatal to the proceedings [20 Cr 549 (Pat)]

(9) *Simultaneous proceedings under Ss. 250 and 476 Cr. P. C.*

65. There is nothing in the Code which makes it illegal for a Magistrate to proceed under both the sections 250 and 476 Cr P C at the same time. There is no conflict between the two sections, as the object of S. 250 is to give compensation to the accused who has been harassed by a vexatious accusation, whereas proceedings under S. 476 are taken on grounds of public policy to punish the complainant for making a false charge.—7 S 10. 10 S 162 21 M. 237. 27 M. 59 30 C 123 (F. B.) 15 B. R. 49

(10) *Can the Court to which the case is referred under S. 476 proceed against persons other than named in the order?*

66. Scott-Smith and Broadway JJ in 34 P. R 1917 have held that Ss 195 and 476 Cr P C merely remove the bar to the trial of certain offences and not to the trial of any offender. The Magistrate before whom the case is sent for trial is not barred

dealt with by Chaudhuri and Newbould JJ. in 21 C N 990 and although its decision was not directly necessary in that case as the offence did

[4 C N 367 4 C N. 550]

Note.—It is of considerable interest to note that this very point was dealt with by Sir Barnes Peacock in Essan Chander Dutt v. Paramnath, 2 Hay 236—Marshall 270—W R (F. B.) 71 and he was of the same opinion. The decision in 23 C. 532 seems to indicate a contrary view.]

- 66A. The case is sent to nearest Magistrates, not necessarily all the offenders.—Under S. 476 Cr. P. C it is the Case which is to be sent

(6) *Appellate Court may proceed under S. 476 Cr. P. C.*

60. When an appeal is preferred to a District Judge and is disposed of according to law, the District Judge is fully competent to grant any sanction under S. 476 in respect of any offence that may have been committed in the case.—20 Cr 202 (Pat) 32 B 184 16 C J 569 See 1 A 17 (T.B.) (82) A N 84 1 Rat 683 But see 10 C. N 1091

Note.—The High Court in revision can set aside an order under S. 195 Cr P C and itself take proceedings under S. 176 Cr P C in 11 A J 127

(7) *Condition precedent to application of the Section.*

61. (1) 'Sec 476 requires that the Court, Civil, Criminal or Revenue, making the reference to the Magistrate shall be of opinion that there is ground for enquiry into the offence in respect of which the case is sent to the Magistrate. As laid down in 10 N 177, this opinion must be a judicial opinion founded on evidence.—(Per Drake Blochman J C in 21 Cr 310 (N)) Before a Court is justified in making an order under S. 476 Cr P. C directing the prosecution of any person, it ought to have before it direct evidence fixing the offence upon the persons whom it is sought to charge, either in the course of the preliminary enquiry referred to in that section, or in the earlier proceeding out of which the enquiry arises

16 C 730 14 C. N 334 21 Cr 675 (C) 21 Cr 601 (P) 5 A 62 (O1) A N 59.

- 62 (2) The offence must be committed before the Court or must be brought to its notice in the course of a judicial proceeding, not by means of an application asking for action under S. 476 Cr. P. C.—13 P. W 1913. 13 P. R 1915.

63. Only requisite for jurisdiction of the Magistrate who subsequently tries the

for enquiry to the nearest Magistrate and not necessarily all the offenders who might be concerned in the commission of the offence, the subsequent clause of the section referring only to such offender or offenders as might, at the time, be known and be within the grasp of the enquiring officer—43 B 300

(11) False complaints.

67. Where a Magistrate dismisses a complaint under S 203 merely upon the result of a police investigation, he should hold a preliminary enquiry under S 476 Cr. P. C. in order that the party complaining might have an opportunity of showing in the preliminary enquiry the truth of the bona fide character of the complaint, before directing a prosecution under S 211 I. P. C.—7 M. 189; 10 M. 232 (F.B.) 2 Weir 585 21 M. J. 795 6 C. 496 6 C 584 7 C 87 8 C 435 2 C. L. 313 8 C. L. 289 14 C 707 [F.B.], 33 C. I. 30 A. 52 23 P. R. 1896, also 6 A. 111. (93-00) L B 542 5 C N 106 27 C 921, 13 Cr. 43 (A) But See 5 C 291 6 C 552 7 C 208. 4 C L 134 1 A. 497 1 A 527 1 A 182. 1 M. II 30 6 C N. 205 2 P. R. 1907

[Note.—When a charge is pronounced false by the police, proceedings should not be taken by the Magistrate, *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation, and takes no further step—7 C. L. 382

68. Prosecution under S. 211 where there is no complaint.—The police enquired into the case upon information being laid by the petitioner and made a report to the Magistrate that the case was maliciously false and asking for prosecution of the informant under S 211 I. P. C. The Magistrate thereupon called upon the petitioner to prove his case. He heard the witnesses the petitioner produced and then finding that the case had not been proved passed an order under S. 476 Cr. P. C.—Held that there is no provision for calling upon an informant to prove his case on the police report, and in the absence of a complaint—[See 17 C N. 824], hence the order must be set aside. Had the petitioner been called upon to show cause why he should not be prosecuted under S 211, I. P. C. an objection could have been taken to the order—21 Cr. 381 (Pat); see 21 Cr 416 (A)

(12) Miscellaneous rules of practice.

68. Nearest Magistrate.—does not include a successor-in-office—[21 Cr 29 (Pat)]
70. Magistrate to whom the case is sent cannot order preliminary enquiry under

S. 202 Cr. P. C.—See VIII Powers of the Magistrate to whom the case is sent for trial

71. Omission to direct accused to be taken to nearest Magistrate.—The omission to at once direct the accused to be taken before the nearest first class Magistrate, under the provisions of the first clause, is at most an irregularity which is expressly cured by S 537 (b) Cr P. C.—37 M. 317; Con—26 A 249
72. Contents of the order.—An order under S 476 of the Crim. Pro. Code should disclose the materials upon which it was based; such an order is a judicial order and if it does not show the basis upon which it was passed, it is liable to be set aside in revision—21 Cr 833 (Pat) (1918) Pat 352. See 39 A. 367 1 C 450
73. Filing of complaint cannot be delegated.—A Deputy Commissioner cannot delegate the filing of a complaint to the Public Prosecutor where he himself can file it—13 P. R. 1915 19 P. R. 1917 38 B. 642 (648) But See 2 Weir 586
74. Case cannot be sent to a third class Magistrate to hold preliminary enquiry.—7 M. 189 See 15 M. 131.
75. *Quia Sententia*

investigated.—13 W. R. 45 Con 4 N. P 86

76. Taking security pending drawing up of proceedings.—A Sessions Judge cannot take security from a witness (who, he considers has perjured himself) to appear at a future date before him to answer charges yet to be framed under S 193 I. P. C. He should take immediate action—5 C. N. 630
77. Submission of case to District Magistrate for orders.—An Assistant Collector of the second class trying a rent suit came to the conclusion that the plaintiff had committed an offence under S. 193 I. P. C. and thereupon submitted the record to the "District Collector" for starting a case under that section. The District Collector ordered the initiation of a case under S 193 I. P. C. and made it over for decision to a first class Magistrate, held (1) the order of the Assistant Collector for submission of the record did not amount to an order under S 476 Cr. P. C., but his intention was to make a complaint either under S. 193 or 476 Cr. P. C. to the Collector of the District for action under the Code of Criminal Procedure for

1905.

III. "COURT"—MEANING AND SCOPE.

(1) Does the term include Successor-in-office?

78. This point has given rise to a great conflict of rulings necessitating the reference to a special Bench of seven Judges of the Calcutta High Court

in 37 C 642 (S.B.). In this ruling the following dictum has been laid down. The word 'Court' in S. 476 Cr. P. C. is to be understood as bearing its natural meaning with the sense of continuity; it implies notwithstanding any change of officers,

thus definitely overruling 34 C 571 (F.B.) and settling the point so far as at least the Calcutta High Court is concerned. The following rulings *pro* and *con* indicated below will show the conflict of rulings by different Courts:

Calcutta—*Pro* 20 Cr. 184 (C). 15 O. N. 691
Con 34 C 551 (F.B.). 35 C 114 9 C. N. 859

Madras—*Pro* 25 M. T. 18; 29 M. 331. *Con* 32 M 49 (F.B.); 31 M. 140 (F.B.)

Allahabad—*Pro* 37 A. 344 34 A. 393 33 A. 396
12 A. J. 1003. 7 A. J. 691. 6 A. J. 392

Bombay—*Pro* 32 B. 184

Punjab—*Con* 101 P. L. 1909. 6 P. R. 1009 10 P. L. 1811.

Nagpur—*Pro* 14 N. 161. 20 Cr. 426 (N). *Con* 11 N. 36

Burma—12 Cr. 521 (U B)

79. **Note.**—A Magistrate who has succeeded the Magistrate who tried and finally disposed of the case in the course of which an alleged offence under S. 209 I P C has been committed, has no jurisdiction to make an order in the case under S. 476 Cr P C. He can do so only if the proceedings had been pending when he took over charge. His proper course would be to grant sanction under S. 195—[4 Pat W 141] A successor cannot act *ex officio*, when his predecessor closed the case without taking any action under the section [2 Weir 597]

Continuation of proceedings.

- 79A. (1) Mena proceedings taken so immediately after the proceedings in the course of which the offence has been committed before or brought to the notice of the Court as to make it really a continuation of the same proceedings—32 M 49 (F.B.)
- 79B. (2) When the order is made in such circumstances that it can be said to have been a continuation of the proceedings in which the offence was committed, it must be set aside—8 M T 61
- 79C. (3) An order under S. 476 is illegal in the absence of anything to show that it is a part of the proceedings in the trial in which the alleged offence was committed—6 M T 92
- 79D. (4) To justify action under S. 476 it will suffice if it is taken with reasonable promptitude and so shortly after the conclusion of proceedings as to make it practically the continuation of the same proceeding—(12) M N 1206
- 79E. (5) The use of the word "Court" instead of either Judge or Magistrate shows that the Legislature intended that in dealing with cases of this nature the continuity of jurisdiction should be maintained, though the personnel of the officers was changed—12 Cr. 521 (U B)

(2) The test.

80. The proper test for ascertaining whether an officer is a Court or not, is whether he has power to record evidence and to come to a judicial determination on the evidence so recorded.—25 M. J. 123 27 M. J. 227 36 M. 72 24 M. 121 See 32 M. J. 402

(3) Revenue officers.

81. (1) Revenue officer acting under S. 46 of the Code Land Revenue Act is merely a Revenue officer as defined in S. 4 (9) of U. P. Act III of 1901 and not a Revenue Court within the meaning of S. 476—13 O C 194
82. (2) A Revenue officer preparing a Record of Rights under Ss 164 to 167 of the Madras Estate Land Act is only discharging an executive function of Government and is not a Court within the meaning of S. 476 Cr P C—28 M. J. 123. 26 A. 362 3 C J 133. 28 C 471 But See 15 M. 135 24 M. 121 [D. C.]
83. **Income-Tax Collector holding proceedings**—under Chapter IV of Act II of 1886 is a Court within the meaning of S. 476—3 S. 66. 8 B R 477
84. **Collector dealing with petition for refund of money.**—A Collector dealing with a petition for a refund of the money alleged to have been collected from the petitioner and misappropriated by a Reddi addressed to him in his Revenue capacity is not a Court within the meaning of S. 476 Cr P C and is not authorised to direct the prosecution of the petitioner under S. 211 I P C.—(15) M N 253
85. **Collector dealing with petition for refund of money.**—A Collector dealing with a petition for a refund of the money alleged to have been collected from the petitioner and misappropriated by a Reddi addressed to him in his Revenue capacity is not a Court within the meaning of S. 476 Cr P C and is not authorised to direct the prosecution of the petitioner under S. 211 I P C.—(15) M N 253
88. **Deputy Collector making enquiries** under S. 48 of the U. P. Land Revenue Act (III of 1901) is not a Revenue Court within the meaning of S. 476 Cr P C.—13 O C 194
- 89A. **District Registrar.**—A District Registrar as provided by S. 195 Cr P C is not a "Court" and has therefore no jurisdiction to make an order under S. 476 Cr P C—16 B R 946.

(4) Miscellaneous.

87. **Magistrate dealing with a Police report** under S. 173 Cr. P. C.—Where the police report (on a first information being laid under S. 154) is not under S. 157, so as to entitle the Magistrate to proceed under S. 159 Cr P C but under S. 173 Cr. P. C. he cannot investigate into the complaint and therefore cannot, under S. 476, make an order for prosecution of the informant under S. 211 I P C—43 C 1152 See 4 C N 311; 12 C N 575 37 C 250
88. **District Magistrate acting in his executive capacity.**—A Divisional Commissioner received a complaint against a Patwari. He sent the complaint to the Collector and District Magistrate for disposal. The latter sent the file of the case to his subordinate and asked him to take the evidence produced by the applicant and also of the Patwari and his witnesses and report whether there was any *prima facie* case against the Patwari. There being a report that there was no *prima facie* case against the Patwari,

He allowed the matter to be dropped, but ordered the prosecution of the complainant under S. 152 Cr. P. C., held that the District Magistrate was acting merely as an executive officer and there was no judicial proceeding within the meaning of S. 476 Cr. P. C.—15 A. J. 634

89. **Enquiry under the Legal Practitioner's Act.**—A Magistrate holding and enquiry under S. 23 of the Legal Practitioner's Act is a Court within the meaning of S. 476 9 A. J. 156 6 M. 232 32 M. J. 402

90. **Mamlatdar's Court.**—Constituted under Bombay Act II, of 1906 is a Civil Court within

the meaning of S. 476 Cr. P. C.—15 B. E. 313 137: 4 B. E. 970: 9 B. E. 596: 14 B. E. 947

91. **Presiding officer transferred to some other duty** comes to be so and cannot as orders under S. 476 in respect of a case which is tried as the presiding officer of the Court after the transfer. 1 A. J. 315.
92. **"Divisional officer."**—Orders under S. 4 Cr. P. C. can be passed only by a Civil, Criminal or Revenue Court. An order purporting to be one passed by a "Divisional Officer" that is by the Deputy Collector to whom a Taluk before whom the alleged false statement was made was subordinate, is *ultra vires*.—(17) 2 W. 27.

IV. JUDICIAL PROCEEDINGS.

(1) General Principles.

93. **The test.**—The test which has to be applied to a particular proceeding before a Court to determine whether it is or it is not a judicial proceeding for the purposes of S. 476 is whether in the course of that proceeding the judge has power legally to take evidence on oath, not whether he has actually taken such evidence. 37 C. 22 37 S. B. R. 589 24 M. J. 123 27 M. J. 227 32 M. J. 402 24 M. 121: 35 M. 72.

Enquiries in the nature of Departmental enquiry.

94. (1) Enquiry held by a District Registrar into a complaint against the conduct of a Sub-Registrar is a departmental one and not a judicial proceeding within S. 476 10 C. N. 222
95. (2) A departmental enquiry into a complaint made against a Sub-Magistrate by the District Magistrate is a purely executive matter and is not

99. **Note.**—A magistrate making further enquiry after receiving a report from the police officer. He had referred the case for investigation is not in a stage of judicial proceeding within the meaning of S. 476 5 B. E. 569: 5-15 M. E. 29 M. 69.

(3) Preliminary enquiries under S. 202 Cr. P. C.

100. It is doubtful whether an investigation under S. 202 Cr. P. C. can be regarded as a judicial proceeding and may be used for purposes of an order under S. 476 Cr. P. C.—*See* 14 J. 20 C. 515 (3): *See also* 33 M. 750 (F. B.) 21 M. J. 795: (15) U. R. II 91 [(17) U. R. I D. 4].

[**Note.**—The Code does not permit a Magistrate to refer a complaint to another Magistrate for enquiry and report. An order under S. 476 made by the Magistrate is not a case which will not be considered.—41 C. 17.]

to whom the case has been transferred, ordered the prosecution of a witness for giving false evidence before the original Court, but that deposition was not put in evidence, in the trial before the second Magistrate, nor was the person himself examined, held that he could not direct the prosecution of the witness, as the offence did not come to his notice in the course of a judicial proceeding (72) 2 Weir 598

101. Proceedings cannot be started on the result of the counter case in another Court.—J. and F. presented counter complaints against each other before the Subdivisional Magistrate who referred F's complaint to a subordinate Magistrate and retained J's on his own file. The subordinate Magistrate convicted F. Thereupon the Subdivisional Officer, without adjudicating judicially upon J's complaint, directed his prosecution under S. 476 Cr. P. C. Held that S. 476 does not contemplate that the proceeding should be based upon what has occurred in another Court.—1 Pat W. 540

(7) Judicial Proceedings within S. 476.

105. Execution Proceedings.—An execution proceeding is a judicial proceeding "within the meaning of S. 476 of the Cr. P. C., the definition in S. 4 cl. (m) being clearly not exhaustive—37 C. 642 (S.B.); 10 C. N. 53 10 C. J. 450 1 P. R. 1910 25 M. J. 693 19 Cr. 153 (Pat) 10 N. 177 17 O. C. 309 Contra 35 C. 133 32 C. 367 (ord)
106. (2) Proceedings under the Northern India Canal and Drainage Act 1873, before a Revenue Court (22) 22 A. N. 202
107. (3) Proceedings under S. 144 Cr. P. C.—19 M. 18 5 M. J. 249
108. (4) Proceedings before a Subordinate Court recording further evidence as directed by the Appellate Court—15 W. R. 64
109. (5) Proceeding under Chap. IV of Act II of 1886 (Income Tax)—38 66 15 Cr. 2 (1) 31 36 M. 72 44 P. R. 1905 C. N. S. B. R. 477
110. (6) Proceedings before a Magistrate to whom a complaint has been referred for enquiry prior to the issue of process—36 C. 72 See 20 Cr. 396 (Pat); 10 C. J. 564 Con 4 C. N. 366
111. (7) Proceedings before an Assistant Settlement Officer—37 C. 52
112. (8) Proceeding before a Collector who is called upon under the Bengal Tenancy Act to appraise crops—17 C. 572
113. (9) Proceedings held by a Magistrate under S. 23 of the Legal Practitioner's Act—9 A. J. 156
114. (10) Proceedings before a Subdivisional Officer to whom the Collector had transferred an enquiry under S. 54 of the Bengal Tenancy Act—49 C. 465
115. (11) Proceedings taken upon an application being made by the complainant to the Magistrate requiring the police report and asking for a judicial investigation.—21 Cr. 349 (Pat) See 14 C. 707 (F.B.)

Note.—But where the complainant does not ask for a judicial investigation his application is made

complaint within the meaning of 4 (h) and proceedings relating thereto are not judicial proceedings within the meaning of S. 476—4 1152 J.

116. (12) Proceedings before a Certificate Off when acting in the discharge of his duties in the Bihar and Orissa Public Demands Recd. Act (IV of 1914)—4 Pat J. 475

(8) What are not judicial proceedings within S. 476.

117. (a) An enquiry under S. 46 of the Code of Revenue Act.—13 O. C. 198,
Purely Ministerial Acts.
118. (b) Delivery of possession of land to the holder by a Nazir in execution of a decree C. 367; 35 C. 133 But see Rat 701 10 C. J. 4
Inquiry by Subordinate Magistrate.
119. (c) Proceedings before a subordinate Magistrate to whom the Deputy Commissioner has referred complaint against a public servant for enquiry and report are not judicial proceedings. 4 C. N. 366 But See Note No 110 above
- Executive orders.
120. (f) An order passed by a District Magistrate his executive capacity calling for the records see whether an application for enquiry into conduct of a police constable should be granted or not—25 M. 639
- Police Report.
121. (e) Proceedings of Magistrate acting on a report and taking evidence in order to prove the complainant under S. 211 P. C. 4 C. N. 3 Contra 5 C. N. 106
- Enquiry under the Stamp Act.
122. (f) Enquiry in order to determine the amount stamp duty and penalty in respect of a document imposed by a Sub Registrar—7 C. N. 745

Proceedings ultra vires.

123. (i) A Magistrate making enquiry into the question of legal guardianship is acting ultra vires, and proceedings are not judicial proceedings within the meaning of S. 476—9 C. N. 1030.

Other proceedings.

124. (b) Proceedings under S. 445 before a District Magistrate—15 M. J. 444
125. (i) Proceedings not sanctioned by the law G. J. 983 5 E. R. 587
126. The proceedings of the District Magistrate passed orders on papers laid before him by the District Superintendent of Police—(44) A. N. 270.
127. (i) Departmental Enquiries See Notes Nos. 1 to 10 above
128. (c) Miscellaneous proceedings under the Vill Regulations by a Deputy Commissioner in Bar (6) U. B. 4—4 13.
129. (f) Proceedings relating to settlement of land attached under S. 146 Cr. P. C.—21 Cr. 247 (Pat)
130. (i) Proceedings before a Deputy Commissioner his capacity as Chairman of a District Board. 20 Cr. 201 (Pat)

131. (b) Proceedings under S 353 of the Police Regulations—38 A. 32.
132. (a) Deputy Collector making an enquiry under S 46 of the Land Revenue Act (III of 1901) is not a Revenue Court within the meaning of S. 47 Or P. C.—13 C. 198.

(9) *Offence committed before the Police.*

133. **Perjury committed before the Police.**—An order for prosecution under S 476 cannot be made for alleged perjury during a police investigation 10 C J 564; 7 C J. 373
134. **False complaint.**—When the offence of instigating a false complaint was committed before the police and not the Magistrate, the latter cannot on a police report proceed under S 476. The proper course in such a case is to direct the police to lodge a complaint. 7 C J. 371 33 C 30 See 30 A 52 See Note No 67 above.

V. STAGE AT WHICH AN ORDER UNDER S. 476 CAN BE MADE.

137. **Either at the close of proceedings or shortly afterwards.**

(1) An order under S. 476 Cr. P. C. should be made either at the close of the proceeding or so shortly thereafter that it may be reasonably said that the order is part of the proceeding—31 M 140 (F.B.) 34 C 551 (F.B.) See 37 C. 642 (S.B.)

(2) The power conferred by S 476 Cr P C can be exercised by the Court only in the course of the judicial proceeding or at its conclusion or so immediately after as to make it really the continuation of the same proceeding in the course of which the offence was committed or brought to its notice—32 M 49 (F.B.). 8 M. T 81

138. **Sub-Judice trials.**—Where there has been an illegal withdrawal of a case at the sessions by the Government Pleader, the Sessions Judge acts prematurely in directing certain witnesses to be prosecuted—(56) A. N. 84

139. **Subsequent to decision appeal.**—A Sub-Judge has jurisdiction to pass an order under S 476, on the Judge in appeal declaring that an offence has been committed—e.g.—that the sale-deed had been antedated—(04) A. N. 170

140. **Case not finally decided.**—Action under S 476 Cr P. C. should not be taken until the case has been finally decided [3 C. J. 302] or the

(10) *Miscellaneous.*

135. **Enquiry by subordinate Magistrate.**—A Magistrate cannot direct a prosecution upon a report being submitted by a Magistrate who was deputed for enquiry. 33 C. 30; 7 C. J. 371 See 13 C. N. 395

N. B.—The latter alone is competent to draw up proceedings under S 476. See 36 C. 72; 10 C. J. 564

136. **Action on a petition presented by a Vakil.**—A Magistrate cannot take action against a pleader who has presented to him a petition containing imputations on him in regard to an illegal detention of his client, inasmuch as the offence was not committed in the course of a judicial proceeding nor was it brought under his notice in the course of such proceeding

29 M. 100.

complaint has been finally determined 4 C. J. 55 See 3 C N 758

141. **After disposal of application.**—A Magistrate who has already disposed of an application for transfer, cannot take action under S 476 Cr P C against the applicants for offence under S 193—7 N 63.

142. **What is a premature order.**—An order made before the case has been disposed of and before the person prosecuted had an opportunity to show that he had not committed any offence is premature and wrong

(12) M. N. 400

143. **Order made before the case is finally decided.**

t to the
38.—In re
Hillips and
reference

to the Full Bench—where the commission of an offence has been discovered by a Court after the judicial proceedings have terminated, but at a time when the facts were fresh in the mind of the Judge, can he pass an order under S 476 Cr P C?—The Full Bench answered the question in the negative following the decisions in 32 M 49 (F.B.) and 31 M 140 (F.B.) [Though Aylmer J remarked that had the matter been *res integra*, he should concur in the dissenting judgment of Miller J. in 32 M. 49 (F.B.)]

VI. DELAY IN INSTITUTING PROCEEDINGS.

(1) *Action must be taken promptly.*

144. (1) Action under S 476 Cr. P. C. should as far as possible be prompt and expeditious 37 C 642 (F.B.) 7 S 187 (Per Boyd J. J. C.) 18 Cr. 311 (L. B.)

- (2) An order under S 476 would be bad if it were passed after a long time even if the presiding officer were the same. It should be made either in the course of the judicial proceeding in which the alleged offence was committed or at its conclusion or so soon after it as to make it

really a continuation of the same proceeding—34 C 551 (F.B.), 13 C. N. 398 See also 40 C 144 11 N 36 68 P L 1916

- 148 (3) The words of S 476 contemplate immediate

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294 (M.)

- 148 (5) An order under S 476 passed by a District Munsif, after a delay of 10 days and at the

suggestion of the District Judge is illegal—10 M. T. 333 20 Cr. 226 (Pat.). Bat. Sec. 32 B 184: 37 A 344: 34 A 393: 20 Cr. 286 (C).

(2) Case law.

149. (1) "Such a restricted interpretation [see Note No 145 above] does not seem, however, to be justified by the language of S 476 of the Code, for there is nothing in it to limit the exercise of that power within any period or at any particular time. The power can be exercised at any time, when an offence is committed before a Court in a judicial proceeding, or when the commission of it is brought to its notice or in the course of that proceeding or in any other. The discovery of the commission of such an offence may not be brought to the notice of the Court before which it was committed, till an enquiry is made in some cognate matter in any other judicial proceedings, and it would be satisfying the scope and intention of S 476 to hold that a Court would not be competent to deal with such a commission, unless a discovery is made in the judicial proceeding in which the offence was committed"—5 O J. 70 See 6 A J 392 37 A 344 34 A 393 2 Pat J. 553: 32 B 184 7 S 184 29 P R 1910 24 T 30 (F. B.)
150. (2) "There does not appear to me to be anything in the wording of the section or in the reasons for its enactment to hold that officers acting under it are bound to make their enquiry either in the actual course of the judicial proceedings or so shortly thereafter as to make it really a continuation of those proceedings. The section appears to have been enacted not with the intention of protecting offenders against public justice from prosecution by the Courts, but on the contrary to facilitate, wherever and whenever those offences might come to notice, such prosecution by the Courts" [Per Hayatani] "It seems to me that the section not only intends to, but is expressly worded so that it may confer on a Court a power

to enquire into a case and to take action, whenever my prove to be the offender, *although months or even years may elapse before it becomes known with any degree of certainty who the offenders are.* [Per Heaton J]—43 B 300, see 21 Cr 519 (Pat)

- 150A. (3) There is nothing in the section which requires the Court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any fixed time thereafter—29 P R 1916
151. (4) "In my opinion where in a particular case there has been undue delay in making an order under S 476, is a question which must be decided on the facts of each case, and where undue delay has been established, the High Court is entitled to set aside the order and to arrest further proceedings—*Per Sultan Ahmed J.* in 21 Cr 548 (Pat).
152. (5) An order under S 470 passed *months after* the termination of proceedings directing the prosecution of a person for having committed an offence in those proceedings, is bad if it appears that the Magistrate did not become cognisant of the offence during the pendency of the proceedings—21 Cr 633 (Pat).
153. (6) The fact that the Magistrate did not take any action against the complainant under S 476, when he acquitted the accused indicates very strongly that at the time, he did not think it necessary. When however, at the instance of the District Magistrate he takes action 14 months after, the belated order must be held not to represent his independent judicial opinion and such being the case, the prosecution should not be sanctioned—17 O N 290.
154. (7) It is highly desirable that where steps under S 476 Cr P C are to be taken, they should be taken as soon as possible. Where there is delay, the delay should be explained—34 A 695 see 11 Cr 20 (A)

VII. STAY OF PROCEEDINGS.

(1) General Rules.

155. Proceedings under S 476 Cr P C arising out of a case which has gone up in appeal should be stayed pending the disposal of the appeal—[20 C N 1146 (Pat)] Criminal proceedings for perjury or forgery arising out of a Civil litigation should not go on during the pendency of such litigation. The prosecution should be stayed pending the disposal of the appeal [16 B 729 34 C 848 30 M 226 see 8 C N xxxi 13 C N 398 13 Cr 1 (C) 14 C N xxxi]

(2) During Pendency of Civil Suit.

156. The High Court will not direct a trial to be adjourned pending the hearing of a lawsuit to establish the genuineness of the transaction on the basis of which a prosecution under S 476 for perjury and forgery has been ordered 18 B 541 26 B 785: 23 C 610 (*Per Emperor J.*): 31 C 558: 35 C 909: see 6 C G. 308 7 W. R. 24 (Civ) 13 B. 109: 7 B H. 29: 23 C. 332 5 C J. 233:]

5 C N. 44 16 C 730 20 C 349 13 M 144 21 M 124 16 A. 80 con 30 M 226

N. B.—The proposed amendment gives a discretion to the Magistrate if he thinks it expedient in the interest of justice to stay proceedings, until an appeal against the decision arrived at in the judicial proceedings is disposed of]

157. No hard and fast rule.—It would be a dangerous doctrine to lay down any hard and fast rule to the effect that a criminal trial or inquiry should, of necessity, be stayed, simply because a civil suit has been instituted between the parties, in which some or all the matters materially in issue in the criminal case would have to be determined, until the civil litigation was finally decided—13 C N 394, see 34 C 848

(3) Pendency of Civil appeal.

158. (1) Is not in itself a sufficient ground for staying criminal proceedings under S 476 [14 B R 104: 8 C L 148: 26 B 785]

159. (2) "The tendency has been, whenever possible to secure a final adjudication by the Civil Court before the actual trial of the accused persons in a Criminal Court. I do not think however, that any direct authority can be quoted for interfering with proceedings by a subordinate Civil Court under S. 476 of the Crim. Pro. Code merely on the ground that an appeal upon the same facts is pending before the High Court—22 Cr. 236 (A) (05) AN 251. see *Koketel* 26 M. 98 (F. B.)

(4) *Session Judge cannot stay proceedings of a Civil Court.*

160. A District Munsiff taking action under S. 478 Cr. P. C. remains, while exercising its powers under the Cr. P. C., a Civil Court and is not an inferior.

Criminal Court within the meaning of S. 435 The Session Judge has therefore no power to stay the proceeding taken by the Munsiff—5 M. J. 226

(5) *Effect of setting aside the original proceedings.*

161. (1) Where the Sessions Judge set aside the order dismissing the complaint and ordered further enquiry but did not at the same time set aside the order under S. 476, the order under S. 476 remains good—21 M. J. 795
162. (2) If an order passed under S. 476 (1) Cr. P. C. directing an enquiry to be made by another Magistrate is set aside, it is just and proper that proceedings under S. 476 (2) before the Magistrate shall also cease—6 L. B. 49.

VIII. POWERS OF THE MAGISTRATE TO WHOM THE CASE IS SENT FOR TRIAL.

(1) *Effect of change of Law.*

163. "The substitution of the description "nearest" for "having power to try" in the 1872 Code is significant." [Per *Shepherd C. J.* in 16 M. 461]. It is not necessary that such Magistrate should be a Magistrate having jurisdiction over the division, in which the offence was committed.—*Ibid*: See also *Bat* 88; 32 M. 49 (F. B.), at p. 57; 1 C. J. 630; *Con* 1 S. 84 10 D. R. 23; 2 Weir 590 For the latest case See 20 Cr. 202 (Pat) [Note No. 63 above]

(2) *Meaning of "Nearest Magistrate".*

164. Nearest Magistrate cannot be the very officer acting under S. 476.—An officer cannot himself try an offence under S. 174 I. P. C. in his capacity as a Magistrate when the offence has been committed before him in his capacity as a settlement officer [2 A. 403. See 12 W. R. 18 15 W. R. 89; 2 Weir 613].

[Note.—The rule will not apply when the officer committing the case for trial is the District Judge. A Sessions Judge has power to try a person for an offence punishable under S. 195 I. P. C. when he has given sanction as a District Judge for the prosecution under S. 195 Cr. P. C.—16 C. 706 (F. B.): See 7 C. N. 704; ('89) U. B. (97-'01) 61 (62)]

165. Nearest does not mean "geographically nearest."—The word "nearest" in S. 476 must be construed reasonably. The word does not necessarily refer to the head-quarters of the Magistrate but has reference to the area of his jurisdiction—(72) 2 Weir 590
166. Nearest Magistrate does not include a successor-in-office [21 Cr. 29 (Pat)].

(3) *Powers.*

167. Powers of the Magistrate to whom the case is sent for trial.—(1) The expression "proceed according to law" in sub (2) of S. 476 Cr. P. C. requires the Magistrate receiving the reference to proceed under Chapters XVIII to XXI of the Code according to the nature of the offence supposed to have been committed. He has no jurisdiction to order an investigation under S. 203 Cr. P. C.—[21 Cr. 310 (N)] See 7 B. H. 29 (2) But he is competent to discharge the accused under S. 253 *supra*, if in his opinion the evidence against the accused is not sufficient to warrant their committal [5 B. H. (C. O.) 41] (3) Where the order under S. 476 Cr. P. C. is clearly without jurisdiction the Magistrate may dismiss the complaint [10 M. T. 389] (4) He cannot, while acquitting the accused direct compensation to be paid under S. 250 Cr. P. C. [14 B. R. 1106]. (5) He cannot refuse to take action on the ground that the accused should have been committed to the Sessions under S. 478 [7 B. H. 29] (6) He cannot return the case to the Civil Court. [3 B. L. 47 7 B. H. (C. O.) 29]

168. No jurisdiction to question the validity of the order.—

- (1) A Magistrate to whom the case is sent under S. 476 (1) is bound to proceed with the case as provided by S. 476 (2) He cannot acquit the accused on the ground that there was no sanction as required by the law—31 C. 664; See 26 B. 755. 13 B. 109 7 B. H. (C. C.) 29
- (2) Misdescription of the Magistrate to whom a case is sent as "Collector" is not a ground for

169. ..

IX. POWERS OF COURTS GENERALLY.

(1) *Powers of Courts acting under S. 476.*

170. The Session Court—can try the case itself under S. 177 Cr. P. C. and need not proceed under S. 476.

[N. B. Under the Code of 1872 this could not be done in view S. 473—See 7 M. H. (ap) 17 7 M. H. (ap) 23. 1 A. 129 1 A. 625 (F. B.) overruling 1 A. 193; 1 B. 311; 1 B. 339; 3 C. L. 599; 4 B. 287.]

171. ...
172. **Munsiff.**—A Munsiff proceeding under S 476 Cr. P. C. cannot, as a judicial officer, direct the trial of a person who has committed an offence under S 500 I. P. C. and ask the Magistrate to deal with his order directing a trial as a complaint—6 C J 713

(2) Superior Court.

(i) Cannot.

173. (1) It cannot interpose and order an inferior Court to proceed under S 470—6 A. J. 924
174. (2) It cannot direct, on setting aside a conviction the lower Court, to take action under S. 476—(89) A. N. 95 See (90) A. N. 167
- [N. B.—In (90) A. N. 167 the District Magistrate's order was taken as made by him as the head of the police and therefore good]
175. (3) Other than a High Court has no power to set aside a complaint duly made by a subordinate Court—9 C P 26

(ii) Can.

176. Can, on appeal against an order by a subordinate

Court refusing sanction, pass orders under S. 476 read with S 195 Cr. P. C.—32 B. 181.

(3) Appellate Court.

177. **Change in the law.**—By inserting S. 476 B the Amending Act proposes to provide for an application to a superior Court as defined by sec 195 (3) against a complaint made under S. 476 (1) and the superior Court can direct the withdrawal of such complaints. The effect will be to render obsolete the following rulings (92) 22 A. N. 202 13 B 109 13 M. 144

Note.—The superior Court will be able to make any order which can be passed by a subordinate Court under S 476 (1) See S 476 (B) 34 P. R. 1880

[N. B.—the rulings in 16 A. 80—(94) A. N. 91 9 Cr. 181—1 I G 220, will be rendered obsolete]

178. **Alteration of order.**—A Court cannot

179. **A District Judge cannot**—make an order under S 476 in a case tried by a Munsiff upon an application by the defendant for sanction to prosecute a witness—16 A. 80

X. COMPLAINTS.

(1) General rules.

180. (1) A complaint must be made in writing.—See 470 (1)
181. (2) Order not strictly falling within S 476 (1) may be treated as a complaint and action can be taken on it as such—26 A. 514 See 23 A. 219
182. (3) Subs (2) of S. 478 Cr. P. C. indicates the procedure, which is to be followed when an order under subs (c) has been made—32 M 49 (F.B.)
183. (4) S 476 and 195 Cr. P. C. must be read together and the former section prescribes the procedure to be adopted by a Court when making a complaint 32 M. 49 (F. B.) 7 A. 871 (F.B.) 9 C P 26 See Rat 895 31 M 140 17 M J 554 (F.B.) [Per Miller J.]
184. (1) The words "as if upon a complaint made and recorded under S 200" in the Code of 1898 was introduced into the section to give effect in the ruling of the Full Bench in 7 A. 871—26 A. 249
185. **What does not amount to a complaint.**—Where in a case of fraudulent execution of decree, the Court did not grant sanction under S 195 or take action under S 476 Cr. P. C. but merely addressed a letter to the District Magistrate in which he stated all the facts and concluded by soliciting orders in the case, held that the letter did not amount to a complaint within the meaning of S 476 Cr. P. C.—40 A. 641.

(2) Contents of the complaint.

186. **Misdescription of the Magistrate to whom the case is sent as 'Collector.'**—

See—VIII Powers of Magistrate to whom the case is sent for trial (165) above

187. **An order which does not specify or even indicate in any way how or in what respect, the document in question is a false one, is wrong and must be set aside**—(12) M. N. 400.
188. **False statement alleged must be specified.**—There must be indication of a specific charge and of the particular statements alleged to be false [1 C 450] A Court directing the prosecution of a witness for perjury under S. 476 Cr. P. C. must specify the statements in respect of which the offence is alleged to have been committed. The object of specifying the offence and the occasion when the offence is committed is to give not only notice to the accused but also to the trying Court of the specific offences against the accused [4 Pat W 41 39 A 367]
189. **Form of the complaint.**—Where the Judge of Mainpuri passed the following order "I hereby complain against R. R. Son of G. R. Brahmam of Kajhal, that he on the 15th of July 1912, filed two false and forged bonds in suit No 337 of 1912 in the Court of Small Causes, Mainpuri, and thereby committed an offence under Ss 471-477 I. P. C. and S 209 I. P. C. The papers will be sent to the District Magistrate with the request they may be made over to a competent Court for disposal". Held, that this amounted to a complaint under S 4 (b) Cr. P. C. It was not a sanction given under S. 195 or S 476 Cr. P. C.—12 A. J. 881
190. **What the order should contain.**—An order under S. 476 Cr. P. C. should clearly specify

the exact charges against the accused, and should not leave the meaning of the Judge in doubt.—S. 179. I C. 430 (30) A. N. 119

191. The order must quash that it was part of the proceedings.—An order under S. 476 Cr. P. C. is one made without jurisdiction, in the absence of anything to show that it was part of

the proceedings in the trial in which the offence was committed.—6 M. 792 [31 M. 110 (F.B.) 32 M. 49 (F.B.) Fd.]

- 191A. Effect of omission to direct the accused to be taken before the nearest first class Magistrate—See I C. J. 630.

XI. REVISION.

(1) Order cannot be quashed because civil suit filed.

192. High Court cannot quash a prosecution based on an order under S. 476 or 478 Cr. P. C. simply because a regular suit has been filed, to establish the genuineness of the transaction forming the subject-matter of the prosecution—18 B. 531; 23 C 610

(2) Who may apply for revision.

- 192A. An application under S. 439 of the Criminal Procedure Code to interfere in revision with an order passed under S. 476 Criminal Procedure Code, can only be made by a party aggrieved thereby, that is to say, the person whose prosecution has been ordered—21 Cr 816 (N)

(3) Orders by Civil and Revenue Courts.

193. There is a great conflict of rulings as to the powers of revision of the High Court, of orders under S. 476 Cr. P. C. particularly when passed by Civil or Revenue Courts. Out of the great mass of rulings it is possible however to construct 4 general principles. They are as follows—

194. (1) The High Court cannot interfere under S. 439 Cr. P. C. with an order under S. 476 passed by a Civil Court. It can do so only under S. 115 (C P. C.—S. 622 (old C. P. C.))

Calcutta—40 C. 477 (F.B.); 21 C N 654 * S C. N. 73. 32 C. 367. See 23 C. 532.

Allahabad—26 A. 249 (F.B.). 38 A. 693; (91) A. N. 170 4 A J. 701.

Madras—See 32 M. 49 (F.B.). 26 M. 139

Burma—4 L B 339 10 Bur T. 13; 4 L B. 138 (15) U B II 83.

Oudh—4 C C 96; 17 O C. 25. Con 6 O. C. 216

[N. B.—No such limitations have been laid down in other Courts.—See Bat 895. 26 B 785. In the Punjab it has been laid down that it is competent for the High Court to revise under S. 439 an order granted by any Court Civil, Revenue or Criminal.—See 5 P. R. 1909 (F.B.); and 163 P. L. See also 9 N. 181 4 N. 140 for Nagpur ruling].

195. (2) The High Court cannot interfere with orders passed by a Revenue Court under S. 476 in the exercise of its Revisional jurisdiction under S. 439 Cr. P. C.—40 C 477 (F.B.). 32 M. 49 (F.B.); (97) A. N. 277.

[Note.—In (97) A. N. 277, it was held that the only authority which could interfere was the Board of Revenue.—But in 10 C 477 (F.B.) the High Court decided that it had power to interfere under S. 115 Cr. P. C. or S. 15 of the High Court's Act]

196. The High Court cannot interfere with an order

12 Cr. 85 (L. B.) 6 L. B. 49; 13 Cr 49. Oudh 284; 15 M. 224; 21 M. 124 (F.B.). 29 M 100. 32 M. 49 (F.B.). 33 M. 48 (F.B.)

N. B.—The only rulings laying down as contrary proposition are—35 C. 909; 26 M. 99 (F.B.) 13 M. 144. 13 B 109

197. (4) That the High Court can interfere and revise order under S. 476 Cr. P. C. on grounds other than want of jurisdiction.—33 M 48 (F.B.); [29 M. 100 (old)] See (91) A. N. 177. (97) U. B. I-2-1. Contra T B. R. 84

[N. B.—In the following case it has been laid down that the powers should be exercised only in exceptional cases—(97) A. N. 64]

198. Orders by Revenue Courts.—The High Court has no power to interfere in revision with an order passed by a Collector, under S. 476, but an application for revision should be filed before the Board of Revenue—(97) A. N. 277

199. Order passed by an Income-tax collector is not open to revision under S. 439. 3 S 86.

200. High Court cannot interfere with the order of a District Registrar under 476 Cr. P. C.—35 A. 109

(4) Order by a Small Cause Court.

201. The High Court cannot interfere with an order

respect of a statement made by him before that Court, nor can such an order be interfered with under S. 115 of the Civil Procedure Code.—16 A J 921

(5) Power to interfere at an Interlocutory stage.

202. Where the lower Court called upon a complainant to show cause why he should not be prosecuted under S. 182 I P. C. without giving him an opportunity of having the complaint enquired into, held the High Court had power to revise the order, although no final order directing the prosecution of the accused had been passed.—22 Cr. 81 (A)

(6) Grounds on which the High Court will interfere.

203. Before an order under S. 476 Cr. P. C. can be revised it must be clear that the opinion formed by the lower Court in regard to the propriety of a prosecution was not a real opinion but that "the Court acted on merely fanciful grounds, on grounds so empty, so obviously wrong that it could not be said to have formed a serious judicial opinion at all."—21 Cr. 846 (N) 9 N. 104; 23 A. 349

(7) When the High Court will or will not interfere.

204. (1) The High Court ought not to interfere with an order under S. 476 Cr. P. C. unless it can be shown to be perverse.—9N. 184. 10 N. 177; 22 Cr. 151 (N)
205. (2) The High Court should not exercise its power of revising an order under S. 476 Cr. P. C. where the Court below has arrived at a judicial opinion on evidence that there is ground for enquiring into "an offence referred to in S. 195" merely

because the High Court might disagree with that opinion.—14 N. 15

206. (3) The High Court will interfere, under S. 115 Civil Pro. Code or under S. 107 of the Government of India Act 1915, with an order under S. 476 Cr. P. C. by a lower Court, only in exceptional cases.—32 M. J. 402

207. (4) When an order under S. 476 was made apparently on insufficient grounds, and no further action was taken in respect of it by the Court making it for more than one year, held that this was a Case in which the revisional powers of the High Court might be properly exercised.—(01) A. N. 177.

(8) Miscellaneous.

208. Sessions Judge.—A Sessions Judge has no jurisdiction to revise an order of a Magistrate passed under S. 476 Cr. P. C.—34 C. 42 20 Cr. 413 (Pat.) 23 M. 205
209. Power to pass the proper order.—High Court as a Court of Revision has power to pass the proper order which the District Munsiff might have made and has power to grant the necessary sanction.—25 M. J. 393

XII. MISCELLANEOUS.

(1) Offence under S. 228, P. C. (contempt of Court.)

210. The Court in which an offence under S. 228 P. C. is committed should itself try the offender then and there, and pass orders under that section.—6 C. J. 713

(2) Presidency Magistrates.

211. Under the amended code, the Chief Presidency Magistrate has power to take action under S. 476 Cr. P. C.—[See S. 476 (2)]
This was not the case formerly—Sec. 9 B. E. 1160-3 C. J. 357.

(3) Further enquiry cannot be ordered where the Magistrate after dismissing the case has made an order under S. 476 Cr. P. C.

212. A Sessions Judge has no jurisdiction to direct a further enquiry into a case in which after discharging the accused, the Magistrate has passed under S. 476 Cr. P. C. an order for the prosecution of the complainant under S. 211. 1. P. C.—15 Cr. 1 (C); 15 Cr. 16 (C).

(4) No appeal against an order refusing to take action under S. 476 Cr. P. C.

213. A District Judge has no jurisdiction to entertain an appeal against an order of a Munsiff refusing, on the application of a party, to take action under S. 476 Cr. P. C.—12 A. J. 684.

(5) Power of Civil Bench to revise orders under S. 476 Cr. P. C.

214. A Division Bench of the High Court dealing with a Civil business of a group has jurisdiction to deal with an order under S. 643 Civil Pro. Code made by a civil court in that group. Such Bench

may also take cognizance of an order under S. 476 Cr. P. C. if such case has been transferred to the Bench by an order of the Chief Justice.—23 C. 532.

(6) No power to review order.

215. In a case of assault the Magistrate while acquitting the accused remarked that a prosecution for perjury would be a fit punishment for the complainant but he would leave it to the private party, but subsequently upon the application of the accused passed an order under S. 476 Cr. P. C.—held—that the latter order amounted to a review of the former and must be set aside.—10 M. T. 359.

(7) Cognate Sections.

216. An order under S. 476 cannot be made the basis of a trial in accordance with S. 475 Cr. P. C.—11 P. E. 1570.

(8) Witnesses.

217. Offences mentioned in cl. (c) S. 195 Cr. P. O. must be committed by a party to the proceeding but the scope of S. 476 is not so restricted, and applies to witnesses of parties.—32 M. 49 (F. B.) See 15 B. 551.
218. Arrest of witness.—S. 476 does not permit a Magistrate to arrest a witness, who has in his opinion fabricated false evidence with a view to commit him to the Court of Sessions. If he is satisfied that there is ground for enquiry into any offence referred to in S. 195 and if he thinks that no further preliminary enquiry is necessary, send the case to the nearest First Class Magistrate.—3 B. E. 145.
219. Prosecution for perjury.—It is unusual and improper procedure for the appellate Court to order prosecution for perjury in the Court or materials which are not a Court and which the witness had no to explain while in the box.—10 C. N

477. (1) Subject to the provisions of section 444, a Court of Session may charge a person for Power of Court of Session as to such any offence referred to in section 195 and committed before it, or offences committed before itself brought under its notice in the course of a judicial proceeding, and may commit or admit to bail and try such person upon its own charge.

(2) Such Court may direct the Magistrate to cause attendance of any witnesses for the purposes of the trial.

Notes.

1. **Action under S. 477 is discretionary.**—S. 477 is an empowering section and authorises a Court of Session, when an offence referred to in S. 195 Cr. P. C. has been committed before it or brought under its notice as mentioned in the Section, to charge the offender and to commit or admit to bail and try him upon its own charge. The word "may" in S. 477 ought not to be read as "must". [26 C. 434]

2. **Trial should not be summary.**—"See 477 grants a power which is very seldom exercised. It gives the power to a Court of Session to charge a person for any offence referred to in S. 195 and committed before it. It further gives the power to commit for trial or admit to bail and to try the person for the charge it has framed, but the section nowhere lays it down that the trial is to be a summary trial nor does the section anywhere demand a decision which should be more prompt and speedy than that of any ordinary trial. The very powers granted in that section to a Court of Session are so unusual, that it seems to me it is the bounden duty of any Court exercising them, to be at pains, to give the accused a fair and impartial trial, in view of the fact that the Court has already had before it a certain amount of evidence upon which it may have already formed an opinion."—Per Taitball J. in 41 A. 197.

3. **Change of Law.**—S. 473 of the Code of 1872, laid down that "no Court shall try any person for an offence committed in contempt of its own authority." The term "contempt" included not only offences under Chapter X of the Penal Code but all contempts of Court [1 B. 339. See 10 B. H. 424; Rat 70. 2 A. 405]. The prohibition in S. 473 extended to the offence of giving false evidence [1 B. 311. 7 M. H. (appx) xxviii]. But see 2 Weir 608 and to offences described in Ss. 467, 468 and 469 of the Cr. P. C. 1872 [7 M. H. (appx) xvii]. The prohibition which was probably intended by the Legislature to apply in Magisterial Courts, [See 1 M. 305], was by reason of the general terms in which it was couched, held applicable to Sessions Courts as well [1 B. 311. 11 B. H. (C. C.) 98. 1 C. 570. 21 W. R. 37. 3 M. 254. See 3 M. 351; 5 C. 184 (187). 2 A. 101]. The term "try" was however held not to apply to appeals from conviction,

S. 487 post.] This was a power which the Sessions Court enjoyed under the Code of 1861, S. 172 [12 W. R. 69. 31] but of which it was unintentionally deprived by the Code of 1872. The phrase "in the course of a judicial proceedings" is taken from the judgment of Norman J. in 12 W. R. 69. As to the law as it stood before—See 5 A. 103. 14 A. 354. (1897) U. B. ('97.01): 127 (130).

4. **S. 477 applies only to offences committed before itself.**—S. 477 of the Code of Criminal Procedure deals with cases which transpire before the Court of Sessions, itself, and in which the Sessions Judge is in a position to declare without any further enquiry that a person against whom action is necessary under that Section, has in fact committed an offence mentioned in S. 195 Cr. P. C. [5 C. N. 640; 12 W. R. 31]. Where a witness made a statement before the Sessions Court which contradicted that made by him before the committing officer and no evidence is given to show which of the statements is true, it cannot under S. 172, Act XXV of 1861 (=S. 477), be said that an offence has been committed under the coram actione of the Sessions Court [12 W. R. 69. O. S. 172. O. S. 208. See 3 B. L. (A. C.) 33].

5. **Power of Sessions Judge to try offences committed before him as District Judge.**—A Sessions Judge has power to try a person for an offence punishable under S. 196 I. P. C. when he has as a District Judge, given sanction for the prosecution [16 C. 776 (F. B.); 7 C. N. 708 ('97) U. B. (1897.1901) 127, 6 B. 479; 15 B. R. 104. But See 6 A. 103].

6. **...**

provisions of S. 474 Cr. P. C., convicted him for perjury. Held, that the reference to the Judge

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P. C.—6 A. 103.

7. **Should the case be transferred when Judge has already formed strong opinion?**—It has been held in (82) 2 Weir 608 that

an accused person for any offence referred to in S. 195 committed before himself—a power which is peculiar to that Court [See 8 C. N. sec. See

this section is an exception to the general rule that no Court shall try a person for an offence committed in contempt of its own authority. Where the offence of fabricating false evidence has been committed in the Sessions Court, there is nothing illegal in a Sessions Judge trying it and the fact that the Sessions Judge had expressed an opinion prejudicial to the accused is no ground for the transfer of the case, as that is a circumstance which the law necessarily contemplates when it authorises a Sessions Court to try a case. The Calcutta High Court has taken a different view in 3 C N 615 and the Allahabad High Court in (57) A N 139 in which Edga C J remarked "If I as a Sessions Judge, had directed a prosecution in consequence of a matter that appeared before me at a trial, I would much prefer not to be the Judge to try the prisoner for the offence which I had directed him to be prosecuted for, and would ask the High Court to transfer the case for trial to some other Judge."

8. Sessions Judge has jurisdiction only when he proceeds under this section.—Where an offence committed before a Sessions Judge in contempt of his authority is not taken up by him under the authority of S. 472 (=S 477) he cannot try it notwithstanding that it is exclusively triable by a Court of Session [(82) 2 Weir 609 (57) 2 Weir 609 See 14 A 354]

9. Is there any necessity for preliminary enquiry?—There is no provision in S. 477 Cr P C with regard to any enquiry [18 B R 234]. This is a fact which is to be noted as distinguishing this section from S. 476 which expressly provides for a 'preliminary enquiry'. In *Umeh Inre* [5 C N 630] it is laid down that S. 477 deals with cases which transpire before the Court itself and in which the Sessions Judge is in a position to deliver, without any further enquiry, that the person against whom action is necessary under that section has committed an offence. In (90) 2 Weir 601 however it has been held that where the facts do not make out any case as

against the accused which would justify the Judge in committing without further enquiry under S. 477 he ought not to convict him on his own charge.

10. Procedure.—Charge must be framed—S 477 contemplates that there should be a charge upon which the complaint is based, in other words, the person accused of having committed the offence should know the specific nature of the accusation against him so as to be able to answer it.—See 5 C N 615 29 C 434 3 C N 630

11. Jurisdiction to hear appeals.—The jurisdiction of a Sessions Judge to hear an appeal from a conviction is not ousted by the fact that the same Court granted the sanction for the prosecution of the offence of which the appellant was convicted [(95) A N 225. But See 14 A 354]

[Note.—In (95) A N 225 the word "try" has been held to include the hearing of appeals. The word "try" in S. 473 of the Code of 1872 was held not to include the hearing of an appeal.—(82) A N, 46. See (79) 2 Weir 607 and Note No 3 above.]

12. S. 477 does not override S. 339.—There is nothing in S. 477 Cr P C to justify a conclusion that it is intended to override the last clause of S. 339 Cr P C so as to dispense with the sanction of the High Court when false evidence is given in a sessions trial by a person whose pardon has been withdrawn.—42 P R 1881

13. Power of High Court.—The High Court has power, in the exercise of its powers of revision under S. 297 of the Code of 1872 (=S. 439), to quash a commitment made by a Court of Session under S. 472 of that Act (=S. 477) [Per Stuart C J. *Spankie J. dubitante*].—2 A 398.

14. to answer charges not yet framed under S. 183, was not warranted by S. 477 Cr. P. C

478. (1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of complete inquiry and commit to High Court or Court of Session. High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(2) For the purposes of an inquiry under this section the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

Notes.

Meaning of terms.

1. Application of the section.—The power of a Civil Court to commit a case to the Sessions is limited to cases triable exclusively by the Court of Sessions, and to such cases only when the offence charged has been committed before the Civil Court itself 4 B. 287.

2. (i) "Any such offence."—The words "any such offence" in S. 478 mean an offence referred to in S. 183 and not an offence qualified by the circumstances under which it is committed, that is as described in cl. (c) of subsection (i) of S. 183, by a party to any proceeding in any Court [22 C. 1001 15 B 581 Com 15 B 234] 11 Jan

(2) Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

Notes.

1. **Meaning of contempt of Court.**—Any act done or writing published, calculated to bring a Court or a Judge into contempt, or to lower his authority, or to obstruct or interfere with the due course of justice or the lawful process of the Court, is a contempt of Court—33 B. 340 See Note No 3 under General Notes *above*.

2. **Scope of S. 480.**—It should be noted that the powers of a Court other than the High Court are circumscribed by the use of the expression "is committed in view of presence of any Civil, Criminal or Revenue Court." The powers of the High Court as Supreme Court of Record are the same as in England not by virtue of the Penal Code and the Criminal Procedure Code but by virtue of the common law of England which was introduced at the time of the establishment of the Supreme Court. The High Court has power to punish for contempts committed out of Court *e.g.* comments on proceedings pending in Court. It makes no difference whether the comments are made in writing or in speeches of public assemblies. [See *Sunderia Nath Banerjee* 10 C 109 (P C) See Note No 2, under S. 483 *infra*]

3. **S. 480 confined to offences enumerated in the section.**—The accused was convicted under this section for "walking with creaking shoes" near the Court room. *Held* the Court acted illegally as it had the power to act under this section only if the accused had committed one of the offences enumerated therein [5 M. T. 256]. The offence under S. 174, I. P. C. is not within the purview of this section. A Magistrate cannot therefore take cognizance of such offence, (committed against his own Court), but is bound to send the case for trial before another Magistrate—[13 W. R. 66 14 W. R. 74 15 W. R. 88]. It was however held in 4 M. R. (Ap) 51 and 52 that a subordinate Magistrate who issues a summons may take cognizance of the offence of disobedience to that summons and convict the accused under S. 174 I. P. C.

3A. **Section not applicable to Village Munsiffs.**—The accused was charged under S. 224 I. P. C. with having intentionally insulted a village Munsiff while sitting in charge of a judicial proceeding. The Munsiff did not prefer any complaint nor sanction the prosecution. The accused was tried and convicted by a second class Magistrate who took cognizance of the case on a police report. *Held* that S. 480 and 482 do not apply to village Magistrates. *Held* also that although no complaint was made by the village Munsiff the defect was covered by S. 537—15 M 131; but see (04) AN 266

4. **Defamatory statements made in a petition.**—(1) Where parties to proceedings make use of objectionable or defamatory expressions against the trying Magistrate either in the course of their pleadings or in a petition submitted by

them, the proper course to be adopted by the Magistrate is to take proceedings against them for defamation, not in his capacity as a judicial officer but in his personal capacity, since the said statements cannot be said to be made in the view and presence of the Magistrate or with the object of intentionally insulting him as contemplated by S. 228 I P C: the summary procedure in S. 480 does not apply to such cases—15 Mys 9

5. (2) In the course of the trial of a Criminal case against the accused, he presented an application containing some objectionable and defamatory expressions against the Court with reference to the conduct of the Court in another case brought by the accused against some other persons. On this the accused was proceeded against under S. 480 Cr P C and sentenced under S. 228 I. P. C for committing contempt of the Court in its presence. *Held* that the conviction was illegal, the use of the objectionable and defamatory words in the petition cannot be regarded as a contempt committed in the presence of the Court—582 P L 1904 See 34 P R. 1869.

6. **Scandalous allegations in a petition of transfer.**—Where an accused person in making an application for transfer of a case pending against him inserted in such application allegations of a scandalous and defamatory nature concerning the trying Magistrate, *held* that there being no intention on the part of the applicant to insult the Court, but merely to procure a transfer of his case, the conviction under S. 228 I P C was bad.—[198] A. N 145]

Offence under S. 228 I. P. C.

7. "Intentionally insulted or otherwise

or the objections untenable. There ought to be a spirit of give and take between the Bench and the Bar in such matters, and every little persistence on the part of a pleader should not be turned into an occasion for a criminal trial unless the pleader's conduct is so clearly venious, as to lead to the inference that it is a deliberate insult

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witness called on, when the Magistrate was examining the witness; *Held* that the order of the Magistrate was ill advised and illegal [29 P. L. 1804]. The objections taken by a Counsel to the

Court's allowing the Court Inspector to use various insulting expressions and otherwise to annoy and interrupt him while conducting the defence cannot be said to be intentional interruption within the meaning of S 224 I P C—[O S 186]

8. (2) **Provarication whether an offence under S. 228 I. P. C.**—Although the refusal or neglect to return direct answers to questions does not necessarily constitute an offence under S 224 I P C.—[4 B. II 6 7] or an offence under S 228 I P C is committed because the witness gives inconsistent evidence and gives his evidence reluctantly, thus taking up unnecessarily the time of the Court—[15 W R 5] It cannot be laid down as a general proposition that no amount of provocation of a witness will constitute an offence under S 224 I P C [Rat 69. Cr R 16 3-71. Rat 473 10 B II 69 3 M. T. 286 See 13 C N 685 (P. C.)] A Court ought not to take serious notice of a mere laugh and hesitation in speaking—[4 M II 140]

9. (3) **Disobedience of order.**—To leave the Court when ordered to remain or to make signs from outside to a prisoner on his trial was held not to be an offence under S 224 I P C in 5 M II 13

10. (4) **Person making frivolous bid at Court Sala.**—A person who bids for an estate at a sale in execution of a decree knowing that he is not able to deposit the earnest money, obstructs the business of the Court and is punishable under S 228 P C—[W R (S. M) 3]

11. (3) **Refusal to answer questions.**—Where a witness does not merely prevaricate but persistently refuses to answer any question whatever put to him by the Judge, his conduct amounts to an intentional interruption of the proceedings within the meaning of S 228 I P C and S 480 Cr. P O—[14 P R 1918]

- 11A. (6) **Refusal to repeat *Latma*.**—Where a Mahomedan refused to repeat *Latma* in order to complete the oath, held that the accused could not be required to repeat *Latma* even though it formed part of the oath current in the district, and the conviction for contempt under S 480 Cr. P. C was illegal—[20 P R 1902]

12. **Contempt of Court.**—[O S 186]

W R 64] While the Tashildar was engaged

date On the Tashildar pressing for immediate payment in full, accused was alleged to have abused him and on an order being given for his arrest, to have resisted such arrest Held, that when the acts as described above were committed by the accused, the Tashildar was not sitting in any stage of a judicial proceeding and a conviction under S 228 P. C. and S 435 Cr. P. C. [S 480] was unsustainable [40 P. R 1881] A Tashildar not sitting as a Court but doing work under

S. 10 of the Land Revenue Act was insulted by the accused Held that the Tashildar was not sitting in some stage of a judicial proceeding within the meaning of S 480 [30 P. R. 1886]. In an enquiry into a case of a breach of the peace by a Second-class Magistrate conducted merely to ascertain whether he should make a report to his official superior, a person who behaved insolently towards him Held that the Magistrate could not be said to be exercising any powers conferred by the Code or conducting any proceeding in which evidence might be legally taken. Hence the offender could not be proceeded against under S 480—[2 Weir 605] A proceeding under this section instituted immediately after the reading out of the final order in the case (in the course of which the contempt took place) cannot be objected to on the ground that the judicial proceeding had terminated with the final order, [16 P R 1897]

- 12A. **When S. 175 I. P. C. is in applicability.**—Where the production of a document is not necessary for the decision of a case in which the document is called for, the person failing to produce the document cannot be convicted under S 175 I P C [4 Pat W. 65 II Or, 20 (A), See 12 B 63] In order to sustain a conviction under S 175 I P C, the particular document must be specified in the summons, [(90) A. N 171].

Note.—Civil Courts should proceed in the manner prescribed by order XI r 21 and not under S 175 I P O—[15 P W 1910]

13. **Contempts must be dealt with "before the rising of the Court."**—The provisions of S 489 should be applied then and there, or at any rate before it rises, by the Court in whose view or presence, a contempt has been committed, if it considers that it can be properly and adequately dealt with under this section. The proper procedure is, when the Court cannot take up the matter at once, to detain the accused and to deal with matter before rising Where the Magistrate postponed his final order for some days, in order to afford the accused an opportunity of showing cause, held the irregularity was cured by S 537 Cr. P C—[11A 361 6 C J 713 see 12 B 53]

- 13A. **Officer acting in dual capacity.**—An officer before whom, while acting in a particular capacity an offence under S 224 I P C. is committed cannot in another capacity, take up and try the offence [12 W R 18]

14. **Is it optional with the Court to act under the section or to prefer a complaint under S. 195 P?**—In 13 B L (np) 40 it was held that a Sub-Register being competent to act under S 436 Cr. P C (S 480) with reference to an offence under S 224 I. P. C. committed in his presence, cannot charge the accused before an assistant Magistrate The proceedings before the latter were quashed But this ruling cannot be accepted as sound in view of cl. (b) of S. 195 Cr. P C. *Supra*

15. **Can the High Court punish for contempts of Subordinate Courts?**—"I feel

to punish for contempt (of Mofassil Courts)".—*Per Mookerji, J.* [The matter is elaborately discussed both by *Jenkins C. J.* and *Mookerji J.* in 17 C. N. 1253 (S.B.) who dissent from the ruling in 21 M. J. 832 (F.B.). See also *R. v. Lefroy* 8 Q. B. 134. *R. v. Brompton County Court Judge* 62 L. J. Q. B. 604. *Ex parte Bradley* 74 U. S. N. 214 *Ex parte Tillinghast* 29 U. S. VII 759

16. **Punishment.**—The power to punish for an offence under S. 228 I. P. C. is limited by the terms of this Section. The Magistrate cannot impose the full amount of punishment prescribed by S. 228 I. P. C. but should limit the punishment to a fine of Rs. 200 with imprisonment, in default, of 30 days. [2 Weir 603; See *in M. H. 16*] If the Court thinks the punishment ought to be more severe, it should act under S. 452 *infra*. [See also 10 W. R. 47]

17. **Right of appeal.**—A Sessions Judge cannot decline to interfere on appeal from an order under S. 450 Cr. P. C. merely because in his opinion "the matter is a mere trifle." He is bound to hear the appeal and to come to a finding whether the conviction is legal or illegal.

[Rat 978]

18. **Imprisonment in default to be in Civil Jail.**—Though this section does not in terms say

that the imprisonment in default is to be in the Civil Jail, the offenders are generally sent to that jail. When a person is committed to jail for contempt, the Government is bound to supply him with rations in the same way in which they are supplied to the other prisoners in the jail—3 W. R. (Cr. Lct) 21.

19. **Limit suit against Magistrate taking action**

228 I. P. C. committed by the Appellant (1899) by walking in view of the respondent with shoes on, while the latter was discharging his duties as a Magistrate and where it was found that the respondent had acted *bonafide*; held, that the respondent was justified in his action and that no suit could be maintained against him—9 M. T. 444

20. **Form of Warrant.**—As to form of warrant in certain cases of contempt when fine is imposed—See Sch. V. Form No. 38.

21. **Brief History of the section.**—In Sec. 1 of Act XXX of 1841, "Zillah or City Magistrate, Joint Magistrate or other officer under a Magistrate empowered to try a civil case or any superior or inferior Court of the East India Company was authorised to fine "all persons using menacing questions or expressions or otherwise obstructing justice" any amount not exceeding Rs. 200 or in case such fine be not paid to be imprisoned for any period not exceeding one month

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult.

Notes.

1. **Record of statement.**—In a proceeding for contempt it is fatal to the conviction if the Judge fails to record with the finding and sentence, the statement of the offender [*Lekhi v. Palee* Ram 1 N. P. (Ed. 1873) 241]

2. **Record must show nature and stage of**

the nature of which should also be stated
[36 P. R. 1859, 12 W. R. 64]

3. **Direction in S. 481 mandatory.**—The directions in S. 481 are clearly mandatory, and the omission to record the particulars mentioned in the section, in any proceedings taken under S. 480 is fatal to such proceedings. [10 C. N. 1063]

4. **Duty of the Court.**—A Criminal Court inflicting a fine for contempt of Court should specifically

record its reasons and the facts constituting the contempt with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order—4 M. H. 229; See 13 C. N. 695 (P. C.). *In re Pollard* L. R. 2 P. O. 106

5. **Is omission to record statement curable?**—Although a failure to comply with the provisions of S. 481(2) Cr. P. C. is only an irregularity which may be cured by S. 537, it will not be condoned, when it cannot be gathered from the record what was the judicial proceeding or stage of judicial proceeding or stage of stage of judicial proceeding at which the offence was committed and when it is doubtful if the evidence established the fact that the interruption was intentional.—15 Cr. 621 (M) But See Note No. 3 above.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be

Procedure where Court considers that case should not be dealt with under section 480

imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided

Notes.

1. **Distinction between Ss. 480 and 482.**—Where, in punishing for contempt of Court, the summary procedure sanctioned by S. 163 (= S. 480) is followed, the Court must sit as a Court before which the offence was committed and not in any other capacity and is bound to take cognizance of the contempt on the day on which it was committed. In such a case the imprisonment cannot be added to fine as a punishment. In a case which is not dealt with in a summary manner, the offence must, under S. 163 (= S. 482), be tried by an officer other than the person before whom the contempt was committed.—[12 W. R. 18] Commitment to another Court is necessary in all cases of contempt save where such contempt is committed in the presence of the Court first taking notice of it and imprisonment without option of fine or fine in excess of Rs. 200 is deemed requisite.—[Rat '01 G M H (Ap) xvi]
2. **Object of the Section.**—"Section 163 (= 482, distinctly contemplates that the trial is to be by a judicial officer other than the person before whom the contempt was committed. There is nothing to warrant the inference that an officer before whom, while acting in a particular capacity, punishable under S. 228 1 P C can in another capacity take up and try the offence, an offence committed against himself. If he could do so, it would be in violation of that fundamental rule in the administration of justice that no man can be a judge in a case wherein he is interested.—*Per Newman J* in 12 W. R. 18 (21)
3. **Bail.**—In a case of contempt, the Court before which the offence is committed, is bound under

S. 163 C. P. (= S. 482) to accept bail if sufficient bail is tendered.—[12 W. R. 18] A detention in jail without reasonable cause will render the Court liable to an action in damages notwithstanding Act XVIII of 1850.—[11 W. R. 19].

4. **Application for release.**—When a person is in custody for contempt of Court, the Court may order his release.—[11 W. R. 19].

5. **Procedure.**—Under S. 163 C P (= S. 482) of a Court before which the offence of contempt, under S. 179 P C is committed, considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt and the statement of the accused, and forward the case to a Magistrate.—[1 W. R. 49, 12 W. R. 19].

jurisdiction [7 B H 102 & B R 343] But where the inability to record the statement was due to the offender (a barrister) abruptly leaving the Court house, the omission was material.—[2 Weir 604]

6. **Under S. 482, proceeding need not be drawn up the same day.**—S. 482 does not require a Magistrate to draw up the proceedings on the same day that the offence is committed. The section need not be read along with S. 480—35 C 161

483. When the Local Government so directs any Registrar or any Sub-Registrar appointed

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

Notes.

1. This Section is based on 13 B L (app) 10—22 W. R. 10 which laid down that a Sub-Registrar is a public servant and proceedings before him are judicial proceedings under this section.
2. **Scope of S. 483 Cr. P. C.**—Although it appears from S. 483 Cr. P. C that the Local Government may constitute a Sub-Registrar Court for the purpose of certain sections

those dealing with contumacious contempt, still, from the fact of authorisation under that section being deemed necessary, it is to be implied that he is not to be considered a Court for ordinary purposes. A provision that a particular officer may, for particular purposes, be deemed a Court, does not warrant the extension of that provision so as by inference to produce a group of rules in conflict with the general system. A provision such as that contained in S 483, is an encroachment on the general system, and exceptional provisions are not to be drawn out into all their logical consequences—12 B. 36 See 4 M. J. 189

Note.—A Registrar acting under Ss 72 to 75 of the Registration Act is a Court for the purposes of S. 195 Cr. P. C.—15 M. 138 (F. B.) [ov 12 M. 201]; 10 M. 154.

3. **Disobedience of an order to produce a document.**—A person called upon by a Sub-Registrar to produce this original document, which was registered in his office, to enable him to compare it with the copy of the deed in the Registration office register, which, it was suspected was tampered with, is not legally bound to produce it, and he cannot on his failure to do so, be convicted under S 175 I. P. C.—2 C. J. 621

484. When any Court has under section 480 [or section 482] adjudged an offender to punish—
 Discharge of offender on submission or apology. [or forwarded him to a Magistrate for trial] for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Notes.

1. **Acceptance of apology.**—In the case of *Bambali Rai* 11 A. J. 935 Babu Ram Bali Rai, Pleader, asked for an adjournment of his case. He was asked to wait till his case was called on. He went out of the Court room to spit but on coming back he found that in the meantime his case had been taken up and the Munsiff was writing his order. He made a motion to the Court but the Court did not take any notice of it. The pleader of the opposite side thereupon said, "Let the objection be dismissed. You can file a regular suit." Thereupon Babu Ram Bali Rai said, "*Thaine jone Mulidhuni khary ho jone ap dillagi karle hain*" The Munsiff understood that these words were used with reference to him and drew up proceedings against the pleader for contempt of Court. The pleader gave assurance that the words were not meant for him but for the pleader on the opposite side. The Munsiff did not accept this assurance and punished the pleader. The District Judge refused to interfere. Knox J in revision said "I think the learned Munsiff should have accepted that assurance as coming from a gentleman of the standing of the Pleader, as full and real assurance that he never intended to make use of that expression and did not use that expression with reference to the Court. The Judge will always do well to give the fullest belief to the words addressed to him in real earnest from a gentleman at the Bar. . . . The very fact, that the Pleader assured the Munsiff that the words were never addressed to him, ought to be sufficient assurance to the Munsiff that such was the case." Knox J. did not pass any order leaving the Munsiff to act upon this expression of opinion but as the latter did not accept the assurance even then, Knox J. set aside the order and directed the fine if paid to be refunded.

2. "The Court, on the 1st July submitted a petition saying that the accusation against him was false, and in his petition mentioned various causes of difference all reflecting on the personal character of the Magistrate. The Chief Court issued notice on the counsel to show cause why he should not be suspended for grossly improper conduct. The Court however did not pass any sentence on the accused counsel as the latter expressed regret and threw himself entirely on the mercy of the Court and asked leave to withdraw the offensive petition and with it all the offensive allegations—555 P. L. 1902

3. **Court ought not to take serious notice of sudden lapses during a moment of excitement.**—A coarse expression used by a litigant but not addressed to the Court can hardly be treated as an intentional insult to the Court or interruption of the proceedings under S. 225 I. P. C. even if it is actually overheard by the presiding officer. Litigants are bound to conduct themselves in an orderly manner, but too much notice should not be taken of the sudden lapse during a moment of excitement, into language which is unfortunately too common among the lower class of rustics and is not meant to be taken seriously. Where a litigant is detained and adopts a submissive attitude when brought before the Court after this excitement has worn off, a due admonition or a petty fine, at the most is sufficient for preservation of the order—23 P. W. 1812 [P. Kensington J.]

485. If any witness or person called to produce a document or thing before a Criminal Court imprisonment or committal of person refuses to answer such questions as are put to him or to produce refusing to answer or produce document any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 182, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Notes.

- 1. Powers of chartered High Courts.**—The three Presidency High Courts are by express terms of the Letters Patent, Courts of Record. "All Courts of Record are the Courts of the King in right of His Crown and Royal dignity, and therefore no other Court hath authority to fine and imprison for contempt of its own authority" [Stephen's Commentaries 15th Ed 1905 Vol III p. 314]. The High Courts have power to punish contempts not by virtue of the Penal Code but by virtue of the common law of England which was introduced at the time of the establishment of the Supreme Court, [Charter dated 26th March 1774 granted under 13 Geo 3 C 64. See Cl 1]. A High Court can punish for contempts not committed "in its view or presence" [See 10 C 109 (P C) 11 C N 273 (P. C.) 45 C 109 11 C 173 (215) 33 C 927 15 C N 771 8 W R 32 (Per Sir Barnes Peacock C J) 33 B 240 8 B 350 14 B R 231 2 B R 170 Rat 644 21 M J 532 (F. B.)].
- 2. Refusal to produce documents.**—See Note No 12 A under section 480 *Supra*.
- 3. Refusal to answer questions.**—See Note No 11 under S 480 *supra*. The terms of S 182 of the Evidence Act, when read with the rest of the

Act, affords protection only to answers to which a witness has objected or has been constrained by the Court to give—[3 M 271 (F. B.) 12 B 440. *Queen v Williams* 26 Can R 583. But see Q t. *Hammond* 34 Crim J no 5 p 164 2 C. N. clxiv Rat 360 15 M. 63 2 Weir 702 21 C. 392 16 A 83]. Under S 165 of the Evidence Act, a Judge has power to ask any question he pleases about irrelevant facts, if he does so in order to discover or obtain proper proof of relevant facts. But where the question is asked with a view to criminal proceedings being taken against the witness the witness is not legally bound to answer it and he cannot be punished under S 179 I. P C for refusing to answer—[10 B. 185; 13 B 609 (321)].

- 4. Is a complainant a witness within the meaning of S. 485?**—A complainant can hardly be held to be a witness punishable for refusal to answer either under S 485 Or I' C. or under S 174 I P C—13 B 600.
- 5. Not exceeding 7 days.**—"It is advisable but not necessary to limit the period of commitment to a fixed time,"—[1 I J (N S) 23]. The duration of imprisonment should not be too long or severe. *In re Davies* (1888) 2 Q B D 236.

486. (1) Any person sentenced by any Court under section 480 or section 185 may, notwithstanding anything hereinbefore contained appeal to the Court to which appeals from convictions in contempt of Court, which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of small Causes in a presidency town shall lie to the High Court, and

an appeal from such conviction by any other Court of small Causes shall lie to the Court of Session for the sessions division within which such Court is situated.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which

it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the presidency-towns, to the High Court.

Note.

1. "Ordinary appealable"—means appealable in majority of cases "[11 B 438 (440)] An order

by a civil Court refusing an application to commit for contempt is appealable [25 C. 236]

487. (1) Except as proved in section 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court * * * shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session of High Court from himself committing any case to such Court.

Notes.

1. Object of S. 487.—The prohibition in the section is a personal prohibition, the mischief to be prevented being that the same person should not decide a matter which he may have already prejudged. It does not refer to the office of the Magistrate or Judge before whom an offence of the class described in the section is committed, but only refers to the person of the Magistrate—1 M 305.

2. The prohibition in this section applies to all contempt of Court.—S. 473 (=487), which says that no Court shall try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Chap. X of the Penal Code. It extends to all contempt of Courts.—1 B 3339 See 24 M 262. 12 W. R. 18 15 W. R. 89

Note.—This section is not intended to include offences which under the Penal Code are classes as offences against public justice in contradistinction to offences in contempt of the Court's authority. Nevertheless a Magistrate, before whom an offence under S. 196 I. P. C. has been committed, may not under S. 271 himself try the accused person for that offence—[1 A. 129]. The first part of the ruling in 1 A. 129 however is obsolete in view of the words "any offence referred to in S. 195" in S. 487.

3. As to the change of Law.—See Note No 3 under S. 477 *Supra*.

4. S. 487.—[11 B 438 (440)]

5. Judge of a High Court.—See Note No 1 under S. 485 *Supra*

6. Disobedience to lawful summons (S. 174 I. P. C.)—S. 171 I. P. C. is one of the

sections referred to in S. 195 Cr. P. C. and having regard to the provisions of S. 487 Cr. P. C. therefore an offence under S. 174 I. P. C. cannot be tried by the officer whose order is disobeyed.—16 A. J. 432. 13 W. R. 66; 14 W. R. 74; 15 W. R. 2; 15 W. R. 68 1 Weir 82. 2 Weir 612 18 P. R. 1875

7. Disobedience to lawful order promulgated by a public servant.—A Magistrate who passed an order under S. 144 Cr. P. C. directing the petitioners "to abstain from going either to ply any ferry boat or to erect any banal on the lake etc" cannot, upon the order being disobeyed, in view of S. 487 Cr. P. C. take cognizance of the offence under S. 184 I. P. C.—23 O. N. 520 ('83) A. N. 222; 24 M. 262 1 B 339 10 B H 421 Rat 904. 13 O. N. certior.
8. Offence under S. 207 I. P. C.—A Magistrate is debarred from trying a case under S. 207 I. P. C. when the offence was committed with reference to property attached by him under Ss. 88 and 89 Cr. P. C. and which came to his knowledge in the course of judicial proceedings.—21 Cr 696 (i).

9. False complaint (S. 211 I. P. C.)—The Court which dismisses a complaint has no jurisdiction to try the complainant for preferring a false charge.—3 P. R. 1875 4 P. R. 1676
10. Offence under S. 175 I. P. C.—The ruling in ('89) 13 M 24 to the effect that an offence under S. 175 I. P. C. does not come in under any of the

sections expressly mentioned in S. 480 of the Code of 1894.

11. Offences under S. 193 I. P. C.—The rulings in 1 A. 102 and 1 A. 103 to the effect that the

Magistrate before whom an offence under S. 193 1. P. C. is committed is himself competent to try the case were over-ruled in 1 A. 623 (F. B.) and dissented from in 1 B. 311. See also 10 H. H. 73 3 M. 234 7 M. H. (Ap.) 17 3 C. L. 599. 22 W. R. 40 The rulings in 18 W. R. 15 and 22 W. R. 49 are no longer good law. The rule applies also to an abetment of the offence [7 M. H. (Ap.) xxviii.]

[Note.—S. 193 (1) (b) has reference to an offence under S. 211 1. P. C. but only when such offence is committed in or in relation to any proceeding in Court.—12 P. B. 1903, See 3 A. 322.]

12. A Magistrate is not debarred by law from trying an accused person under S. 174 of the Penal Code, for disobedience of Summons issued by him in his capacity of Mamlatdar [18 B. 380 (F. B.)]. But See Rat 70. 904] The principle underlying these decisions has not been accepted as sound in 22 P. B. 1879 (in which the same officer was both a Small Cause Court Judge and Cantonment Magistrate) and 2 A. 403 (in which the Settlement Officer who issued the Summons tried the disobedience to it as a Magistrate).

13. Prohibition restricted to Judges of Criminal Courts Magistrates.—A Sub-Magistrate convicted certain persons under S. 174 of disobedience to summonses issued by him as tahsildar Held that the convictions were legal [6 M. H. (Ap.) 44] Where sanction is given by a Deputy Collector and Magistrate, as a Revenue Officer, he is not debarred from trying the case himself as a Deputy Magistrate [2 Weir 613] A Magistrate is not precluded from trying an offence referred to in S. 193 of the Code, when the offence is alleged to have been committed in contempt of his authority not as a Magistrate but as a Civil Judge [(59) U. B. (07-01)]

14. Sessions Judge cannot try a person for an offence committed before him as District Judge.—In S. 487 effect must be given to the words "as such Judge or Magistrate" and the meaning of that section is that, when an offence referred to in S. 193 has been committed before a Judge of a Criminal Court or Magistrate or in contempt of his authority or brought under his notice in the course of a judicial proceeding he cannot himself try such offence. A Sessions Judge therefore has jurisdiction to try a person for an offence under S. 193 P. C. when, *br*, as District Judge, has given sanction for the prosecution under S. 193 Cr. P. C. [16 C. 766 (F. B.) 18 B. 350 6 B. 479. 7 C. N. 708 (97) U. B. (97-01) 127 (130) See 1 A. 129] A Sessions Judge is not debarred from hearing an appeal from a conviction by the District Magistrate to whom he had sent the case under S. 476 Cr. P. C. [7 C. N. 708 2 Weir 607. Con 2 L. B. 302] The ruling in 16 C. 121 to the contrary was overruled by 16 C. 766 (F. B.)] The prohibition would apply only

taken in accordance with either S. 476 or S. 477 Cr. P. C. and the accused was committed by the same, the Sessions Judge was precluded from trying the case by the provisions of S. 487 [2 Weir 609].

15. District Magistrates.—It was held in 20 M. 383, that a District Magistrate who has declined to revoke a sanction to prosecute a person on a charge of forgery is precluded under S. 487 from himself trying the case, as an order revoking or refusing to revoke a sanction is a judicial proceeding. But in 27 C. 452 it was held that where upon a Police report that an information was false, the District Magistrate gave sanction to prosecute the person giving such false information, held that S. 487 did not apply to the case and prevent the District Magistrate from hearing an appeal from a conviction of such person.
16. When a transfer is desirable, although the Judge is not disqualified.—The High Court, does not, as a general rule, exercise its powers of transfer, in a case of forgery or perjury solely on the ground that the Judge who is to try the case has already formed an opinion sitting as a Judge on the Civil side, that the document has been forged, or the perjury committed. But when the transfer can be made without any risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses the transfer may be proper not only as a fair concession to the person charged, but as a means of relieving the Judge from a position which he would himself desire to avoid.—[5 M. H. 212] Where a District Magistrate procured the initiation of a number of prosecution against the same person, and one of them resulted in conviction, came up before him in appeal, the High Court considering that it was not altogether secure that he should hear the appeal, ordered its transfer to the Sessions Judge.—[24 W. R. 58.]

17. [Note.—The offence of fabrication of evidence]

that the Sessions Judge had expressed an opinion prejudicial to the accused is no ground for the transfer of the case, as that is a circumstance which the law necessarily contemplates when it authorises a Sessions Court to try such cases.—2 Weir 609]

CHAPTER XXXVI

OF THE MAINTENANCE OF WIVES AND CHILDREN

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance

(3) If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases:

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown on application made within three months from the date thereof.

(7) The accused may tender himself as a witness, and in such case shall be examined as such.

(8) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(9) The accused may be proceeded against in any district where he resides or is, or where he last resided with his wife, or as the case may be, the mother of the illegitimate child.

Proposed amendments to the section.—In section 488 of the said Code—

(1) In sub-section (3), for the words "wilfully neglects" the words "falsely without sufficient cause" shall be substituted.

(2) To the same sub-section, the following proviso shall be added, namely:—

"Provided further that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due

(1) Sub-section (7) shall be omitted.

(4) Sub-sections (5) and (9) shall be renumbered (7) and (8), respectively, and in the last aforesaid sub-section for the words "The accused may be proceeded against" the words "Proceedings under this section may be taken against any person" shall be substituted

ARRANGEMENT OF NOTES.

S 484—S 536 (1872)—S. 316 (1861—9)

I. Change in the Law.

II. Object and application of the Section.

- (1) The object
- (2) Scope of the Section
- (3) The legal obligation of the husband to maintain
- (4) Liability of the father
- (5) The liability to pay maintenance is irrespective of personal law
- (6) Discretion of the Magistrate
- (7) Presumption of sufficiency of means
- (8) Sufficient ground for proceeding

III. Nature of Proceedings.

- (1) "Maintenance" meaning
- (2)
- (3)

- (4) Scope of the Enquiry

IV. Jurisdiction of Magistrates.

- (1) Jurisdiction
- (2) Local

V. Increase Reduction and assessment of allowance.

- (1) No power to go behind the order
- (2) Reduction
- (3) Modification due to change of circumstances
- (4) Power of the High Court to modify the order
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VI. Conjugal relation as recognised by S. 488 Cr. P. C.

VII. Children.

- (1) Meaning of the word "child"
- (2) The right of a child to maintenance
- (3) The maintenance of the children of a divorced wife.
- (4) Court's duty to ascertain parentage of illegitimate children
- (5) Unable to maintain itself—meaning
- (6) Subs (4) does not apply to children
- (7) Miscellaneous

VIII. Refusal to live with the husband.

- (1) The principle explained
- (2) What is not sufficient reason for
- (3) Is second marriage of husband a sufficient reason for separation?
- (4) Effect of the husband's living in concubinage.
- (5) Cruelty as justification for refusal to live
- (6) Marriage with step-mother.
- (7) Effect of refusal to live with the husband
- (8) Infant wife.

IX. Refusal or neglect to maintain.

- (1) Meaning of "as his wife"
- (2) What is not sufficient offer to maintain
- (3) What amounts to
- (4) What does not amount to
- (5) Magistrate's duty in case of application for maintenance of children

X. Grounds for refusal of maintenance.

- (1) What are not sufficient grounds
- (2) What are sufficient grounds
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XI. Practice and Procedure.

- (1) Order must be passed in the presence of the defendant
- (2) Procedure
- (3) Form of order etc
- (4) Revival of proceedings.
- (5) Pardanashin Lady

XII. Evidence.

- (1) Procedure
- (2) Meaning of "proof"
- (3) Evidence for the Defence
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- (6) Miscellaneous

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- (1) Which can be passed
- (2) Which cannot be passed

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XV. Civil Court.

- (1) Jurisdiction
- (2) Effect of decision by Civil Court

XVI. Enforcement of the order.

- (1) Court-fee on application for enforcement
- (2) The effect of divorce on enforcement
- (3) Injunction by Civil Court
- (4) Accumulation of arrears
- (5) Procedure
- (6) Insolvency of the defendant
- (7) Death of the defendant.
- (8) Limitation

XVII. Imprisonment in default.

- (1) Non-payment must be due to wilful default.
- (2) Condition precedent.

- (3) Mode of computation.
- (4) Imprisonment cannot be awarded in anticipation
- (5) Nature of the imprisonment—does it cease on payment of arrears?
- (6) Imprisonment ought to be simple.

XVIII. Appeal, Revision etc.

- (1) No appeal
- (2) Further enquiry.
- (3) Revision
- (4) Review
- (5) Rehearing.

XIX. Cancellation of orders.

XX. Miscellaneous.

- (1) Court-fee on application for enforcement
- (2) Court-fee on application for maintenance
- (3) Res Judicata.
- (4) Costs
- (5) Reference under S 438 Cr P C.
- (6) Fresh application on new facts.
- (7) Renewal of Proceedings.

I. CHANGE IN THE LAW.

1. The words "that there is just ground for no dowry," in subs (3) have been substituted for the words "that such person is living in adultery or that he has habitually treated his wife with cruelty" in the old Codes—[13 Cr. 55 (L. B.)] 4 Bar T 269 The result being to give the Magistrate a

wider discretion than before. Under the old codes no separate maintenance could be awarded except on proof that the husband was living in adultery or that he habitually treated his wife with cruelty. See 31 P. R. 1887 Rat 7 16 B 269 (1901) U B I 104 (Which are now obsolete)

I. OBJECT AND APPLICATION OF THE SECTION.

(1) The object.

2. (1) The object of maintenance proceedings is not to punish a parent for past neglect but to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and have a moral claim to support—22 P R 1917.
3. (2) The intention of the Legislature is to enforce the liability of the husband of the woman and of the male parent of an illegitimate child as the person primarily responsible for their maintenance. The Code imposes no restriction on allowance of maintenance for the illegitimate children of women, who having been married may have lost their husbands, or for the illegitimate children of a married woman having a husband living and not divorced, although the presumption in the latter case would be strongly in favour of the child being legitimate—2 Weir 619. See 22 T. 222 (223)
4. (3) The provisions of this section only enable a Magistrate to make an order for the maintenance of the wife and children on the Court being satisfied that the husband or the father, as the case may be, has neglected or refused to do so, although in possession of sufficient means—4 O. 374 7 Bar T. 34
5. (4) "The object of S 495 is to provide maintenance and not to enforce conjugal duty. If the Legislature had meant that the order was to be one to live with the woman as wife, it would have used those words"—*Per Jardine J.* in 16 B 279

(2) Scope of the section.

6. The scope of Chap XXXVI is limited and the Magistrate may not except as therein provided, usurp the jurisdiction in matrimonial disputes possessed by the Civil Courts. The object of the section (488) is to provide maintenance and not to enforce conjugal rights—16 B 269

7. Questions beyond the scope of the Section.—

- (1) Issues as to the social standing of the wife, the amount of alimony appropriate, the kind of education the children ought to receive, the amount, if any, properly payable as schooling fees are beyond the scope of the section.
(109) U B. 1 q. 17.
- (2) The word "maintenance" does not include children's schooling fees—(109) U B 17.
8. Legal guardianship.—The question of legal guardianship cannot be determined in maintenance proceedings—1 O. 374: 9 Bar, 93. 38 P. R 1885 or whether the father is fit to be the guardian of his children 18 P. R 1894
9. Where there is no proof of neglect or refusal to maintain.—A Magistrate cannot make an order under S 488 Cr. P. C. The proper forum to decide whether the woman is entitled to maintenance or not in such a case is the Civil Court.—16 B 269. See 1 O. J. 214 G N P. 201. 9 B R 238
10. Where Husband willing to maintain, jurisdiction is ousted.—Where the husband offers to maintain his wife and the wife states she is willing to live with her husband, the Magistrate cannot make an order under S 488 unless the complainant satisfies him that notwithstanding such offer, there is a just ground for making the order 1 O. J 214
11. Order cannot be made fixing duration of payment.—An order for maintenance, fixing the duration of the period for which it is to be paid, is unauthorised by law—[2 Weir 674 (Nagale)]
12. Orders cannot have retrospective effect.—A direction to pay arrears of maintenance is opposed to the provision in cl 2 of S 436 (=188) The allowance is only payable from the date of the order.—[175] 2 Weir 635 Where however,

the order granting maintenance from a date prior to the date of the order was passed by consent of the parties, the High Court refused to interfere.—[80] 2 Weir 636]

13. **Court cannot apportion maintenance between mother and child.**—Where the Magistrate who ordered the maintenance did not allot any particular portion for his wife, the Magistrate who was asked to enforce the order cannot do this either as regards arrears or future maintenance. Her remedy is to make another application under S 488 Cr. P. C for an allowance for herself alone.—9 L. B. 49

14. **Order based on compromise.**—A Magistrate has jurisdiction to direct monthly payment of a fixed sum of money, on the basis of a compromise between the parties without taking any evidence [2 Weir 629 But see 42 P. R 1885 39 P. R 1905] But where the agreement between the husband and the wife was that he would furnish his wife with certain ornaments, build a house for her and deliver to her annually a certain amount of grain, and pay her a certain sum in cash, held that as the law empowers a Magistrate to pass an order for payment of a monthly maintenance he could not base his order on the agreement. [6 M 283 But see 2 Weir 634] Where a claim for maintenance is compromised with the consent of the parties, the Magistrate is not competent to pass an order in accordance with the terms of the compromise. He can only dismiss the petition and strike it off the file [(85) 2 Weir 629 But See (02) 2 Weir 619] Where subsequent to an application, the parties put in a *razinama*, stating that the wife had come to live with the husband, the Magistrate should dismiss the petition for maintenance as in that case there is no refusal or neglect to maintain [2 Weir 630]

15. **Order cannot be made both against the husband and the husband's father.**—S 488 Cr. P. C does not contemplate an order for maintenance being passed against both the husband and the husband's father.—26 P. R 1903 12 P. R 1914 115 P. L 1914

16. **Intervention of Kazi.**—The wife of a Mahomedian is not bound to seek the assistance of a Kazi before applying to the Magistrate for maintenance 2 Weir 615

17. **The section applies to European British subjects.**—10 P. R 1871

18. **Order under this section no bar to divorce.**—An order under this section does not deprive a Mahomedian husband of his inherent right to divorce his wife.—8 B II 95

(3) The legal obligation of the husband to maintain.

19. The fact that the husband is of slender means, will justify a small amount of maintenance but does not justify an absolute refusal of maintenance.—[2 Weir 617] A person who is a *profligate* and *indolent*, is not relieved thereby from the obligation to contribute to the support of his

illegitimate child. If a man is capable of labour and the Magistrate is satisfied that the child is his child, he should order and enforce the payment of a reasonable sum.—[2 Weir 616; But see (82) A. N. 79. (11) U. B. I. 90.] If the husband has sufficient means, he is bound to maintain his wife, and he is not relieved of the obligation by the circumstance that the wife may have friends able and willing to maintain her.—[2 Weir 615] A son not divorced from his father can be ordered to maintain his wife under S. 488 Cr. P. C.—[13 M. 17] A Magistrate is not competent to refuse to enforce his order for maintenance, on the ground of the defendant's inability to pay.—[2 Weir 636] Where a husband is willing to maintain his wife who has not attained puberty, a Magistrate cannot order the father of the girl to maintain her on the ground that the husband is not bound to maintain his wife until she attains puberty.—[2 Weir 650].

- 19A. **Note.**—The wife's means of earning a livelihood should not be taken into consideration, before an order under this section for maintenance is passed. [(57) A. N. 107 10 Bur II 166 See 10 Bur R 160] A husband is not relieved of her obligation to maintain his wife under this section by the circumstance that she has relations able and willing to maintain her but is bound to maintain her if he has sufficient means [2 Weir 615 16 Cr 80 (M)]

(4) Liability of the father.

20. A father cannot divest himself of his liability to maintain his child by an agreement with his wife.—[2 Weir 618 (00-02) [L II 126] A putative father cannot escape liability by pleading that he is a youth of 16 years and still studying at school.—[4 N P 123]

(6) *Discretion of the Magistrate.*

22. The use of the word "may" in S 488 Cr. P. C. is distinguished from "shall" shows that the Magistrate has a discretion to decide in what cases the award of maintenance may properly be made.
31 M 185 [20 M. 470 (F. B.) Fd.] 5 N. 19.

(7) *Presumption of sufficiency of means.*

23. In maintenance cases, in the case of an able-bodied man, the law will presume, until the contrary is shown that he is able to support his child and the *onus* lies on him to show that he has not sufficient means—(11) U B 21190; See 4 N P. 123
24. Meaning of "unable to maintain."—Does the expression mean "unable on account of tender age to earn a living and therefore unable to maintain himself" or "unable for want of sufficient means"? *Abdur Rahim J* in 39 M 957 adopts the latter interpretation while *Sadana Agar J* in 25 M J. 355 and *Collins C J* in 22 M 246 adopts the former "I think" says *Abdur Rahim J*, "the ability contemplated by S. 488 Cr. P. C. applies as much to the case of a child which has got means of its own or which is entitled in law to be maintained and is being maintained as to a child which is able to earn a living by its own exertion." [See 39 M. 957].

(8) *Sufficient ground for proceeding*

25. What is not—

- (1) Non-payment of prompt dower by a Mahomedan husband 15 P. R 1840
- (2) A minor wife refusing to live with her husband not on account of any ill-treatment but because she would be better off if she lived with her parents, if the husband is willing to maintain her, cannot be allowed separate allowances—1. P. R. 1892
- (3) Husband marrying again.
26. Absence of proof of adultery and ill-treatment.—In the absence of the proof of adultery or ill-treatment a wife can claim no separate maintenance. She cannot also get it when she refuses to live with her husband merely because the husband's mother would not let her live in peace 30 P R 1867 21 P. R 1870
27. When there is a mutual agreement to live separately.—S. 488 does not apply.
55 P. R 1866
28. Effect of wife's return to her husband.—The Quare in (97-'01) U. B. 104: "Whether return of the wife to cohabitation with her husband, after an order of maintenance has been made, does not have the effect of putting an end to the previous proceedings under S 488 Cr. P. C." should probably be answered in the affirmative in view of the decision in (85) A. N. 217

III.—NATURE OF PROCEEDINGS.

(1) *Proceedings are judicial.*

29. Proceedings under S. 488 are judicial proceedings.—5 B H. 81, 5 A. 224

(2) *Quasi-Civil Proceedings.*

30. (1) A person against whom the order is sought is a competent witness on his own behalf.

See Person against whom the order is sought

31. (2) The liability to pay maintenance is a Civil and not a Criminal liability.—17 C. P. 127

32. (3) The jurisdiction of the Criminal Courts under S. 488 is merely auxiliary to that of the Civil Courts. [2 Weir 615; 21 Cr 127 (L. B.)]. A Magistrate therefore ought to refuse to enforce an order for maintenance of a child made under S 488 if, after the passing of the order, a Civil Court decides that the respondent is not the father of the child [21 Cr. 127 (L. B.)]

33. Not Criminal proceedings.—Order for payment of maintenance does not amount to a conviction for offence.—16 M 234 11 C. P. 13

34. (1) An application for maintenance is not a complaint of an offence.—17 C. P. 127 26 P. R 1845, 661 P. I. 1103

34. (2) Application under S. 488 Cr. P. C. is not a complaint.—A proceeding under S. 488 Cr. P. C. does not relate to any offence, and the application is not therefore a complaint within the meaning of S 4 (f) *supra*. Hence a Magistrate entertaining an application is not

competent to refer it to a Subordinate Magistrate for enquiry under S 202 Cr. P. C.—29 P. R. 1903
2 Weir 617 11 M 190

35. Proceedings are of a Civil nature.—Proceedings under this section are of a Civil nature and parties are competent witnesses.—See subs (7) also 18 A 107, 18 B, 408, 16 C. 781 ('93-'00) L. B. 602

36. S. 250 does not apply to proceedings under S. 488 Cr. P. C.—6 M. T. 261

(3) *Proceeding, a Criminal Case within the meaning of S. 628 infra.*

37. A proceeding under this section is a criminal case within the meaning of S 628 *infra*, and a District Magistrate may withdraw a case from the file of a Sub-ordinate Magistrate to his own file—5 P. R 1905

(4) *Scope of the enquiry.*

38. The proceedings under this Chapter do not amount to a civil suit where the issue is as to the social standing of the wife and the amount of alimony appropriate or the kind of education children of a person in the father's position ought to receive and the amount, if any, properly payable as their schooling fees. These are questions beyond the scope of this Code. The Code in providing maintenance does not intend to go further than to ensure to the wife or children, food, clothing and lodging. It does not provide for Schooling fees.—(09) U. B. 1, 17.

IV. JURISDICTION OF MAGISTRATES.

(1) *Jurisdiction.*

39. An order under S. 488 cannot be made by a Magistrate of the Second class.—22 W. R. 30. See 2 Weir 617
40. **Presidency Magistrates.**—Are competent to stay the operation of an order made under S. 488 and to refuse the issue of a warrant for enforcement but he cannot formally cancel the order which was made and he is competent to try all questions which affect the right to receive maintenance—5 C 558.
41. **Magistrates.**—A second class Magistrate cannot act under this section [22 W. R. 30] unless he is a Subordinate Magistrate. A Magistrate of the first class, though not empowered under S. 190 Cr. P. C. may act under this section [5 N. P. 277] As to the effect of a Magistrate not empowered by law, passing an order under S. 488 Cr. P. C. See S. 530 cl. (a) post.
- 41A. The expression "the District Magistrate a Presidency Magistrate a sub-divisional Magistrate or a Magistrate of the 1st class" means the Magistrate of the particular District in which the defendant resides—8 B 40
42. **Enforcement of order**—can be made by a second class Magistrate Rat 288 2 Weir 617
43. **Order under S. 488 (5) can be made by a Magistrate other than the Magistrate who made the order under S. 488 (1) and even though the latter is still in the District**
5 P. R. 1873
44. **Magistrate cannot assume the functions of Civil Court.**—A Magistrate acting under S. 488 cannot assume the functions of a Civil Court and pass judgment in accordance with a compromise between the parties 6 Weir 629
45. **Date from which the order should take effect.**—Maintenance cannot be allowed to a wife for any period before the date of the complaint 5 P. R. 1870

(2) *Local.*

46. The jurisdiction is to be exercised in the District in which the person against whom an order under S. 488 is sought has his residence at the time of making the complaint—9 B 40 7 C. P. 12: (94) A. N. 153 21 C 638 1 C N 577 See 13 P. R. 1885 3 P. R. 1893 Con S. N. P. 237 13 A. 348
47. **Note.**—But where the wife was compelled by her husband's conduct to choose her own place of residence, held, the Courts of the place where she resided had jurisdiction over the matter [13 A. 348 5 N. P. 237] Subs (9) does not however give the wife or child the right to select a *forum* other than where the husband or father is then residing, or last resided with the applicant—(94) U. B. [10]
48. **Occasional visit to the mother of the illegitimate child**—a residence with her within the meaning of Subs (9) of S. 488 Cr. P. C.—5 S. 220 S. r. 1 A. 51 5 M. H. 101, 31 L. J. C. P. 357 16 Ch. D. 454 4 B. and C. 959
49. **Temporary residence.**—The temporary residence of the husband at Calcutta within the jurisdiction of the Magistrate, at the time the application for maintenance under S. 488 Cr. P. C. was made by the wife, was sufficient to give jurisdiction to the Presidency Magistrate's Court in Calcutta, regard being had to subs (9) of S. 488 Cr. P. C.—[31 C. N. 872] A man may have a number of residences [3 A. 91 (P. C.)] [The following Civil rulings should be studied—3 B. 227 6 D. 100 18 H. 290 25 B. 176, 21 C. 634 36 C. (Ind.) 1 A. 51].
50. **Question of domicile.**—Husband's domicile is the wife's domicile and an application for maintenance should be heard and disposed of at the place where the refusal to maintain the wife was made 4 P. R. 1883
51. **In the Absence of permanent residence elsewhere.**—Two month's residence at any place is residence within the meaning of S. 488. 5 S. 220 9 M. 203 *Alexander v. Jones* L. R. 1, Ex 131

V. INCREASE AND REDUCTION OF ALLOWANCE.

(1) *No Power to go behind the order.*

52. In dealing with an application for an increase of maintenance a Magistrate cannot enquire into the propriety or otherwise of the order for maintenance previously made—2 Weir 610

(2) *Reduction.*

53. (1) **Principle.**—The rate of allowance cannot be reduced with retrospective effect. The order can operate only as against payments accruing due after the date of the order. 2 Weir 650
54. (2) A Magistrate is not competent to refuse to enforce his order for maintenance on the ground of the defendant's inability to pay. But on further enquiry he may revise the rate of maintenance, and the order will take effect subsequent to the date of such enquiry.—2 Weir 634.
55. **Reduction on the basis of a deed of**

that the Magistrate was not competent to cancel the order for maintenance, until the agreement had been declared by a competent tribunal to be binding on the wife. 2 Weir 649

56. **Power to reduce limited to instalments not yet due.**—A Magistrate has no power to reduce the rate of maintenance which has accrued due. He should enforce the payment of arrears at the rate originally awarded, and the reduction should be limited to payments accruing due after the date of the order. [2 Weir 650]

(3) *Modification due to change of circumstances.*

57. Although a maintenance order of a Criminal

Court under S. 488 may be modified, on a change of circumstances being shown, still so long as that order remains in force, it must carry its proper consequences—22 C 291

58. **Meaning "of change in the circumstances"**—The fact that the child whose maintenance allowance has been awarded, has grown older constitutes "a change in the circumstances of the person receiving the allowance." Therefore the rate may be varied from time to time on application being made as the child grows older.—11 N 398 ('97) L B. ('93-00) 393 (394). See 9 W R. 1.

Note.—See Notes under S. 489 *infra*

(4) **Power of High Court to modify the rule.**

59. Where the rate of maintenance is excessive, the

High Court has power to set aside or modify the Magistrate's order, or to direct further enquiry with a view to decide what amount should be allowed—2 Weir 575 674

(5) **Assessment of Allowance.**

60. **Considerations on which assessment can be based.**—In fixing the amount of maintenance no luxury should be allowed and necessities of life should be considered according to the station in life of the applicant and the means of the respondent—13 Cr 55 (I. B.)
61. **Amount which can be allowed.**—Magistrate may order the defendant to pay Rs 50 to his wife and like amount to each of his children, —12 Cr 563 (L. B.)

VI. CONJUGAL RELATION AS RECOGNISED BY S. 488.

62. **The only condition precedent of right to maintenance.**—The only condition precedent to the possession of wife's right to maintenance as such is the existence of the conjugal relation.—5 A 226

63. **Moota marriage under Shia Law**—does not entitle a woman to maintenance, but such a wife is entitled to maintenance under the provisions of S. 488—8 C 736 G W. R. 60

Note.—Such a marriage may be terminated on the husband giving up the unexpired portion of the terms fixed by the Moota marriage—14 C 276 *Can.* 8 C 736

64. **Karao marriage.**—The "Iarna form of marriage among" the Jats is valid for the purposes of S. 488. 4 N. T. 128; See also 6 W. R. 60

65. **"Sambandham marriage."**—Under the Marumalatayam law among the Nairs of Malabar is a valid marriage for the purposes of S. 188.—22 M. 246.

66. **Nikah Marriage.**—The children of a nikah wife are legitimate and are entitled to maintenance.—16 W R. 28.

67. **Illegal marriage.**—The child born of an illegal marriage must be maintained by its father. 19 M. J. 461

68. **Nat-worshipping karons.**—The Nat-worshipping Karens have peculiar marriage ceremonies of their own. A match-maker brings the parties together; the man goes to the woman's house if the parties were not married before, but the woman may go to the man's house if he is a widower. A cock and hen eating would apparently complete the ceremony but if the parties

profess Buddhism, though Karens, they may marry according to the Buddhist Law.—15 Cr. 590 (L B.)

69. **Christian wife of a re-convert.**—wife of a Christian who has reverted to Hinduism and married a second wife is entitled to maintenance. 4 M. II (sp) 3

70. **Personal Law applicable to the husband to be considered.**—In determining the question whether there has been a valid and legal marriage, regard must be had to the personal law applicable to the respondent (the alleged husband) 7 Bur T 71. 2 L B 85 7 L B. 270

[**Note.**—Thus when it was proved that the appli-

71. **...**

72. **Valid Marriage must be proved before the Magistrate may act.**—It is only on proof of a valid marriage, between the applicant and her alleged husband that a Magistrate may have any rules for maintenance [10 B 260 5 C 688; 5 A 226]. Where the marriage is disputed, the Magistrate must himself try and decide the issue and not refer the parties to a civil suit [11 P. R. 1851]

VII. CHILDREN.

(1) **Meaning of the word child.**

73. **The word child as used in S. 488 means** simply son or daughter and reference to age is purposely omitted therein therefore any son or daughter is entitled to claim maintenance whatever his or her age may be, so long as he or she is unable to maintain himself or herself—25 P. W. 1910; See 15 P. R. 1891

74. **The word child in S. 488 Cr. P. C. means one** who has not attained majority.—25 M. J. 349

[**Note.**—But a child who is deaf and dumb and unable to maintain itself is entitled to maintenance although it has arrived at the age of majority—[5 N. T. 237]

Increase of rate of allowance according to age.—The rate can be varied from time to time

- on application being made as the child grows older—14 M. 398 (93-'00) L. B. 393.
75. **Unborn child.**—No order can be passed for the maintenance of an unborn child—3 N. P. 70. 2 Weir 618.
76. **Children of married women.**
77. **Children of a woman who has been divorced.**
78. **Children governed by the Marumak-
I.**
- maintain them—19 M. 461 But See 25 M. J. 355
- 78A. **Where father offers to maintain his children.**—A Criminal Court has no jurisdiction merely because he refuses to make a money allowance, when they prefer to remain with their mother apart from him—18 P. R. 1894 See 16 W. R. 62 Contra 25 M. J. 355
- (2) *The right of a child to maintenance.*
79. (1) **Is not lost by divorce of the mother.**—A divorced wife is, under the Mahomedan Law, entitled to the custody of her children and therefore the father is not thereby relieved of his liability to maintain them—6 B. R. 536
80. (2) **The Civil Court's refusal to uphold an agreement,** by which the man agreed to pay for the maintenance of the woman, cannot conclude either the woman from applying for or the Magistrate from making an order under this section for the maintenance of his illegitimate daughter—17 W. R. 49
81. (3) **The father cannot divest himself of his liability to maintain his child by an agreement with his wife**—2 Weir 648
82. (4) **Where the father has made arrangement for maintenance.**—So long as the property which has been given by the father to the mother for the maintenance of the child exists, no order for maintenance can be made under this section [(97-'01) U. B. 108] In the case of an illegitimate child, it has been held that the mother having, in consideration of a payment of lump sum, agreed to renounce in future all claims for maintenance, the Magistrate could not pass an order under this section, even if the agreement was obtained by fraud [2 Weir 631] A compromise by the lawful guardian of a minor acting bona fide for his benefit, cannot be set aside except on proof of fraud, and the subsequent extravagance or misconduct of the guardian cannot revive an obligation which was once lawfully satisfied [2 Weir 630] But where the agreement is not bona fide for the benefit of the child, it will not be binding on the child or the person who subsequently becomes the guardian [13 P. R. 1885—see 25 A. 165 S. Bar. R. 46]

83. (5) **A Mahomedan mother, being the natural guardian of her minor daughter, would be entitled to claim maintenance for her child even though she was living separately from the husband without any valid grounds** [15 C. N. xxvii] The rule applies to Christians also. [15 C. N. xxxvi]

83A. (6) **The fact, that the wife refuses to live with the husband in spite of the latter's having obtained a decree for the restitution of conjugal rights, does not relieve the father of his obligation to maintain the children**—2 L. B. 46

Where a mother has the custody of a child and has to maintain him, she is entitled to an allowance on his account [2 Weir 630]

(3) *The maintenance of the children of a divorced wife*

84. **The father is not relieved from his obligation to maintain the children of a divorced wife remaining in the custody of the latter.**—6 B. R. 536 (92-'03) U. B. 7 (94-'06) U. B. 39 (10) U. B. 1-q. 1 19 M. 461 See 16 W. R. 62 1 Bar. 145. 1 Bar. 362

85. **Child electing to live with mother living in adultery is not entitled to maintenance from his father**—2 Weir 630

(4) *Court's duty to ascertain parentage of illegitimate child.*

86. **Where maintenance is claimed for an illegitimate child.**

781] A wife can be examined as the non-access of her husband during married life, without independent evidence being first offered to prove illegitimacy [18 B. 403] The applicant may prove acts of familiarity previous to conception to establish parentage [See Cole v. Manning L. R. 2 Q. B. D. 611]

87. **Proof of parentage.**—In a proceeding for maintenance by a woman for her illegitimate child, the two persons who are most competent to give evidence about the parentage are the woman and the alleged father [18 A. 107] An order, passed on the strength of the sworn testimony of the mother alone, was upheld in 20 W. R. 58

(5) *Unable to maintain itself—meaning.*

88. **The inability referred to in the section relates to the absence of sufficient maturity of physical and mental development in the child rendering it unable to earn its own livelihood by its own efforts, and does not refer to inability through poverty or absence of means**—25 M. J. 355

89. **"Unable to maintain itself."**—It cannot be pleaded by a dancing girl that her child (a daughter) is able to earn a livelihood by prostitution. The law will not treat prostitution as a profession by which a girl might earn her livelihood and "maintain itself" under S. 484 Cr. P. C.—25 M. J. 319

90. Inability may be due to insufficient maturity of understanding etc.—The inability referred to in this section relates to the absence of sufficient maturity of physical and mental development in the child rendering it in consequence unable to earn its living by its own efforts and does not refer to inability through poverty or the absence of means —25 W. J. 353

(6) *Subs. (4) does not apply to children.*

91. S. 488 cl. (4) disentitles only a wife who refuses to live with her husband without sufficient cause, and does not disentitle a child who is living with its lawful guardian —25 M. J. 355

(7) *Miscellaneous.*

92. Married woman may claim maintenance for illegitimate child.—A married woman has *locus standi* under S. 488 Cr. P. C., to claim maintenance for her illegitimate children.—18 R. 468. 2 Weir 619 18 A. 107

93. Mother having the custody of a child, is entitled to allowance for its maintenance, so long as he is under the obligation to maintain it —2 Weir 630

94. Removal by the mother from the father's keeping without the latter's consent, and prevention by her, of their coming back to the father, disentitle the mother from receiving any allowance for the support of the children —2 Weir 632

95. Agreement with wife.—A father cannot divest himself of his liability to maintain his child by agreement with his wife.—2 Weir 619

96. Duty to maintain ceases on marriage of the child.—The obligation to maintain an illegitimate child (girl) ceases on the girl's getting married —11 C. X. G.

97. Evidence of prostitution of the girl is not a defence in a maintenance case entitling the father to avoid his liability to pay as it cannot be treated as a profession for the purposes of S. 488 —25 M. J. 349

VIII. REFUSAL TO LIVE WITH THE HUSBAND.

(1) *Principle explained.*

98. If a wife voluntarily leaves her husband without being justified in so doing, she will not be entitled to any maintenance. If on the other hand, the husband refuses to maintain her and turns her out or ill-treats her so as to make it impossible for her to live in the house that would be refusal or neglect to maintain her.—5 B. R. 614; See 9 B. R. 359. But see 11 C. P. 11

(2) *What is not sufficient reason for.*

99. (1) The fact that—in a Civil Suit by the husband for restitution of conjugal rights the wife successfully resisted her claim by a plea of unpaid prompt dower. 6 P. R. 1888.

100. (2) The inability of a husband and wife to agree to live together is no ground for decreeing separate maintenance —6 W. R. 59

101. (3) Disobedience to an order for restitution of conjugal rights.—A Civil Court decree for restitution of conjugal rights supercedes an order under S. 484 if the wife refuses to live with the husband —(35) A. N. 54.

102. (4) Incompatibility of temper.—By itself is not legally sufficient to justify an order for separate allowance.—See 21 P. R. 1673. 2 P. R. 1674; 30 P. R. 1681; 31 P. R. 1682

103. Inability to live together.—The inability of husband and wife to agree to live together is no ground for decreeing a separate maintenance to the wife —6 W. R. 59

104. Ill treatment by the mother-in-law.—A refusal to live with the husband merely because the husband's mother would not let her live in peace will not justify an order under S. 488 Cr. P. C.—30 P. R. 1677; 21 P. R. 1670.

105. Refusal by the father of the girl to allow her to live with her husband.—Where the husband had not been called upon

to maintain his wife, and she was living with her father who refused to allow her to live with her husband without a payment from him, *habeas corpus* Magistrate cannot make an order for maintenance —23 W. R. 30

(3) *Is second marriage of husband a sufficient reason for separation?*

106. (1) Hindu.—Where a Hindu husband shows

R. 1673; 7 C. P. 39 (40)

107. (2) unless the wife can prove that in consequence of the second marriage, her husband is ill-treating her or treating her with habitual cruelty.—14 P. R. 1901 60 P. R. 1887; Rat. 7.

108. Second marriage of the husband.—A wife cannot refuse to live with her husband on the sole ground that he has contracted a second marriage —Rat. 7 (74) U. B. 1-9, 10

109. Second marriage by a Burmese Husband.

(1) Where a Burman Buddhist takes a lesser wife without the consent of his headwife the refusal of the headwife to live and cohabit with her husband unless she is provided with a separate residence is not a sufficient reason for refusing her maintenance under S. 488 Cr. P. C.—4 L. B. 340 (F. B.). [4 L. B. 146 overruled: (97-01) L. U. B. 104; S. J. L. B. 114 *dist.* S. J. L. B. 103 *disentitled from*]

(2) A lesser wife refusing to live with her husband will not be deprived of her right to maintenance if at the time, she married, she did not know that the husband had been previously married.—11 Cr. 750 (L. B.). See 4 L. B. 7; 8 Cr. 422 (L. B.)

(3) Where however, a husband marries a second wife owing to the refusal of his first wife to live with him but is willing to take back the first wife, the latter is not entitled to maintenance under S 488 (4) Cr P C.—11 Bar T, 105

(4) *Effect of the husband's living in concubinage.*

109A. "In determining whether the cause shown by the wife for refusing to live with her husband is good and reasonable, it is but just that the Magistrate should take into consideration the social habits of the particular community to which the parties belong. If that community does not completely disapprove of concubinage and tolerates it so far as to give kept women some

adultery on the part of the husband may constitute a sufficient cause for the wife separating from the husband and enable her to claim maintenance under S. 488 Cr P C. [The rulings to the contrary in (84) 3 Weir 641 and (103) 17 M. 260 have been over-ruled]. See also 14 Bar R 240. 2 L B 40 ('02) U B 7 13 A 348

(5) *Cruelty as justification for refusal to live.*

110. A false charge of incest amounts to cruelty [Mlner 4 Swab and Trist 24]. Refusal to take food and water from the wife is tantamount to cruelty [1 B 164]. Husband's communicating venereal disease to his wife, knowing that he is suffering from it, is cruelty [Bonaman v. Boardman, 1 Prob and Mat 233]. A reasonable apprehension of violence being used may justify separation [see 19 C 84]. The word cruelty is not necessarily limited to personal violence [11 A 480]. The systematic exertion of force whether physical or moral to compel the submission of the wife, to such a degree as to seriously injure her health may amount to cruelty [1 B 164 (174). See Kelly v. Kelly 2 Prob and Mat 31 59 Tomkins v. Tomkins 1 Swab and Trist 168].

111. *Habitual cruelty.*—The present Code does not restrict the operation of S 488 to cases, in which the wife is living separately owing to the habitual cruelty of the husband. 13 Cr 55 (U B)

N. B.—(97-'01) U B 1 104 is now obsolete

IX. REFUSAL OR NEGLECT TO MAINTAIN.

(1) *Meaning of "as his wife"*

120. There is no authority for the proposition that the words "as his wife" must be read into S 488. Where therefore the husband refused to treat the applicant as his wife but offered to maintain her in her house an order under S 488 is not justified.—16 B 261. But see 6 M 371 17 M. 220.

(6) *Marriage with step-mother.*

112. *Marriage with step-mother*—of the wife by a Mahomedan would entitle the wife to refuse to live with her husband during the continuance of the wedlock as such marriage is prohibited.—2 Weir 617

(7) *Effect of refusal to live with the husband.*

113. The duty of a husband to maintain his wife under the Hindu Law is absolute [31 B 278] and under the Criminal Procedure Code it is subject only to the wife's chastity [See 458(4)]. Even if she left her husband's house without a good cause her right of maintenance is only suspended [31 M 318]. She has the right to return to her husband's house at any time and claim to be maintained by him.—2 S 90

114. The proviso to subs (3) would seem to refer to cases where a wife obtains a maintenance order for herself and not where one is made for the children.—6 L B 127

115. *Wife failing to comply with decree for restitution of conjugal rights.*—"There is clear authority that a Magistrate ought to treat an order of maintenance made by him as determined, if the wife, failing to comply with the decree for restitution of conjugal rights, refuses to live with her husband"—23 B 454 9 Bar T 162

116. *Refusal to remain without cause.*—If a woman is living apart from her husband without due cause, she is not entitled to maintenance. If however, it is a case where he will not keep her, or where for some other sufficient reason she is living away from him, he must provide for her maintenance.—14 P B 1917

(8) *Infant wife.*

117. A minor wife refusing to live with her husband not because of her husband's ill treatment or refusal or neglect to maintain but simply because she would be better off in her father's place cannot be allowed separate maintenance.—1 P R 1462

118. An infant wife coming with her guardian is not entitled to maintenance.—22 P R 1869

119. The husband being under the obligation to support his infant wife, the father after her marriage is entitled to apply for cancellation an order for her maintenance made before the marriage.—2 Weir 650

(2) *What is not sufficient offer to maintain.*

Offer must be reasonable.

121. (1) The offer to maintain under S 488 must be an offer to maintain with the consideration due to her position as wife.—17 M 260 (261) 6 M 371

122. (2) An offer by a Hindu husband having two wives, to maintain his first wife in case she

refused to live in the house, adding that he could not live with her as a husband would live with his wife, but supply grain to her to cook her own food in his house and eat it separately, was held to be not a sufficient offer to maintain within the provisions of S 536 of the Code (S 455) 6 M. 371: *But See* 16 B. 269(275).

123. Where the breach is irremediable, mere offer to maintain is insufficient.—Where the breach between the husband and the wife is irremediable and it is quite impossible for the wife to return to her husband after the cruel way in which he has treated her for a number of years, the mere fact that he says that "he is willing to maintain her if she returns to his house" cannot absolve him from the responsibility to maintain her.—170 P. L. 1914.

(3) What amounts to.

124. If a husband turns his wife out or ill-treats her so as to make it impossible for her to live in the house, that would be refusal or neglect on his part to maintain her.—3 B R 614 9 B R 359
125. Neglect.—If a man who is continuously bound to maintain his child, does not in fact, do so, he neglects to do so.—1 L. B 189
126. Inference from conduct.—A neglect or refusal to maintain may be by words or by conduct. It may be express or implied. Where for instance the respondent has denied his paternity of the child, that is a fact from which the Court

Future contingency not provided for.—

It is not open to a Magistrate (even with the consent of the parties) to pass an order in view of a possible default to maintain the wife. To give jurisdiction to the Magistrate, an actual neglect or refusal to maintain must be established.—2 Weir 630

- 126A. Turning the wife out of the house.—

127. Father willing to maintain provided children live with him.—It is no answer to an application for the maintenance of children that the father is willing to do so, on condition that they live with him. The contention cannot prevail, and unless and until the father en-

128. Mother taking away the Children.—Where a father is entitled to the custody of his children, and the mother takes them away and does not allow them to return to him, there is no such refusal or neglect to maintain them as is contemplated by S. 488 Cr. P. C.—2 Weir 632

(4) What does not amount to.

129. (1) Where the husband is willing to maintain his wife, the fact that the prompt dower has not been paid, is no ground under this section for separate order for maintenance.—[6 P R 1888 15 P. R. 1880].

130. (2) When a father offers to maintain his children on condition that they live with him, he cannot be said "to refuse to maintain them" within the meaning of S. 488.—18 P. R 1894; 115 P. L. 1914.

[Note.—But invitation sent through a man to the child to come and live with him does not amount to an offer to look after the child. Such an offer cannot absolve the father from his responsibility to maintain his child.—[7 Bur. T 31 (1910) 1 U. B. 1]

131. Where the father has all along been guardian.—Where the father had all along the custody of the children after his divorce from their mother, and was all along maintaining them, the mere fact that a few months before they had left their father's house, and went to live with their mother, would not constitute "neglect or refusal to maintain" within the meaning of S. 488 Cr. P. C.—8 L. B 103.

132. Where the evidence is doubtful.—Where from the record, it appeared that the husband had stated that he was willing to maintain his wife and the wife had stated that he was willing to live with her husband but had contended that he refused to maintain her; and the Magistrate expressed the following opinion: "really a difficult matter to decide, whether it is the accused who refused to maintain complainant or whether it is the latter who refuses to be maintained." Held that (in the circumstances) it had not been proved that the husband had refused or neglected to maintain his wife.—213 P. L. 1915. See 9 B. R 359

(5) Magistrate's duty in case of applications for maintenance of Children.

133. "It seems to me that when an application is made under S 488 Cr. P. C by a child, it is the duty of the Magistrate to enquire first, as to whether the child is unable to maintain itself, secondly, if the father is in a position to support his child, and thirdly whether the father is neglecting to maintain his child. Past neglect of his duty, to support his child, may be a cogent factor in coming to a finding that, at the time of the application, the father is neglecting or refusing to support his offspring," but the fact that in the past, he has neglected to support his son, should not, by itself, be considered as sufficient to justify a finding that the offer is not made in good faith.—*Per Boudway J.*, in 22 P. R 1917.

X. GROUNDS FOR REFUSAL OF MAINTENANCE.

(1) *What are not sufficient grounds.*

134. **Wife having rich relations.**—The mere fact that the wife has relations or friends willing to maintain her or to bear the costs of the proceedings is no ground for dismissing an application under S 488 Cr. P. C.—16 Cr 80 (M) 2 Weir 616
135. **Refusal to make over child no ground.**—Refusal to make over illegitimate child to its father is no ground for refusal of allowance for maintenance—19 M 461 : or to stop an allowance previously ordered—4 C 374
136. **Delay in application.**—(1) A wife does not lose her right to maintenance, because she may not have advanced her claim immediately on her husband's desertion—2 Weir 615 2 Weir 616
(2) or because she has delayed making the application—2 Weir 616

(2) *What are sufficient grounds.*

137. (1) **Agreement for separation.**—If a wife and her husband enter into an agreement to live separately and they so live by mutual consent, she is not entitled to maintenance.—Rat 871
See (3) Separation by consent below
138. (2) **Divorce.**—See (1) *Divorce, below*
139. (3) **Adultery.**—See (5) *Adultery, below.*
140. (4) **Offspring of Sambandam marriage.**—The offspring of a Malabar *Sambandam* marriage are not entitled to an order for maintenance under S 488 Cr. P. C. where the *Tavazhi* or *Tarwardi* to which their mother is attached has sufficient funds to maintain them—37 M J 361 39 M 917 See 19 M 461 Con 22 M 247 (F N) 22 M 246 25 M J 355.

[Note.—“I would, however, point out that if the mother of the child can at any time show that the amount available from the *Tavazhi* or possibly from the *Tarwardi* funds is insufficient to maintain the child, it is open to the mother to renew the application.”—Per Napier J in 37 M J 361]

- 140A. (5) **Apostasy.**—See (6) *Apostasy, below*

(3) *Separation by Consent.*

141. **The Principle.**—“What the law contemplates by suba (4) of S 488 is what is well recognised in application proceedings between husband and wife under the English Law, namely, where the husband and wife have lived apart by a definite contract mutually made between them then affiliation proceedings are inapplicable. A contract voluntarily and freely made and entered into by reason of the ill-treatment of the husband towards his wife would be an act of their own volition, so that neither should molest the other and that both should be free to live and go where and whether they respectively wished, such an agreement would be a voluntary act and contract by the parties themselves unfettered by the

decree or declaration of any tribunal.”—Per Atkinson J in 4 Pat J 109. 2 Weir 617. Rat 870

142. **Separation by decree of punchayet.**—Where a husband and wife are living apart in obedience to the decree of a *punchayet* of their castemen, by which the wife is awarded maintenance, it cannot be said, that they are living apart with mutual consent within the meaning of subs (4) of S 488 Cr. P. C.—4 Pat J 109
143. **When separation by consent is a good defence.**—When it appeared that by mutual consent, the husband and wife have been living separately for a number of years, and that the maintenance of the wife was, by arrangement made at the time they began to live separately, provided for by the assignment to her of some land, held that a Magistrate had no jurisdiction to make an order under S 488 Cr. P. C.—2 Weir 648 (*Jampana*)

(4) *Divorce.*

Objection to be enquired into.

144. (1) An objection to the enforcement of the order on the ground of divorce should be enquired into and should be given effect to if found true.—O S 239. 5 C 658 21 P R 1894 2 Weir 620; 17 O C 260
145. (2) Magistrate is competent to determine on such evidence as may be before him, whether there has been a legal divorce or not—5 C 658
146. **Effect.**—A legal divorce whether under the Indian Divorce Act or the Mahomedan Law would put an end to the operation of a Magistrate's order for maintenance—5 C 555 5 A 220 19 A 50 (F. B.) (over ruling 15 A 143) 8 B A 95. 2 Weir 620 1 B R 346 Contra 15 A 143 (37-01) 1 C B 112
147. **A Mahomedan Divorce**—does not become operative before the expiration of the period of the *iddat* 5 A 226 (85) A N 29 19 A 50 (F. B.), 41 C 140 (M) 6 M T 295 2 Weir 620 2 Weir 617 5 P R 1905 4 Bar T 14
148. **“Talak Bidut”**—or irregular divorce is valid divorce for the purposes of S 484—7 B 160
149. **Talak ahsan**—amongst Mahomedans is accomplished by a single pronouncement during the *cohabitation* of the wife and by the abstention of conjugal intercourse for the period of three *laks*—4 Bar T 13
150. **Effect of Talak ahsan**—where a husband and wife were living together and if during one year he does not give her one loaf of vegetables or one stick of firewood, let each have the right of taking another husband and wife. Let them have the right to separate and marry again.” In my opinion that passage refers to the voluntary desertion by the wife, without the consent of the husband. But the wife who is driven away from her husband by his cruelty cannot be

said to have left the house, not having affection for the husband. A wife who refuses to rejoin her husband without sufficient reason or who is living apart from her husband by mutual consent, is not entitled to maintenance, and I doubt if a husband under the Burmese Buddhist Law, who is bound to maintain the wife, can evade that liability by declaring that the marriage has been dissolved by reason of the wife's absence from him. —*Per Ormond J* in 9 L. B. 44

151. Where divorce is set up as defence—it is the imperative duty of the Magistrate to enquire into the plea and determine whether the plea is a valid one. He has no authority to pass an order for maintenance if the plea is established.—19 A. 50 (F.B.) (1915) U. B. II. 53
152. Divorce on being called on to show cause why the order should not be enforced—made in the presence of the court does not relieve the defendant from liability to obey the order during the time elapsing between the date of the order and the date when the divorce becomes effective (i.e. 3 months).—19 W. R. 73. 21 C. 503 (L. B.) But see (1915) U. B. II. 53
153. Inherent right of a Mahomedan husband to divorce his wife.—is not taken away by an order for maintenance passed under S. 488—S. B. 485 (89) A. N. 85; 1 B. R. 346. 7 B. 180

(5) Adultery.

154. Meaning of Adultery.—Adultery on the part of the husband has not the limited meaning given to it by S. 497 F. C. Adultery for which a conviction under the Penal Code would not be justified may constitute sufficient cause for the wife separating from her husband and claiming maintenance under the provisions of the Criminal Procedure Code.—20 M. 470 (F. B.) overruling 17 N. 260.
155. 'Adultery' as contemplated by S. 488 is adultery in the popular sense of the term, viz a breach of the matrimonial tie by either party. Adultery by the husband with a widow would entitle the wife to maintenance.—20 M. 470 (F. B.)
156. 'Living in adultery' meaning—
 - (1) The words "living in adultery" refer rather to a course of conduct or at least to something more than a single lapse from virtue and therefore a single act of adultery does not necessarily amount to "living in adultery" so as to disentitle the wife from applying for maintenance under S. 488. 30 M. 332; 5 N. 10

Magistrate's discretion.—Where a Magistrate refused to award maintenance on the ground that the petitioner was guilty of adultery with a low-caste man, the High Court refused to interfere with the order of the Magistrate.—31 M. 185

157. (2) Living in adultery.—One act of adultery cannot by itself amount to living in adultery and several such acts, if isolated, do not necessarily come within the meaning of that term.—5 N. 10

158. (3) The words "living in adultery" mean living in adultery at the date of the application.—26 A. 326
 159. Unchaste wife cannot claim maintenance until at least she improves her character.—50 P. R. 1885
- [Note.—But the fact, that a wife has been excommunicated for refusal to attend a *punchayet* convened for the purposes of considering a charge of adultery against her, is not a ground on which a magistrate is bound to reject an application for maintenance.—1 L. W. 156]
160. Adultery of the husband would entitle the wife to maintenance.—20 M. 470 (F. B.); 1 B. 596
 161. A single act of adultery may be a sufficient reason for refusing maintenance when asked for by a wife.—31 M. 185. 5 N. 10
 162. Adultery committed previously to the application.—A wife who has lived in adultery for many years but was attempting to obtain the husband's pardon and who was not living in adultery at the time of the application is not entitled to maintenance.—Rat. 506. But see 20 A. 326.
 163. Order may be cancelled on proof of adultery.—It is open to a husband, upon whom an order for the maintenance of his wife has been made, to prove after such order that his wife is living in adultery, and upon such proof the Magistrate is justified in cancelling his order.—8 B. H. 124. Rat. 333. 5 A. 224. (82) A. N. 168. 24 C. 639. 5 N. 19
 164. Note.—[This view was embodied in the penultimate paragraph of S. 488 of the Code of 1862.—See 5 A. 224.—and now forms subs (5) of S. 488 of the Code of 1898]
 165. Condition precedent.—The circumstances under which an order can be cancelled are limited by subs (5)—5 N. 19

(6) Apostasy.

166. Mahomedan wife converted to Buddhism.—The apostasy of a Mahomedan wife (conversion from Mahomedan to Buddhist religion) *ipso facto* dissolves the marriage and the wife is not thereafter entitled to receive maintenance from her husband.—9 L. B. 206. See *Hussein S J*. 368; 8 L. B. 461
167. Mahomedan wife converted to Christianity.—Under the Mahomedan law a wife's conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband.—33 A. 90 (91)
168. [Note. In discussing the contrary opinion

been accepted by the Fatwa Alamgiri and almost all the Indian writers on Muhammadan Law. This exposition of law has been followed by the

Courts of India and we are, in the circumstance, bound by the rule contained in the above authorities and the fact that a rival school of law is in favour of a different opinion does not appear to us to be a sufficient ground for disturbing the long and continuous current of judicial decision.—114 P. L. 1916

169. **Christian husband reverting to Hinduism.**—The rejection of an application by the wife of a Christian (who has reverted to Hinduism) is wrong.—4 M. R. (appx.)

(7) *Agreement to pay maintenance.*

170. **Where complainant in consideration of a lump sum executed a document renouncing her claim to all future claim for maintenance, held,** that the compromise was binding in the absence of fraud and she could not be awarded any allowance under S. 488.—2 Weir 611
171. **The refusal of a Civil Court to enforce an agreement to pay maintenance is no bar to proceedings under S. 488.**—17 W. R. 19

XI. PRACTICE AND PROCEDURE.

(1) *Order must be passed in the presence of the defendant.*

176. **No order can be passed without calling on the husband to maintain the wife.**—22 W. R. 30
177. **Ex parte proceedings.** Evidence S. 488

U. R. 64

[**Note.**—An *ex parte* order may be passed in the contentious absence of the defendant [7 M. R. (appx.) xlii]. But where the defendant was represented by a *Mukhtar*, a Magistrate acted wrongly, in passing an *ex parte* order and the accused ought not to have been treated as having wilfully neglected to attend [2 B. R. 700]

178. **Evidence must be recorded.**—(1) Order passed without recording any evidence is illegal.—2 Weir 628. See 11 M. R. 9. S. A. 221. 361 P. L. 1905
- (2) The various elements required to sustain an order under this section must be strictly proved.—13 W. R. 19.

(2) *Procedure.*

179. **Order must be made on evidence in the same proceedings**—and cannot be based on knowledge acquired by the Magistrate in another case.—8 W. R. 67.
180. **Mode of recording evidence.**—Evidence should be recorded as provided by S. 355 Cr. P. C. but the proceedings cannot be conducted as in a summary trial.—[20 C. 351; 24 W. R. 61] Procedure as in summons cases. [24 W. R. 61] But the enquiry should ordinarily be full as in trial of warrant cases [2 Weir 628]

172. **An Agreement to pay**—cannot be made subject of an order under S. 488 or be enforced under the section.—21 P. R. 1890 12 P. R. 1890 12 P. R. 1888. G. M. 283 2 Weir 629

173. **Agreement made after the order**—of the Magistrate has the effect of superseding it (88) P. R. 12 Cr. R. 4 of '88

Note.—But it will not be a bar to execution of the order, if the settlement is not brought to the notice of the Court and steps are not taken for the cancellation of the order.—25 A. 165

174. **Agreement with mother of illegitimate child**—is not binding on the guardian of the child after the death of the mother, if there is nothing to show that the agreement was for the benefit of the child (83) P. R. 13

175. **Agreement to pay in cash and kind.**—An order for maintenance based on an agreement by the husband to pay the wife some cash allowance with something in kind is not a proper order under S. 488 Cr. P. C.—21 Cr. 612 (1)

181. **When wife applies for maintenance.**—Where in an enquiry under S. 488 Cr. P. C. the husband offers to maintain his wife, it is the duty of the Magistrate to ask the wife if she is willing to live with her husband and to consider the grounds of her refusal if any. Any order for maintenance, without consideration of these questions, is illegal.—9 Cr. 501

182. *Factum of marriages.*

(1) Must be decided by the Magistrate himself. He should not refer the parties to the Civil Court for getting a decision on the point.—11 P. R. 1681

(2) **Onus.**—Where the marriage is denied, it is for the wife to show that she was legally married.—7 Bur. T. 71

- 182A. **Enquiry cannot be delegated.**—A Magistrate to whom a complaint under S. 488 is made must enquire into it himself. He cannot refer it to a Subordinate Magistrate for enquiry and dismiss it on his report [29 P. R. 1905]. A first class Magistrate referred on application to a second class Magistrate for inquiry and report, and on receiving a report to the effect that the defendant had agreed to pay the complainant lived by the Court on his share of the property, passed an order for maintenance thereon. Held that the order was illegal. [11 M. 199]

183. **Defence.**—(1) A father is entitled to raise the objection that the child for whose maintenance he was ordered to make an allowance has become able to maintain itself.—9 L. B. 49. 25 M. J. 349.
- (2) That he has always been willing to maintain it.—18 P. R. 1894 5 P. L. 1894. 21 P. R. 1914. 22 P. R. 1917. Com. 8 Bur. T. 134 7 Bur. T. 34. 6 L. B. 127. 2 L. B. 36. (02-03) U. B. 1 7. (05) U. B. 1 39; (10) U. B. 1. 1. In the case of an application by the wife a husband may plead,—(1) that she has, without sufficient cause, refused to live with him or (2) that they are separate by mutual consent or (3) that she is

living in adultery (not merely that her conduct is open to suspicion).—[2 Weir 617]

184. Court fee cannot be awarded to the applicant.—An application for enforcement of an order under S. 488 is chargeable with a court-fee of eight annas, but the Court cannot order the defaulter to repay to the complainant under S. 31 of the Court Fees Act the fees so paid on the application.—Rat 498
- 185 Dismissal of petition on suspicion is illegal.—A Magistrate has no power to dismiss an application on the mere ground that he considers the applicant's conduct open to suspicion.—2 Weir 647
- 186 Wife not bound to prove that she has demanded maintenance for the child.—It is not necessary for a mother to prove in a case under S. 488, that she had asked the father to support the son and the father has refused. The mere fact that it is necessary to institute proceedings may be taken to prove the neglect of the father.—T Bur T 34
- 186A. Accused may be examined as a witness.—See Note No 35 above.
187. Duration of allowance.—A Magistrate cannot fix the duration of maintenance to children "until they come of age."—18 P. R. 1894 2 Weir 634 [As to the law in England.—See *Mathews* 2 Salk 475 *Johnson* Comb 60]
- 187A Procedure on parties coming to settlement.—The Magistrate cannot pass orders in accordance with the terms of the compromise. When the parties come to settlement, he should simply dismiss the petition if pending before him.—2 Weir 629 But see 2 Weir 634

(3) Form of order etc.

188. The Court has no power to pass an order for imprisonment in default of payment of the amount ordered as maintenance.—5 M. H. 34 or demand security for possible default.—21 W. R. 72
- 188A. Maintenance must be definitely fixed in cash.—An order under S. 488 Cr. P. O. which

does not definitely fix the maintenance allowance is not enforceable in law. An order to the effect that the petitioner is to pay Rs. 70 in all per annum and is to give certain "wheat and cotton and Rs. 10 cash" is indefinite and cannot be maintained.—21 Cr. 612 (P). 6 M. 283 2 Weir 630 2 Weir 627 [Olahu]. 2 Weir 627 [Chandi]. 19 P. R. 1911

189. Contents of the order.—(1) Frame of the order.—An order fixing a sum of money and providing for a progressive increase as the children grow older is illegal [2 N. P. 451 12 C. 335 14 M. 398] The order can not be made retrospective [2 Weir 635]. (But an order directing payment in advance from the date of the Magistrate's order is legal [Rat 189] Magistrate cannot direct the payment of maintenance allowance into a public treasury [2 Weir 627])
190. Conditional order is illegal.—An order for maintenance passed on condition that the woman resides in her husband's house is illegal.—14 P. R. 1917

(4) Revival of proceedings.

191. Where an application for maintenance under S. 488 Cr. P. O. is dismissed for default without any adjudication being made on the merits, it is open to the complainant to make a fresh application under that Section [21 Cr. 3 (c)] Where there has been an adjudication, the petition cannot be revived [1 C. J. 214: 17 Cr. 106 (c) 1 O. L. 89 5 A. 221]

(5) Pardanashin Lady.

192. [Note.—See also 3 P. R. 1893 12 A. 69 15 O. 775 21 C. 688]

XII. EVIDENCE.

(1) Procedure.

193. Mode of recording evidence.—See XI Procedure (180) above.
194. Order must be based on evidence in the same proceedings.—See XI. Procedure (179) above.
- 194A. Order made without recording any evidence is illegal.—2 Weir 624; 2 Weir 629.

(2) Meaning of "proof."

195. The word "proof" in subs (1)—means legal proof on oath.—13 W. R. 19

(3) Evidence for defence.

196. What is not sufficient defence.—The payment of a hump sum to the mother on a previous

occasion is not a sufficient answer to an application for maintenance of the children.—1 L. R. 189; See 25 A. 103; Contra 10 M. 13

197. Valid Defence of offer to maintain.—An offer to maintain in order to be a valid defence must be a bona fide offer and not one made with the object of escaping the obligation to maintain.—13 Cr. 55 (L. B.)
198. Adultery—onus on the husband.—If husband moves to set aside a maintenance order on the ground of adultery on the part of his wife, he must prove it.—5 N. 19

(4) Evidence of marriage.

199. The fact of the marriage of the parents may be strong evidence of paternity. It raises a presumption which has a very strong bearing upon the question.—16 C. 781; 2 Weir 610

Note.—For the purpose of S. 488 it is immaterial whether the mother had been married to the defendant or not.—16 C 781

100. Onus on the wife claiming maintenance.—She must prove—(1) that she is the validly married wife of the defendant; (2) that the defendant has either neglected or refused to maintain her; (3) she is justified in living apart from him.—16 B 269

(5) Proof of parentage.

201. (1) When maintenance is claimed for an illegitimate child it is not enough that the defendant may have been the father, but it must be shown that in all reasonable probability no one else can have been.—6 M 621.

202. (2) High Court refused to interfere with the finding of the Magistrate declaring a person to be the father of an illegitimate child when he had noted upon the sworn testimony of the mother in the presence of the reputed father.—20 W. R. 54

203. (3) Similarity of features and name of the child with its alleged father is not sufficient evidence for the purpose of S. 488.—16 C. 781.

204. (4) The paternity of the child irrespective of its

legitimacy or illegitimacy must be proved.—16 C 781

204A. Evidence of non-access.—A wife may be cross examined to prove non access during married life without independent evidence being first offered to prove the illegitimacy of the children.—18 B 469

(6) Miscellaneous.

205. Evidence of cruelty.—The word "cruelty" having been omitted no evidence of cruelty is now required. The word "cruelty" has been interpreted as not being confined to "personal violence"—1 A. 480.

Is relevant as a circumstance from which along with other circumstances an inference of neglect can be drawn.—9 B R. 359

206. Agreement between husband and wife.—An agreement between husband and wife for payment of maintenance in the shape of a house jewels and a certain quantity of grain annually cannot be made the subject of an order under S. 488 or enforced under it.—12 P. R. 1890.

207. Paternity and neglect to maintain being established.—Court is bound to make a maintenance order under S. 488.—6 S. 208.

XIII. ORDERS.

(1) Orders which can be passed.

208. Order for payment in advance.—A Magistrate is competent to direct the payment of maintenance allowance in advance from the date of his order.—11 B. 128.

209. Order of cancellation or modification.—Of an order under S. 488 cannot be made except on the ground of change of circumstances—mentioned in S. 489

210. Allowance of Rs. 5. for wife and each child.—can be ordered by the Magistrate. The husband is liable to maintain his wife and each of his children and the Magistrate might order him to pay as much as Rs 50 for each of them.—12 Cr. 563

210A. Where parties have filed a petition of compromise.—the Magistrate can incorporate the value of the cloth agreed to be paid annually in the allowance fixed by him on the basis of the settlement.—2 Weir 634

(2) Orders which cannot be passed.

211. (1) A Magistrate cannot order a mother to take over the custody of her illegitimate child, even if such child is of mature age, to its father.—4 C 374

212. (2) Order providing separate residence.—31 P. R. 1887; 60 P. R. 1887.

213. (3) An alternative order for payment in kind e. g. n specified quantity of grain.—3 P. R. 1887; 13 P. R. 1876.

(3A) An order for payment of maintenance in grain.—2 Weir 625; 2 Weir 627. (11) P. R. 19.

214. (4) Or direct the defendant to furnish security for possible default.—24 W. R. 72.

215. (5) Order for the maintenance of an unborn child.—3 N. P. 70

216. (6) An order for maintenance at a progressively increasing rate [though the rate may be altered under S. 489 from time to time].—12 O. 535; 2 N. P. 451. 14 M. 399

217. (7) Order an allowance to a wife who has left her husband's house and protection of her own accord and whose husband has not refused or neglected to maintain her simply on evidence of ill-treatment.—6 N. P. 205

218. (8) Order that the children should remain with the wife till they attain the age of seven.—1 P. R. 1876

219. (9) An order directing the payment of two cloths annually.—2 Weir 627.

220. (10) Order directing maintenance allowance to be paid into a public treasury.—2 Weir 627.

221. (11) Order directing a prospective increase of the rate of allowance.—2 Weir 634

222. (12) Order directing the payment of allowance with retrospective effect from a certain date.—2 Weir 635.

[N. P.—But when the order was made with the consent of the parties, High Court refused to interfere.—See 2 Weir 635]

XIV. SUFFICIENT MEANS—MEANING.

223. **Minority.**—The circumstance that the father of an illegitimate child is sixteen years old only and still studying at school, is not a sufficient excuse for avoiding a maintenance.—1 N. P. 121
224. **Hindu not divided from his father.**—Can be ordered to maintain his wife under S 488 Cr P. C.—13 M. 17
225. **Professional beggar** is not relieved from the obligation, to contribute to the support of his illegitimate child.—2 Weir 616
226. **Slender means.**—The fact that the husband may be of slender means will justify a small amount of maintenance but does not justify an absolute refusal of maintenance.—2 Weir 617.
227. **Onus.**—A mere denial by the man himself of sufficiency of means, when that man is an able-bodied man, is not conclusive proof of want of sufficiency. The onus lies on him to show that he has not sufficient means.—(11) U. B. 249, 90.
228. **The fact that wife has means is no defence.**—If the husband has sufficient means, he is bound to his wife and he is not relieved of the obligation by the circumstance that the wife may have friends able and willing to maintain her.—2 Weir 615
229. **Allowance order may be proportionate to the means.**—Maintenance ordered with reference to the means of the husband is legal.—9 W. R. 1, 38 P. R. 1885

XV. CIVIL COURT.

(1) Jurisdiction.

230. **Paternity of an illegitimate child.**—A Civil Court has no jurisdiction to entertain a suit for a declaratory decree as to the paternity of an illegitimate child for whose maintenance an order has been passed under S 488 Cr P. C.—11 C. P. 72 20 W. R. 55 See 32 C 179
231. **Injunction.**—A Civil Court cannot grant an injunction restraining a Magistrate from enforcing his order for maintenance.—11 C. 276 30 M. 100, 33 M. J. 419
232. **Suit to set aside an order for maintenance under S. 488** does not lie 18 A. 29 20 W. R. 54 32 C 479; 2 Weir 614 33 M. J. 419 See (93-00) L. B. 602 20 W. R. (Cir) 58 But See 30 M. 100, 2 Weir 615
- Note.**—But a suit for maintenance is not barred by refusal of Magistrate to order maintenance under S 488 Cr P. C.—32 C 479
233. **Magistrate's finding of illegitimacy no bar.**—A Magistrate's finding against the sonship of a person for whom maintenance was claimed is no bar to a Civil Court to establish the sonship and to recover maintenance.—33 M. J. 419; 32 C 479; 15 I. C. 603 (-).

(2) Effect of decision by Civil Court.

234. **Magistrate bound to take into consideration.**—It is not open to a Magistrate to ignore a final decree of the Civil Court on the ground that it rests on reasons which do not appear to him to be satisfactory, the jurisdiction vested in him being auxiliary to that of the Civil Court.—2 Weir 615 See 2 Weir 614
235. **Finding by Civil Court of illegitimacy.**—Where a declaration is obtained by the alleged father, in the Civil Court, subsequent to the order for maintenance under S. 488 Cr. P. C. that he was not the father of the child, the decree supersedes the previous order for maintenance and the Magistrate is bound to give effect to the objection when the order is sought to be enforced.—2 O. J. 251 See 9 O. C. 49 27 A. 483 23 B. 484
236. **Magistrate cannot question the propriety of the Civil Court's findings.**—It is not open to the Magistrate to ignore a final decree of the Civil Court, on the ground that it rests on reasons which do not appear to him satisfactory. The Magistrate is bound to act on declaration by the Civil Court that relationship as husband and wife has ceased to exist since the order of maintenance was passed and to abstain from giving any further effect to his order for maintenance.—33 M. J. 419 2 Weir 615 20 M. J. 12, 5 C. 554 11 C. 276, 19 A. 50 5 A. 236 7 B. 189
237. **Order by Civil Court for maintenance a bar to action under S. 488 Cr. P. C.**—When a decree for a monthly allowance for maintenance had been obtained in the High Court and was in force, held that the Magistrate had no jurisdiction to order a further and separate maintenance.—2 Weir 615. [Sub-baramakkaaminah]
238. **Refusal by Civil Court to enforce agreement.**—A refusal of the Civil Court to enforce an agreement to maintain the woman does not exclude either the woman from applying for or the Magistrate from making an order under S. 488 for the maintenance of their illegitimate daughter.—17 W. R. 49.
239. **Subsequent decree of the Civil Court.**—When an order for maintenance has been made on the ground that M is the wife of N but subsequently the Civil Court decides that M is not and never has been the wife of N the Magistrate is bound to consider the effect of the decree and should refuse to enforce the order.—9 O. C. 49 Where the Civil Court finds that the relationship of husband and wife had ceased to exist, the Magistrate is bound to abstain from giving further effect to his order for maintenance.—14 C. 276 See 2 Weir 614
240. **Decree for restitution of conjugal rights.**—Supersedes a maintenance order passed by a Magistrate under S 488 Cr. P. C. if the wife persists in refusing to live with her husband 27 A. 483 13 W. R. 52 23 B. 484 33 M. J. 447 4 P. R. 1906. 6 P. R. 1888, (01-00) U. B. 1. 10.

(02-63) I B I 7 (04-00) I B I 39 (10) I B I 1 (10) I B 34 See I B I 127

Note.—But non compliance by the husband of the terms of the decree which is passed subject to them, would revive the right to maintenance

4 P R 1900

241. Remedy of the person against whom an order is passed.—The person in whose favour the decree is passed should apply to the Magistrate and satisfy him that by the order of the Civil Court, his order for maintenance cannot be enforced and ask him on the authority of S 5 C 458 and T B 180 to abstain from giving any further effect to his order of maintenance — 14 C 270

242. Violation of the terms of conditional

XVI. ENFORCEMENT OF THE ORDER.

(1) Court-fee on application for enforcement.

244. An application to a magistrate to enforce payment of maintenance already awarded under S 458 is chargeable with a fee of Rs 5 under Sch II Art 1 (b) of Act VII of 1876.—Rat 458

[N. B.—The Court cannot under S 31 of Act VII of 1870, order the defaulter to repay to the complainant the fee so paid on the application.—*Ibid*] But See 11 C. P. 14

(2) The effect of divorce on enforcement.

245. See Notes No. 144 and 146 above

(3) Injunction by Civil Court.

246. Injunction cannot be granted by the Civil Court restraining a magistrate from enforcing his order for maintenance 14 C. 270

(4) Accumulation of arrears.

247. Accumulation of arrears.—Where arrears of maintenance of allowance have been allowed to accumulate for a long period, the Magistrate ought to consider, when it would not be proper to enforce payment of the whole of the arrears, whether he should enforce payment of

U B 3—q 19 (02-03) U. B I. 3.

248. Accumulation of arrears—is opposed to the spirit of the legislation, and Courts ought not to permit it—(02) U. B. 2 q 3. See 4 B L 29

(5) Procedure.

249. Procedure.—A claim for accumulated arrears of maintenance may be dealt with in one proceeding and arrears may be levied under a single warrant.—S C. 291—9 A. 240 (F.B.).

decrees.—Where a lump sum decree obtained from the Civil Court, was subject to certain conditions, non compliance of the husband with those conditions, would justify the wife's having left his custody and would revive her right to maintenance under the Magisterial order passed under this section [4 P R 1905]

243. Civil Court's order not effective before the terms of the decree have been complied with.—Where the suit for restitution is brought not with a view to take the wife back, but simply to evade the payment of the allowance awarded by the Criminal Court, the order of the Magistrate must remain in force until the husband executed the decree against his wife by taking her home.—[Per Jadhav and T. Ling JJ] in *Bomb Gaz* 8th Jan'y, 1902

[Per *Oldfield J*] 7 M. H 37 (ip)=2 Weir 400. See Rat 801 31 P. R. 1880

250. Showing cause.—It is open to any party to an order under S 458 to show cause against its enforcement and to ask for cancellation or alteration on any of the grounds specified in Ss 458 and 459 Cr P. C. in one and the same petition.—21 P. R. 1894

250A. Procedure when the defendant has lost jurisdiction.—The Magistrate may himself issue a warrant for collection of arrears of maintenance or refer the applicant to the Magistrate within whose jurisdiction the defendant is to be found—4 M. 270

251. Enforcement would be wrong on proof of a lump sum having been paid.—Although the Code of Criminal Procedure contains no express provision for cancelling an order for maintenance in cases where the woman has received a lump sum of money in satisfaction of her claims for maintenance, yet a Magistrate would clearly not only be justified in refusing to enforce the order of maintenance in such cases, but would be wrong in enforcing it—10 M 13

252. Excessive allowance.—A Magistrate cannot refuse to enforce an order, because on a further enquiry, evidence is given to show that the allowance was excessive—2 Weir 636

253. Enforcement may be made by a second class Magistrate.—Rat 283.

Power of police officer executing the warrant.

254. Includes the breaking open of an inner door of the house of the person against whom the order is made.—Rat 431.

(6) Insolvency of the defendant.

255. The inclusion of the arrears of a maintenance in the insolvent's Schedule would protect the insolvent from arrest or imprisonment in respect of such debt.—S C 634; See 17 C. P. 127.

(7) *Death of the defendant.*

- 258. The order cannot be enforced, after the death of the person against whom it was made against his estate—17 C N 1130.

(8) *Limitation.*

257. The Code as newly amended provides for a limitation of one year for applications for enforcement. There was no limitation before the amendment was made—See (102) U. B. 3

XVII. IMPRISONMENT IN DEFAULT.

(1) *Non-payment must be due to wilful default.*

258. Before an order for commitment to prison for default can be made, it must be proved that non-payment was due to wilful neglect of the person ordered to pay.—25 C. 291; 22 C. 291 5 O. C. 316. The imprisonment may be either simple or rigorous—9 A. 210 (F. B.) See (92-96) U. B. 70

(2) *Condition precedent.*

259. A condition precedent to the infliction of imprisonment is the issue of a warrant in respect of each breach of the order directing payment of maintenance—9 A. 210 (F. B.)

(3) *Mode of computation.*

260. The maximum imprisonment will be one month for each month's arrears and a further term of a month's imprisonment for the balance of any representing the arrears for a portion of a month—25 C. 291; 20 M. 3; 12 P. R. 1919 12 P. R. 1877 con 9 A. 240 (F. B.); Rtt 601 (193-00) L. B. 316 (192-03) U. B. 13. 7 Bar T. 225; 6 M. H. (1p) 22.

Note.—The petitioner was ordered to pay his wife maintenance allowance at Rs 4 per month. He defaulted and the arrears came up to Rs 170 odd in all. He was sentenced to six months' simple imprisonment. Held that the sentence was justified by the term of section 483(3) Cr. P. C. [12 P. R. 1919]. The decision in 2 Weir 639=6 M. H. (app) XXII to the effect that the result of the issue of a warrant for accumulated arrears would be that one month's imprisonment alone would be awardable in default, was passed with reference to S 316 of the Code of 1861. But under the Code of 1892, the maximum imprisonment that can be imposed will be one month for each month's arrears and if there is a balance representing the arrears for a portion of a month

a further term of a month's imprisonment may be imposed for such arrears [20 M. 3].

It should conso on payment of the amount due
22 C. 291 - contra 8 M. 70

[N. B.—The point has now been settled.—See ante (3)]

(4) *Imprisonment cannot be awarded in anticipation.*

261. An order for maintenance provided that, in the event of the defendant failing to pay the monthly maintenance or of there not being sufficient distrainable goods belonging to him, he should be rigorously imprisoned for the term of 15 days for every breach of the order held that the provision was an anticipation of a procedure to take place on a wilful default, if such should occur, and was therefore illegal—5 M. H. (1p) xxvii.

(5) *Nature of the imprisonment—does it cease on payment of arrears?*

262. In 6 M. 70 and (17) L. B. (31 '00) 316 (317) it has been held that the imprisonment ordered in default of payment is a punishment for a breach of the order by the Court. The sentence is therefore absolute and the defaulter is not entitled to be released on payment of arrears due. It has been held that in Form XI, not only simple but rigorous imprisonment is provided for, which would indicate that the imprisonment is not for default of payment but is a punishment for contempt of court. The form does not provide for release on payment—[(19) U. B. (92-06) 70 (71)]. This view has been expressly dissented from in 22 C. 291.

(6) *Imprisonment ought to be simple.*

263. It would be safer to confine imprisonment in default of payment to simple imprisonment—[(19) U. B. (92-06) 70 (71)]

XVIII. APPEAL REVISION ETC.

(1) *No appeal.*

264. No appeal lies from the order of a Magistrate under the section directing a man to pay a monthly allowance for the support of his illegitimate child—7 W. R. 10; 5 B. H. 81 28 M. J. 493; See 20 W. R. 58

(2) *Further enquiry.*

265. A District Magistrate is not competent to direct further enquiry into an application rejected under S. 458 Cr. P. C.—24 A. 545; See 1 C. J. 102.

(3) *Revision.*

266. High Court in its revisional jurisdiction decided the fact whether under the Hindu Law, the wife is entitled to separate maintenance—16 B. 291

[Note.—As to High Court's powers of revision—See 5 B. H. (c c) 81; 4 N. P. 123; 26 P. L. 1903]

(4) *Review.*

267. The Code of Criminal Procedure does not authorize a Magistrate to review the final order made by him under S. 488 Cr. P. C.—21 C. N. 344

(5) *Rehearing.*

268. The law does not empower a Magistrate to rehear an application for maintenance under S 489 dismissed for non appearance—1 C J 211 1 C L 89-17 Cr 106 (C) 5 A 224

[Note.—But where the application has been dismissed for default without any adjudication it can be revised—21 Cr. 3 (C)]

269. Second enquiry on same materials is illegal.—Where there has already been an adjudication on certain facts by a competent Court under S 489 Cr P C, no second enquiry into the same allegations is competent, unless there have been charges of cruelty subsequent to the former decision—21 P R 1016 5 A 224 (Con 1 L B 377)

270. If, subsequently to the dismissal of the complaint, facts different from those on which

the first application was based, take place, a Magistrate may entertain a second application therefor—2 Weir 633

271. The rejection of an application in one District for want of jurisdiction is no bar to the renewal of the application in the proper District.—5 N. P. 217 9 B 10

272. A District Magistrate cannot entertain an application *de novo*, after the matter has been decided by a duly empowered Magistrate—1 C L 89

273. Fresh application after the first one has become inoperative.—Where after an order for maintenance under S 489 Cr. P C the wife returns to the husband, the original order becomes ineffectual as to the future, and the wife, if again turned out, should again institute formal proceedings under Chapter XXXVI Cr. P. C.—(88) A N 217 H. H Cr R No. 8 of 15-3-88.

XIX. CANCELLATION OF ORDERS.

274. Who can cancel.—Application for cancellation under subs (4) and (5) must be made to the Magistrate who passed the original order or to his successor in office, who and who only has jurisdiction in the matter—25 A 545

275. Allowance of children.—Subs (5) of S 488 Cr P C does not apply to an order awarding maintenance of child Cancellation of an allowance to a child is not provided by the Code—[77 P R 1853 6 L B 127] The only order that can be passed is one of modification under S 489 *infa* on the ground of change of circumstances—[(O'4) A N 149 27 A 11] The fact, that the husband obtained, subsequently to an order under S 488 Cr P C, a decree for the restitution of conjugal rights, does not absolve him from the liability to pay It might be different if he obtained an order for guardianship.—[6 L B 127 2 L B 46 (L B)]

- 276 Refusal to give up the children.—by wife will not entail the cancellation of the order—(02) U B 7

277. Decree for restitution of conjugal rights—vacates a previous order of separate maintenance to the wife under S 488 Cr P C—[See 13 W R 52 23 B 441 27 A 483]

278. Cancellation on proof of adultery.—It is always open to the husband against whom an order for maintenance has been passed, to prove that his wife is living in adultery and have the order cancelled [8 B H (O C) 124- 5 A 224 (22) (82) A N 168, 36 P R 1902] To obtain an order of cancellation on the ground of adultery of the wife, the husband must clearly establish his allegation Where three out of nine witnesses disowned all knowledge of misconduct, one of the witnesses said he suspected the woman because she went continually to the

bazar and the remaining witnesses considered her adulterous because men went to the house where

acts, if isolated, do not necessarily come within the meaning of that term—(5 N 19. See 30 M. 332]

tery a who two y who was leading a course in adultery would not be disentitled to maintenance for her past misconduct—[26 A 326 See Rat 333]

279. Execution of agreement.—between the parties when the validity of such agreement has not been declared by a competent court is not a sufficient ground for cancelling the order.—2 Weir 646

280. Discontinuance of allowance.—Where a father is ordered to make an allowance for the maintenance of his daughters, but it is found that the daughters have become qualified to maintain themselves, the order may be discharged notwithstanding that the daughters are desirous of continuing their education or are reluctant to work for their living—19 Cr 160 (L B)

281. Order cannot be cancelled on production of a disputed compromise.—Where the wife denied the validity of an alleged deed of compromise by which the parties agreed to a reduction in the rate of maintenance allowed by the Magistrate, held that the Magistrate was not competent to cancel the order for maintenance, until the agreement has been declared by a competent tribunal to be binding on the wife—2 Weir 649

XX. MISCELLANEOUS.

(1) Court fee on application for enforcement.

282. See XVI Enforcement of the order (241) above.

(2) Court fee on application for maintenance.

283. An application for maintenance under S 488 cannot be dismissed on the ground that the applicant failed to pay process fees as ordered by the court—16 M. 234; 11 C P. 14

(3) Res Judicata.

284. (1) Where a duly authorised Magistrate has dismissed an application under S. 488 after hearing the evidence offered, the District Magistrate cannot entertain the complaint *de novo*—1 C N. 89

Though an application for maintenance may have been dismissed once in one state of facts, the Magistrate is competent to allow maintenance on an application being made on a different state of facts which have subsequently occurred—2 Weir 633

285. (2) or when under similar circumstances he has granted the application, a second Magistrate cannot reopen matters already adjudicated upon by him and direct the discontinuance of allowance.—5 A. 224

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit. Provided that if he increases the allowance the monthly rate of fifty rupees in the whole be not exceeded

(4) Costs.

286. There is no provision of law under which a husband can be made liable for costs incurred by the wife in connection with an application for maintenance under O P. C—11 C. P. 14.

(5) Reference under S 438 Cr. P. C.

287. Where a subordinate Magistrate has rejected a petition for maintenance under S 488 Cr. P. C., the District Magistrate has no power to take evidence under S 438 Cr. P. C. and if he had that power, it was only for the purpose of making a recommendation to the High Court—12 A. J. 461

(6) Fresh application on new facts.

288. It cannot be generally laid down that, when a duly empowered Magistrate had dismissed an application under S. 488, no other Magistrate is competent to entertain the complaint *de novo*. A woman may apply for maintenance on a given state of facts in one year, and if subsequently different facts take place, they may justify an application for maintenance, though the prior facts did not—2 Weir 633

(7) Revival of proceedings.

289. See Note No. 181 under XI Practice and Procedure, above.

Notes.

1. Meaning of "change in the circumstances".—The "change" in the circumstances referred to in S 488 is a change in the pecuniary or other circumstances of the party paying or receiving the allowance, which would justify an

tenance allowance to his daughter and in 1884 applied for a cancellation of the order of 1877 on the ground that the daughter was married, held that the husband being legally bound to support his wife, the Magistrate was not competent to reject the application that the girl had not yet attained puberty and the husband was therefore not bound to maintain her—2 Weir 630

What are change in the circumstances.

- 19 W. R 731
2. The word "alteration" in the circumstances contemplated by this section, only amounts to a power to alter the amount and not to a total discontinuance thereof.—*Per Mahmood J.* in 5 A. 220. *Con* 2 Weir 450 11 C N C
3. Marriage of the minor daughter.—Where the petitioner was ordered in 1877 to pay a man-

4. (1) That the child is able to maintain itself.—*See* Note No. 6 under S 490 *infra*
5. (2) A decree being obtained by the alleged father declaring that he is not the father of the child.—*See* Note No. 5 under S 490 *infra*
6. (3) Where the amount available for the tawariki or barwad family becomes insufficient to maintain the children, that would be a change of circumstances within the meaning of S 488 Cr. P. C.—37 M J 361.
7. (4) Divorce among Mahomedans may be viewed as a change of circumstances.—10 W. R 73

8. (3) The rate of maintenance should be reduced when there is a fall in the husband's income.—170 P. L. 1914

What are not "change in the circumstances."

9. (1) The fact that the wife had got a divorce after the order for maintenance, and married a second husband, will not absolve the first husband from his duty to maintain his child.—27 A 11
10. A husband cannot claim a reduction of the amount of allowance ordered to be paid by the Court, to his deserted wife, on the mere ground that she might possibly be able to earn something by her own labour.—(87) A N 107
11. (3) The change of circumstances referred to in the Section is a change in the pecuniary or other circumstances of the party paying or receiving the allowance, which would justify an increase
12. Power to order maintenance at "progressively increasing rate."—A Magistrate has no power to make an order under S. 489 Cr. P. C. for maintenance at a progressively increasing rate. The allowance must be ordered at a fixed monthly rate, though it may be altered from time to time under S. 489 as the child grows older [12 O 535 4 N 1 454]. The fact, that a child to whom a maintenance has been awarded, has grown older, constitutes a "change" in the circumstances of the person receiving the allowance [14 M 399 (37) L B (1900) 313 But See 2 Weir 634]

13. Application under S. 489 can be made only in respect of a subsisting order under S. 488 Cr. P. C.—A decree for the restitution of conjugal rights determines or puts an end to a previous order under S. 488 Cr. P. C. The
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1884
A. N. 51
14. Order for reduction cannot operate retrospectively.—A Magistrate has no power to reduce the rate of maintenance which has accrued due. He should enforce the payment of arrears at the rate originally awarded, and the reduction should be limited to payments accruing due after the date of the order.—2 Weir 650.
15. A person aggrieved by the order under S. 488 should apply under S. 489 Cr. P. C.—A person who seeks a modification of the order passed against him under S. 488 Cr. P. C. must proceed under this section [9 W. R. 1 38 P. R. 1885]. If a person, against whom an order for maintenance has been made, considers that such order should no longer be in force against him, it is open for him to apply under S. 489 and get the order altered. It is not suitable or expedient that it should be open to a second Magistrate acting under S. 490 to call in question an
- 16.

order of a criminal court under S. 488 may be modified on a change of circumstances being shown, still, so long as that order remains in force, it must carry with it its proper consequences.—22 O 291

490 A copy of the order of maintenance shall be given without payment to the person in Enforcement of order of maintenance whose favour it is made or to his guardian if any, or to the person to whom the allowance is to be paid and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due

Notes.

1. Scope of the section.—It is not the intention of the Legislature that the Magistrate, to whom an application is made to enforce an order of maintenance, should take into consideration anything further than the identity of the parties and the non-payment of the allowance. It is, no doubt, also open to the Magistrate to consider whether the person to whom the order of maintenance has been given is, at the time she makes the application, still holding the position of wife. No further step relating to the clear words of S. 490 should be allowed.—25 A 165.
2. Note per contra.—The conditions specified in the second clause of S. 490 Cr. P. C. have special reference to cases in which the enforcement is sought at a place other than that in which the order was originally passed or by a Magistrate

other than the one who passed it and cannot be considered as exhaustive, and it is open to any party to such order to show cause against its enforcement and to ask for its cancellation or alteration on any of the grounds specified in S. 488 and 489 Cr. P. C. in one and the same petition.—[21 P. R. 1894]. For instance, it is open to the Magistrate enforcing the order to decline to do so on the ground that the claim had been released [13 M. 13] or that the wife had voluntarily returned to live with the husband [(48) A N 217 (94) L B 1 10]

3. Effect of change of law.—S. 490 replaced the word "shall" used in the corresponding section of Act X of 1882 by the word "may," and the object of the Legislature in making the above alteration obviously was to enable the Magistrate

to consider any reasons, that may be urged against the enforcement of the order other than those for which separate provision is made by S 488 (5) and Sec 459 at the Code. Hence a decree obtained by the party against whom an order has been made in the Civil Court, [See 17 O. C. 331 (Giv)] declaring that he was not the father of child must be given effect to, when the order in favour of the child was sought to be enforced [2 O J. 251. See 9 O C 19 27 A 143 23 B 484]

4. Can the order of maintenance be enforced on proof of divorce?—In the leading case of "*Kavayee Pubhai*" 8 B. H. (c c) 97, a ruling under S 235, Act XLVIII of 1860 (Presidency Town Police Act) it was held that an order for maintenance validly made against a Mahomedan husband under S 13 of the Presidency Town Police Amendment Act, can no further be executed after divorce of the wife by the husband. [The wording of that section corresponded to S 337 of the Cr. P. C. Act X of 1872] The ratio decidendi was applied in a maintenance case under the Cr. P. C. in 1 C 558. It was held in 3 A 226 [See also 7 B 189 8 B 95] that the view expressed in 8 B H. (c c) 95 and 5 C. 558 was based on sound principles of construction, "though there was no express provision in the Code to that effect." The Allahabad High Court, however, in a later ruling [15 A. 143 P.] in (97—01) U. B. 1 112] dissented from this view and distinguished the ruling in 8 B H. (C C) 95 on the ground that it was a ruling under the Act XLVIII of 1860 which contained no provision similar to S 490 Cr. P. C. The dictum in 15 A 143 that the Court acting under S. 490 Cr. P. C. had no jurisdiction to enquire into a plea that the wife was divorced was definitely overruled in 19 A 50 (F. B.). See also (85) A. N. 29 14 C 276 (1916) U. B. II 53. 21 P. R. 1894 17 O C 280 9 O C 49. The fact that the parties are Shia Mahomedans does not preclude the application of the provisions of the Cr. P. C. in such cases.

(the plaintiff) in the presence of the Court. Held that even if such divorce made such an alteration in the circumstances as to justify the Court on the application of the husband (the defendant) in altering the order for maintenance, yet the defendant would not be relieved from obeying the order during the time which had elapsed up to the date when and until the change of circumstances has occurred.—19 W. R. 73 [Dissented from in 19 A 50 (F. B.)]

[Note.—A father, Hindu or Mahomedan, is bound to maintain his children even though the mother of the children may have been divorced.—(72—92) L. B. 145]

5. Effect of orders by Civil Court.—"Courts exercising jurisdiction under S 488 Cr. P. C. must often decide questions of marriage, divorce, paternity and so forth, but their decisions are not binding upon the parties in other litigation in civil courts, they are merely incidental to the main object of the proceedings, namely, the grant or refusal of an order for maintenance

On the other hand, if a competent civil court has decided that A. is not and never has been the wife of B, then a Magistrate cannot in proceedings, under S 488, hold that A is the wife of B and order B to maintain her. If the principle on which the High Courts have acted in holding that, in proceedings under S 494 Magistrates must attend to a divorce effected after the order for maintenance, is correct, as I think it is, it seems to follow that Magistrates must in such proceeding attend to a decree obtained by Z (the defendant) in the present case.—*The Channer* J. J. C. in 10 O C 19

6. Objection that the child is able to maintain itself.—A father is entitled to raise if objection that the child, for whose maintenance he was ordered to make an allowance, has been able to maintain itself.—[9 L. B. 19]. Where father is ordered to make an allowance for the maintenance of his daughters, but it is subsequently found that the daughters have been qualified to maintain themselves, the order may be discharged notwithstanding that the daughters are desirous of continuing their education or are reluctant to work for their living [19 Cr. II (L. B.)]
7. Magistrate cannot refuse to enforce on the ground that the allowance is excessive.—A Magistrate cannot refuse to enforce an order for maintenance when in a further enquiry evidence is given to show that the allowance granted was excessive.—2 Weir 636
8. Order may be enforced anywhere the defendant is to be found.—The second class Magistrate, of the place where the husband is at the time, is competent to enforce an order for maintenance passed against the husband [Rat 285]
9. S. 490 does not deprive Magistrate, who made the order, of jurisdiction to enforce it.—S 535 (=S 490) does not deprive Magistrate, who has made an order for maintenance of the jurisdiction, given him by S 53 (=495) When the defendant is beyond his jurisdiction, he may in his discretion, issue a warrant for collection of arrears of maintenance, or refer the applicant to the Magistrate having jurisdiction at the place where the defendant is to be found.—4 M 230 7 L. B. 116.
10. Where a Magistrate has issued a warrant for collection of arrears of maintenance, and the defendant has been arrested, the Magistrate may, in his discretion, issue a warrant for collection of arrears of maintenance, or refer the applicant to the Magistrate having jurisdiction at the place where the defendant is to be found.—4 M 230 7 L. B. 116.

WHILE WHO IS ENTITLED WITH THE EXECUTION OF A WARRANT ISSUED BY A CRIMINAL COURT ON THE CLAY OF THE AMOUNT RECOVERABLE AS MAINTENANCE UNDER S 488 Cr. P. C. CAN BREAK OPEN AN INNER DOOR OF THE HOUSE OF THE PERSON AGAINST WHOM THE ORDER IS MADE.—[Rat 431] The Jagir Income of a person collected by Revenue Authorities can be taken in satisfaction of the arrears of maintenance due under an order passed against such person.—[J P R 1889]

11. Orders based on compromise cannot be enforced.—If any agreement is made after

the order of the Magistrate, it has the effect of superseding the previous order, and whatever rights it may give rise to in a civil court neither the agreement nor the order was one that could be enforced under this Section—12 P. R. 1855, See 12 P. R. 1890 & 39 P. R. 1905

12. Remission of Court fee.—In the exercise of power conferred by S. 35 of the Court Fees Act VII. of 1870, the Governor-General in Council

is pleased to remit the fees payable under the said Act on a copy of the order when the copy is given under S. 490 to the person named therein—[*Gaz. of India* 1886 Pt. I, 506.] Under S. 20 Cl. (ii) of the same Act, a fee of one rupee has been fixed for serving and executing a warrant for levy of maintenance of a wife and child and also a percentage on the amount of maintenance levied—[*Col. Gaz.* 1874 p. 478; 21 W. R. Rules &c. 12.]

CHAPTER XXXVII

DIRECTIONS IN THE NATURE OF A HABEAS CORPUS.

491. (1) Any of the High Courts of Judicature at Fort William, Madras and Bombay Power to issue directions of the nature may, whenever it thinks fit direct—
of a *habeas corpus*—

- (a) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law,
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty,
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court,
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively,
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial, and
- (f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment

(2) Each of the said High Courts may, from time to time frame rules to regulate the procedure in cases under this section

(3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the State Prisoners Act, 1850, or the State Prisoners Act, 1858

Proposed amendments to the section.—In sub section (3) of section 491 of the said Code, after the figures "1858," the words and figures "or the Indian Extradition Act, 1903" shall be added

Notes.

1. **Habeas Corpus.**—*Habeas Corpus* the most celebrated prerogative writ in the English Law, is a remedy for a person deprived of his liberty. It is addressed to him who detains another in custody, and commands him to produce the body, with the day and cause of his caption and detention, and to do, submit to and receive whatever the Judge or Court shall consider in that behalf—Wharton's Law Lexicon.
2. **Nature of the power exercisable under S. 491.**—The power under S. 491 is a power not created by the Extradition Act or exercisable by way of revision that vested in Presidency Courts to protect the liberty of the subject in appropriate cases, whatever may be the occasion of deprivation of which complaint is made—[12 C. 793] The right to issue a writ of *habeas corpus* passed by the High Court has not

been taken away by the special procedure by subclauses (6) and (7) of the Extradition Act [46 C 31]. The jurisdiction of the High Court to give directions in the nature of *habeas corpus* under S. 491 Cr. P. C. is not excluded by the issue by the Government of India of a warrant under S. 3 sub s 8 of the Extradition Act [29 C 161].

3. Where the petition should be filed.—The Original Side of the High Court in its Criminal jurisdiction is the proper court to deal with applications under S. 491 Cr. P. C.—11 C 76 2 C N cccviii

4. Sec 491 does not apply to case of accused convicted and sentenced by Judge of High Court.—It is doubtful if S. 491 Cr. P. C. has any application in the case of an accused who has been convicted and sentenced by a Judge of the High Court at the Sessions, on the ground of irregularities having been discovered after the delivery of the verdict by the jury.—41 C. 723.

5. Fugitive Criminals.—Sec 11 of the English Extradition Act of 1870 provides that a fugitive criminal may apply for a writ of *habeas corpus*, if the Magistrate commits him to prison. There is no such provision in our Extradition Act—[XV of 1903] and subclauses (6) and (7) have provided a special procedure.—Chaudhuri J in 46 C. 31

6. Person neither arrested nor detained within jurisdiction.—Under S. 491. Cr. P. C., the High Court has no jurisdiction to order the discharge from custody of a person arrested under the Extradition Act where neither the arrest nor the detention was within the jurisdiction of the Court.—46 C 31

7. Can the Indian Legislature take away or limit the right to Habeas Corpus?—Quere.—“Whether a supreme right like that to a Habeas Corpus can be taken away or limited by the Indian Legislature?” The burden lies heavy on those who assert it (that the right has been taken away) to show that it has been taken away by such implication as is absolutely necessary for the interpretation of statutes.—[*Per Mooherey J.* in 39 C 164. L. R. 3 P. C. 282 (289) 1.]

Custody of minors.

8. (1) *Quere*—Whether a Mahomedan (Shiah) could by his will deprive his widow of the custody of her infant children by appointing by his will some one else as their guardian without any just cause, and whether an arbitrary and capricious direction in the will depriving the mother of the custody of her infant would be enforced by courts?—[11 B R 75] Where a European father had left directions in his will that his natural children by a native woman, should be brought up as Christians, held on *habeas corpus* that the mother of these children was entitled to the custody.—[*Rei. W. Fletcher Perry's Oriental Cases* 109.]

0. (2) The delegation of parental authority is revocable at any time and it is the duty of the parents and guardians to revoke it if need to the

detriment of the children. It is also open to the court, within whose jurisdiction the children are to be found to revoke it at any time, if sufficient cause be shown for interference especially when the parents have it out of their power to interfere themselves for the protection of their children by sending them touring round the world in the custody of strangers.—[13 M. 224.]

10. (3) The main consideration for the court to be acted upon in the exercise of its power to interfere for the protection of children is the ‘benefit’ or ‘welfare’ of the child. The term ‘welfare’ must be read in the largest possible sense [30 M. 224; *Q. 1. Goughall* (1893) 2 Q. B. D. 221]. “The welfare of the child is not to be measured by money only, or by physical comfort only. The word must be taken in its widest sense. The moral and religious welfare of the child, must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.” [*Re Me Girth* (1903) 1 Ch. 144 (145).]

11. (1) Even a father, if it be shown that cruelty or corruption is to be apprehended from him, would be deprived of the custody of his children. *The King v. Greenhill* (1836) 4 A. & E. 261. See (1838) 4 A. & E. [643]. A mother would be deprived of her custody, if she is living in open adultery [*In re G.* (1899) 1 Ch. 719.]

12. (2) The underlying principle of every writ of *Habeas Corpus* (and proceedings under S. 491 of the Cr. P. C. 1895) is to ensure the protection and well-being of the person brought before the court under that writ. The real interest and well-being of the person ought to be not only the determining but the sole consideration.—[12 B. R. 891]

12A. (6) In Courts of equity a discretionary power has always been exercised to control the father's or guardian's legal rights of custody. Where therefore the parents, in pursuance of arrangement deliberately entered into by them, have resigned their parental authority. Held that the Court in exercising its powers of interference with the custody of a child, at the instance of the parents should be guided mainly if not entirely by what it conceives to be the best for the welfare and well being of the child [29 C 290].

13. Application of S. 491 in respect of children.—S. 491 (1) (b) Cr. P. C. does not apply, when the children have not been illegally or improperly detained. [8 M. T. 300] A Master is not entitled to a writ of *habeas corpus* for the purpose of recovering the custody of a minor apprentice [33 M. 285 See *R. v. Reynolds* 6 T. R. 497. *Le Francese v. Barnum* (1859) 43 Ch. D. 165]

14. Recovery of minors from the custody of Missionaries.—Where the mother put her illegitimate child in a Mission School and it appeared that she never contributed any thing whatever towards the expenses of the child after she had become a boarder, the court refused an application under this section by her for the recovery of her daughter on the ground that it was clearly for the present and future welfare of the girl that she should remain where she was [16 B 307]. The court will not assist parents in exercising their legal rights of custody in cases

where there has been a voluntary abandonment of such rights [23 C. 200]. The Court on *Habeas Corpus* ordered a Hindu boy of twelve years of age to be delivered up to his father and refused to examine the boy as to his capacity and knowledge of the Christian religion, or as to his wishes to remain with his Christian instructors. See *Robert Nesbit Perry's Oriental Cases* 103.] But a mother who not being able to maintain her children, handed over her infant daughter to a mission and became a convert to Mahomedanism, was held not to be entitled to the custody of her daughter [1 M. T. 317].

15. **Change of religion does not disentitle father to custody.**—Where a Parsi family detained an infant child from its father, on the ground that the latter having embraced Christianity, the Court ordered the child to be given up to the father on *habeas corpus*, a compromise with the father after issue of writ was declared fraudulent as defeating the common law right of the father. [*Shapurji Bezant Perry* 91.] A Mahomedan father will not lose his right to the custody of his children merely because he has changed his religion. [60 P. R. 1901.] A Hindu father does not lose his rights of guardianship by the fact that he has become a Brahmo [8 M. T. 300].

16. **The discretion of the Court.**—S. 491 of the Cr. P. C. leaves it entirely to the discretion of the Court, whether it should or should not direct the person brought before it to be dealt with according to law whereas Rules 794 of the Bombay High Court Rules in dealing with a person so brought before it, deprives the Court of all further discretion, and commands that, in the absence of cause being shown against the rule, which is very different thing from allowing the Court to exercise its discretion even when technically the cause is inadequate, it shall pass an order that the person or persons improperly detained shall be delivered to the person entitled to their custody.—[2 B. R. 891]

17. **Meaning of "dealt with according to law."**—The phrase is of such wide and general meaning that it is fairly open to many constructions. In the case of children it might not unreasonably be extended so as to take in what ordinarily happens when the parties have recourse to the Courts under the Guardian and Wards Act instead of under this section.—[*ibid*.] A search warrant was issued for the production of a ward said to be wrongfully confined at the instance of the guardian. The ward, who was quite grown up, denied the complainant's allegations of

18. **Scope of subs (b).**—The subsection itself provides that the remedy, which the Court gives, goes no further than setting aside detention at liberty.—[*ibid*.] Subs (b) does not apply when the children whose custody is sought are not illegally or improperly detained [8 M. T. 300].

19. **When the custodian has no personal interest.**—Where the defendant had no personal interest in the children whom the plaintiff sought to be delivered up to himself, or in their services, and no right to their custody, and where the only object of the defendant was to send back the children to their parents or natural guardians, the proceedings should be treated as on *habeas corpus* under S. 491 Cr. P. C. for the purpose of determining the custody of the children.—33 M. 289

Practice.

20. A writ of *habeas corpus* may be granted in a Civil or Criminal proceeding [*R. v. Barward* L. R. 23 Q. B. D. 305; (10) M. N. 187]

Calcutta High Court Rules.

21. (1) **Affidavit.**—Every application to the Court to admit a prisoner to bail shall, (unless otherwise ordered) be supported by an affidavit or affirmation stating when, by whom and under what circumstances

[Rule 1]. Every application to bring up before the Court a person alleged to be illegally or improperly detained in custody, shall be supported by affidavit, or affirmation stating where and by whom the person is detained in custody and (so far as they are known) the facts relating to such

caution to bring up a prisoner before the Court to be examined as a witness shall be supported by affidavit, or affirmation stating where the prisoner is detained in custody and for what purpose

other custody it is proposed to remove him, and the reason for such change of custody [Rule 6].

[N. B.—The affidavit or affirmation required by rules 1 and 3 shall be made by the person alleged to be in custody [Rule 8].

(2) **Service and Return of writ.**—(a) The sheriff shall, as soon as possible, after the arrest of any person under a warrant of arrest issued under the High Courts Criminal Procedure Act, bring the body of such person before the Court to be dealt with according to law. If the sheriff shall fail to comply with the foregoing

sheriff's return, shall cause the same to be produced before the Court, on a requisition to him in writing [Rule 7]. If any case in which the Court shall order a person in custody to be brought either before it, or before a Court martial or before Commissioners sitting under the authority of a Commission from the Governor-General in Council or to be removed from one custody to another, a warrant in writing shall be prepared and signed by the Registrar or the Clerk of Crown and countersigned by the Judge who made the order, and sealed with the seal of the Court [Rule No. 10]. Such a warrant when issued under Rule 3, shall be forwarded by the Registrar or Clerk of the Crown, to the officer in charge of the Jail, in which the prisoner is confined. In every other case, the warrant shall, unless otherwise ordered, be delivered to the attorney of the applicant who shall cause it to be served personally upon the person to whom it is directed, or otherwise, as the Court shall direct [Rule No. 11].—See rules under the High Court Criminal Pro. Act X of 1875.

22. [Notes.—(1) "*Cepi corpus et paratum habeo*" (I have taken the body and have it ready) is a return made by the Sheriff upon an attachment *copias* etc. when he has the person, against whom the process was issued, in custody.

(2) The return cannot be controverted.—The return to a writ of *habeas corpus* must be taken to be true and cannot be controverted by an affidavit. In England, 56 Geo 3 c 100 s 4 allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country. The return to a writ of *habeas corpus* can however be amended—[5 B. L. 418]

23. Power of High Court to issue writ into mofassil.—On an application to the High Court to issue a writ of *habeas corpus* to the Superintendent (a European British Subject) of the jail,

held that the Supreme Court had power to writs of *habeas corpus* to persons in the mofassil and that the same power is continued in the High Court. As the person, against who writ was applied for, had acted under the order of the Governor-General in Council the Court would not direct the writ to issue [Khan & D. L. 392: See 18 B. 636: 1 Knapp]

24. Conflicting rulings as to the right of an apostate husband to obtain custody of the wife.—When the wife of a Hindu refused to live with her husband on the ground of his conversion to Christianity, a Judge of the Madras High Court, ordered her delivered up to her husband. But in a similar case at Bombay, where the wife had left the husband voluntarily on the ground of his having abandoned the usages of Hinduism and was living with her relations in restraint, the Court refused to issue the writ [Balaram Perry's Oriental Cases 516]

25. Prisoner brought down from mofassil.—Where a prisoner, who had escaped from custody in Mysore (a State in alliance with the British Government) and had been apprehended in the Mysore Catch, was sent down to Bombay in order to be remitted to his former custody in Mysore. On these facts appearing on a return to a writ of *habeas corpus* refused to discharge the prisoner, though there did not appear to be any warrant for his detention [Lefroy & Perry's Cases 397].

26. Appeals.—An order of a Single Judge of the High Court made in the exercise of its original jurisdiction, refusing an appeal from a prisoner under S. 491 Cr. P. O. for release on bail, was set aside on appeal to the High Court, on the ground that the Judge had acted in excess of his jurisdiction. The order of the High Court, is a judgment within the terms of the Letters Patent and an appeal lies from such order to the High Court.—29 C. 286 555; But See 1 Weir 789-A. 1 Weir 789 B.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. (1) The Governor General in Council or the Local Government may appoint, general Power to appoint Public Prosecutors, in any case, or for any specified class of cases, in any local one or more officers to be called Public Prosecutors.

(2) In any case committed for trial to the Court of Session, the District Magistrate subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence

of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case

Proposed amendments to the section.—In sub-section (2) of section 492 of the said Code—

(i) The words "In any case committed for trial to the Court of Session" shall be omitted, and for the words "such case," the words "any case" shall be substituted

(iv) After the words "for the purpose of such case" the following shall be added, namely:—

"The expression Assistant District Superintendent in this sub-section shall be deemed to include any person authorised by the Local Government to perform all or any of the duties of a District Superintendent."

Notes.

1. **Definition of Public Prosecutor.**—See Notes under S. 4 (t) at p. 15 above.

Who is not a Public Prosecutor.

2. (1) **Legal Remembrancer of Bengal with reference to an appeal by the Government of Bihar and Orissa.**—Where the Legal Remembrancer of Bengal was requested by the Government of Bihar and Orissa to file an appeal against acquittal but the letter did not appoint him a Public Prosecutor

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secutor

3. (2) **Pleader engaged by complainant with the District Magistrate's permission.**—In an appeal pending before the Chief Court, B. a brother of the murdered man, petitioned the District Magis-

not constitute such pleader a Public Prosecutor under S. 492 Cr. P. C.—29 P. R. 1886

4. **Public Prosecutor must not have a personal interest in the case.**—"The appointment as a Crown Prosecutor, of the Magistrate, who tried the case, was a most improper and singular proceeding. To convert a Judge into an Advocate seeking to uphold his decision in another tribunal, is at least in the annals of British jurisprudence quite unprecedented and most objectionable, as he has a personal interest in the case which a Public Prosecutor should not have"—*Per Westropp C. J.* in S. B. II (c. c) 126

5. **Duty of the Public Prosecutor to be scrupulously fair.**—It has been well said by a learned Judge "The counsel for the prosecution has most accurately conceived his duty, which is to be an assistant to the Court in the furtherance of justice, and not to act as counsel for any particular person or party." He should not by statement aggravate the case against the prisoners or keep back a witness, because his evidence may weaken the case for the prosecution. His only object should be to aid the Court in discovering the truth. A Public Prosecutor should avoid any proceeding likely to intimidate or unduly witness on either side.

There should be on his part, no unseemly eagerness for or grasping at conviction."—*Per Westropp C. J.* [S. B. II. (c. c) 126 4 B. L. (appx).]—"In the case of Crown prosecution in England where the Attorney-General or Solicitor-General is conducting the case for the prosecution, there is never the least vestige of animosity or prejudice. The practice and procedure prevailing in England should be adopted in India. [*Per Maclean C. J.* in S. C. N. xvii.] See also *R. v. John Woodhead* 2 C. and K. 520]

6. **As to the Duties of the Public Prosecutor.**—See Notes No. 6 to 12 under S. 286 Supra.

7. **In Criminal cases, the Crown, by the Public Prosecutor, is party, not the complainant.**—The Crown, by the Public Prosecutor, is the party, not the complainant. Every case is conducted by the Public Prosecutor.

the public peace, and not a mere contention between the complainant and the accused.—13 B. 359.

[Note.—The determination of the question, as to who is the real prosecutor, depends upon all the circumstances of the case. The mere setting of the law in motion is not the criterion, nor is it enough to say that the prosecution was instituted and conducted by the Police, the conduct of the complainant before and after making the charge, his means of information and motives may also be taken into consideration.—[30 A. 325 (P. C.)]

8. **The Legal Remembrancer in Bengal.**—is the Public Prosecutor in the High Court (vide Cal. Gaz. 30th June 1886, p. 783.) 7 C. N. ii.

9. **In Madras.** See *Mad. G. O.* No. 1369 J. dated 1-9-86 as to the authority empowered to appoint Public Prosecutor in the mofussil. Also *Mad. G. O.* No. 650 J. dated 2-4-92 as to Public Prosecutor in the Tanjore and South Arcot Districts. As to appointment of private pleaders to conduct Crown cases [Mad. G. O. No. 1045 J. dated 11-8-76. See also *Madras G. O.* No. 1095 J. dated 17-8-74]

10. **Effect of defect in the appointment of a Public Prosecutor.**—S. 270 Cr. P. C. is merely directory. The absence of a Public Prosecutor in sessions trial or a defect in his appointment is at the most an irregularity capable of being

enacted under S. 537 Cr. P. C. by the final order, unless it occasions a failure of justice. [33 P. R. 1857].

11. Copies of documents required by the Public Prosecutor are exempt from Court fees [See *Guz. of Ind. Not 21-1-86*]

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein, under his directions.

Notes.

1. Assistance of private pleaders.—Whether a private complainant is permitted or not to conduct a prosecution under S 59 (—S. 493) he may instruct counsel through a pleader under the Rules of the High Court and the Public Prosecutor may avail himself of counsel's services under S 60 (—S. 493), although the right of general management of the case rests in him. The assistance of counsel extends also to the summing up and reply —(74) 11 B II, 102
2. Private pleader must be specially empowered to act as Public Prosecutor.—Counsel instructed by a private person cannot conduct a prosecution on behalf of Government in a trial before a Court of Session without being specially empowered by the District Magistrate. Counsels so instructed can attend and watch the case on behalf of their client; but they cannot conduct the prosecution.—O S. 31

494. Any Public Prosecutor appointed by the Governor General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal,—

- (a) if it is made before a charge has been framed, the accused shall be discharged;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

Proposed amendments to the section.—In section 494 of the said Code —

- (i) The words "appointed by the Governor General in Council or the Local Government" shall be omitted
- (ii) After the words "prosecution of any person" the words "either generally or in respect of any one or more of the offences for which he is being tried" shall be inserted.
- (iii) After the word 'discharged' in sub-clause (a), the words "in respect of such offence or offences" shall be inserted.
- (iv) After the word "acquitted" in sub-clause (b), the words "in respect of such offence or offences" shall be added

Notes.

1. Effect of withdrawal.—As soon as the public Prosecutor withdraws from the prosecution of a co-accused under S. 491 Cr. P. C., he becomes a competent witness against the remaining accused. His excuses to be on trial, notwithstanding the inadvertent omission to record a final order of discharge.—[18 C N 1213-33 C. 1353 [D]-7 A.J. 86] Even assuming that S. 343 Cr. P. C. would apply and that the case against the accused was withdrawn under S. 491 Cr. P. C. in order to make him a witness in the case, the so-called inducement would not make the evidence of the discharged accused inadmissible in evidence.—[18 B R 266 See 16 B. 661 23 B 213 25 B 422. 5 B II (C. O.) 1: 1 B 610 (619): See M 102]
2. Effect of withdrawal after charge.—S. 403 applies to an order of acquittal made under S. 491 Cr. P. C.—9 N 26 Where an order for discharge under this section should not be disturbed.—'I think that a complaint for rioting or being a member of an unlawful assembly discloses a non-compoundable offence, which the Crown alone in the interests of public peace and security

has a right to conduct and I cannot allow the contention that the complainant has an independent right to have the guilty persons punished by revising the case after the accused had been discharged on the Crown withdrawing through the Court-Inspector under Ss. 494 and 495 Cr P C—*Per Sadayya Aiyar J* in 18 Cr. 329 (M)

3. **Effect of pardon being tendered.**—When an accused person accepts a pardon under S 337 or 338, he ceases to be an accused person to whom the provisions of S. 342 are applicable. It is quite unnecessary in such a case for the prosecution to be withdrawn against him.—[9 S 43] 10 M. J. 147 (F. B.)

Note.—If the pardon has been illegally tendered the accused is not a competent witness.—[See 2 A. 260; Rat 461, 52 P. L. 1902 12 P. R. 1902, 16 C. P. 112; See 100 P. L. 1902 33 C. 1353 5 A. J. 691. 7 W. R. 44; 10 C. L. 553, 30 A. 426 3 B. H. (C. C.) 59; *P. 1. Rudol. Comp* 331 (1775)]

4. **Acquittal is a matter of right.**—The accused was charged with the offence of culpable homicide not amounting to murder and on the Public Prosecutor having, with the consent of the Court, withdrawn from the prosecution, was acquitted and discharged by the Sessions Court, after taking the assessors' opinion on the evidence recorded in the case. *Held* that the Public Prosecutor having withdrawn from the prosecution with the consent of the Court, an acquittal should have been recorded without taking the opinion of the assessors. *An acquittal was a matter of right to the accused, whatever the opinion of the assessors might be*—Rat 307.

5. **Private pleader specially appointed to**

6. **Person charged in a Sessions case must be acquitted.**—A Prisoner once committed to

sessions on a charge cannot be discharged, but must be acquitted or convicted [12 M. 35] A person charged with robbery, was, under S 494, on withdrawal by the Public Prosecutor acquitted by the Magistrate, *Held* that the order of acquittal

the Sessions. Judge ought Prosecutor to withdraw a case of forgery, on the ground that the complainant was keeping out of the way—[2 Weir 655]

Procedure.

7. (a) **Need any reasons be recorded?**—The consent of a Court to a withdrawal from the prosecution is a judicial and not merely ministerial act and the Court should record the reasons in order that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised [22 C. N. 691. *Con* 5 M. T. 216]
8. (b) **Public prosecutor must withdraw all the charges or none at all.**—Under this section, a Public Prosecutor is not competent to withdraw only one of the charges. If he withdraws at all, he must withdraw all the charges. The High Court on appeal against a conviction on the other charges is competent to order the trial of the charge so withdrawn [2 C. J. xiv].
9. (c) **Further enquiry.**—Where the accused was discharged under S 494 Cr P C and the District Magistrate ordered further enquiry, *held* that the order was unsustainable, and if a sentence passed was inadequate, the proper course is an application for enhancement of sentence [(11) M N 74]
10. **S. 494 does not apply to security proceedings.**—*See Note No 7 under S 495 infra.*
11. **High Court cannot revise an order of acquittal.**—The High Court has no power to interfere with an order of acquittal under this section—5 M T 216

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor General in Council, but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted

Notes.

1. **Police Officers.**—With the previous sanction of the Government of India dated the 30th June 1887, the Local Government (Madras) on the 19th July 1887 empowered all officers of Police of and above the rank of a first class Head Constable in charge of Police stations to conduct prosecutions. Such officers are empowered to withdraw with the consent of the Court in case under S 494 [(14) M. N. 776] In Bengal [Pol. Man Vol. I. p. 271] In Assam [Pol. Man 186] In the United Provinces [All. Man p. 215] in the Central Provinces [See C. P. Gaz. 1893 Pt. 11, p. 131] no police officer below the rank of a Sub-Inspector, in the Punjab. [See Punjab. Gaz. 1887 Pt. I 84] below the rank of a Deputy Inspector, and in Burma. [See Bur. Gaz. 1886 Pt. I 360] no officer below the rank of a Sergeant of Police is permitted to conduct a prosecution.

2. **Where a Police Officer himself is the Complainant.**—The fact that the complainant is a Prosecuting Inspector does not deprive him of his rights as a private citizen, and under S 495 Cr. P. C. the trying Magistrate (who has to decide whether there are sufficient grounds for withholding the permission asked for), cannot refuse permission to prosecute his own case, merely because the District Magistrate would not allow the complainant to prosecute himself. [17 Cr. 496 (L B.)]

3. **Reasons for exclusion of Investigating Police Officers.**—In all important cases and especially in cases of murder and dacoity, the

were first questioned by the police and whether such statements agree with those subsequently made by the witnesses in Court [Nat. 173 See 13 W. R. 18] Where a Police Inspector, on information received by him, applied for a warrant and arrested the accused, seized the property found, and named the witnesses to be summoned before the Magistrate; but he did not examine any of the witnesses and his inspection was confined to an inspection of the books and papers which had been seized.—Held that the Inspector fell within the provisions of S. 495 (4), and was not competent to conduct the prosecution of the person charged.—[26 B 533]

4. **Discretion of the Court.**—Where a Magistrate has, after due consideration, exercised the discretion allowed him by S 495 and allowed counsel to appear on behalf of the prosecution, the High Court cannot, as a Court of Revision, over-rule the order of the Magistrate and direct him to refuse to allow counsel to appear. [Per White C. J. and Moore J. in 2 Weir 657; Benson J.

Contra]. The Punjab Chief Court in 6 P. R. 1903 held that it is not improper for a District Magistrate, if he considered that the too frequent appearance of pleaders for the prosecution in petty criminal cases, was detrimental to the interests of justice, to advise Courts subordinate to him by a general circular on the subject to refuse permission.

Note.—Compare the discretion exercisable under S. 430 of the Code of 1898.—2 Weir 400; 12 M. J. 351

5. **Scope of the term "any person."**—It is doubtful whether the words "any person" in S. 195 Cr. P. C. would include an absolute stranger

persons other than uncertificated pleaders. It is however discretionary with the Criminal Courts in each case to permit such persons to conduct the prosecution [M. H. C. Pro 29-92]

6. **Prosecution by Advocate or Attorney in the Courts of Presidency Magistrates.**—With the exception of certain officers, such as the Advocate General, Standing Counsel, Government Solicitor etc., no Counsel or Attorney can claim the right of conduct of a prosecution before the Presidency Magistrate without his permission—6 C 69.

7. **S. 495 does not apply to security proceedings.**—In a proceeding under Chapter VIII,

C therefore do not apply to security proceedings 36 M 315.

8. **Violation of subs (4) is not necessarily fatal.**—The contravention of cl. 4 of S 495 Cr. P. C. does not by itself invalidate a trial altogether when no failure of justice has occurred within the meaning of S 537 Cr. P. C.—26 B 533.

9. **Effect of unauthorised withdrawal.**—If an Advocate, privately engaged by the complainant and not a pleader, withdraws from the trial

provi word officer who has the power of withdrawing from the prosecution under S 494 is the officer referred to in S 495 cl. (1). Where in the course of an enquiry by a Magistrate, an Inspector of Police appeared and said that he withdrew the case against the accused, held that in the circumstances, the order of the Magistrate discharging the accused under S. 494, was illegal [9 M. T. 203]

CHAPTER XXXIX.

OF BAIL.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail. Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Proposed amendments to the section.—In section 496 of the said Code, after the words "such person," the words "and as provided in section 107 (1) and 117 (3)" shall be inserted

Notes.

The object of the section.

- (1) Bail should be taken whenever practicable. Bail is not intended to be punitive but only to secure the attendance of the person at the trial.—*Per Russell C. J.* in 14 T. L. R. 213 2 C. N. exxx 36 C. 174; also *R v Scarfe* (1841) 9 Dowd 553 *In re Barronet* (1853) 1 F. & B. 1
- (2) It is the intention of the law, as I understand it, that when a man is arrested as this man was, who is not accused of a non-bailable offence, no needless impediments should be placed in the way of his being admitted to bail. The intention of the law undoubtedly, as I understand it, is that in such cases the man is ordinarily to be at liberty and it is only if he is unable to furnish moderate security, if any is required of him, as is suitable for this purpose of securing his appearance before a Court pending enquiry, that he should remain in detention.—*Per Henton J* in 20 B. R. 121.

3.

to do so.—6 N. P. 200

- S. 496 applies to Appellate Courts.—The petitioners who were convicted of bailable offences appealed to the District Magistrate and applied for bail. The District Magistrate admitted the appeal but refused bail. The High Court granted bail (1) because no reasons were given for refusal of bail (2) because the terms of S. 496 Cr. P. C. which applied are imperative.—4 C. N. exxxviii.

- Right to be admitted to bail.—S. 496 is imperative in its terms and a Magistrate is bound to release a person accused of a bailable offence on bail [32 C. 80] It must be understood that for every bailable offence, bail is a right and not a favour. Detention in the lock-up is the alternative not the original order. The bail demanded should never be excessive with reference to the social status of the party. The amount of bail and the

offence charged with, under the section under which it is punishable, should always be stated on the face of the order directing the accused to be detained in the lock-up. Bail may be tendered and must be accepted at any time before conviction [Pun. Cr. Vol II, p. 239] Under this section bail may be claimed as of right not only by one accused of a bailable offence, but by "any person other than a person accused of a non-bailable offence" who is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before him [3 C. P. 31]. A Magistrate is not competent to refuse bail unless the law sanctions such refusal. [1 C. L. 21].

- 5A. Release of person arrested under S. 55 Cr. P. C.—Where a person is arrested by the Police under S. 55 Cr. P. C. he should always be given the option of release on reasonable bail being supplied.—14 A. 41

- 6 Duty of the Court admitting prisoner to bail.—If the Court admits a man to bail, it is of course at liberty to call for a report from the Police as to the sufficiency of the bail, but the duty of deciding as to the sufficiency or otherwise is with the Court itself, and not with the Police. If such duties are irregularly entrusted to the Police two dangers are likely to arise. First, a Police officer may sometimes be unscrupulous enough to take advantage of the power entrusted to him for the purposes of extortion. Secondly, the bringing of false charges against the Police.—15 C. 435.

Bail in Security Proceedings.

7. (1) "When a person is arrested under the provisions of S. 496 of the Code of Criminal Procedure, 1898, and is charged with an offence which is bailable, he shall be released on bail if he is prepared to give it, and the Court or Magistrate is satisfied that he is not a dangerous character, and that he is not likely to abscond or to commit any offence while on bail."

such person in custody until the completion of inquiry" is not subject to or controlled by S. 496 Cr. P. C. The latter section does not give an absolute right to bail to any person who is not charged with non-bailable offence, and should be read along with other provisions of the Code giving a special right of detention to a Court.—22 M. J. 357; 32 C. 80.

8. (2) It does not matter whether a person against whom proceedings under S. 110 Cr. P. C. are taken, is brought before the Magistrate legally or illegally. Once he is there, the Magistrate has the power to require bail from him—12 Cr. 533 (19).
9. (3) No bail should be called for from a person against whom proceedings under S. 107 *supra* are contemplated, not actually initiated. The most that can be required of him is to furnish recognizance, and that only when there is any likelihood of his absconding himself from Court.—11 C. N. 415.
10. (4) Where a person arrested under the proviso to S. 114 *supra* applied for his release on bail, and the District Magistrate trying the case refused to pass an order for bail on the ground of expediency and his pleader's inability to show a provision in the Code how he could claim a bail, it was held that under this section, he was entitled to bail as a matter of right—6 C. P. 31.
11. S. 496 overridden by S. 7 (2) of the Extradition Act.—The provisions of S. 7 (2) of the Extradition Act override the provisions of S. 496 of the Criminal Procedure Code, so that a Magistrate has no power apart from sections 8 and 8 A of the Extradition Act, to admit to bail a person arrested under S. 7 of the Act.—43 B. 310
12.

accused to appear in person or by agent. A

Magistrate has no legal authority to secure the attendance of an agent by such a bond—3 B. 11. (c. o.) 61.

13. Court-fees etc.—Under S. 19 cl. xv of the Court Fees Act VII of 1870, bail bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise are exempted from Court-fees. Under S. 513 *infra* a deposit of cash or Government promissory notes may be taken in lieu of bond. For Form See Feb. V. Form No. 42.
14.
- exercise of that duty, without malice, will not sustain an action. [2 M. 11 390] If bail be improperly refused, a Magistrate may in addition to an action for damages, be liable under Ss. 166 or 312 I. P. C. [29 M. 100]
15. S. 496 ot. seq. apply to cases under Railway Act.—The provisions of this Chapter shall, so far as may be, apply to bail given under S. 132 (4) of the Indian Railway Act (IX of 1890)
16. Pendency of Appeal does not necessarily justify taking recognizance.—Where an accused person has been sentenced to pay a fine and the fine has been paid, the pendency of an appeal preferred by him would not give any Court authority or power to arrest him and to take recognizance from him for further appearance—29 M. 100.

497. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry, he released on bail, or; at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Proposed amendments to the section.—To sub-section (1) of section 497 of the said Code the following proviso shall be added, namely—

"Provided that the Court may, in any case for reasons to be recorded, direct that any person under the age of sixteen, or any woman, or sick or infirm person accused of a non-bailable offence, be released on bail."

Notes.

1. Magistrate's discretionary power.—The discretionary powers vested in the District Magistrate of granting bail are not revisable by District

Magistrate. If he considers the order to be wrong, the proper course is to refer it to the High Court—22 B. 549.

Note.—Magistrates will always be lenient to accused persons at any rate, until they are convicted—*Per Paisous J.* in 22 B. 519]

2. **General principles governing grant of bail.**—“For bail, the main question for consideration is for believing offences of considerations which has always guided Courts of justice both in England and India is whether there are any grounds for supposing that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an enquiry or trial—*Per Mitra J.* in 36 O 174 [Fg 10 C N 1093]. But See 36 C 166 G L B 172, 8 R R 420.

[**Note.**—The rule in respect of non-bailable offences is that bail is not to be taken except in special circumstances—8 B R 420 See 10 S 208 2 Weir 657 (F.B.)

3. **Grounds of enquiry (?)**. If after remand evidence

under S 497 cl (2) of the Code, release the accused on bail whatever be the nature of the offence, though the preliminary enquiry should proceed—36 C 174 6 M 63

4. **Duty of the Court.**—In considering an application for bail from a person accused of a non-bailable offence, the Court must be satisfied by an examination of the investigation, enquiry or trial whether or not there are reasonable grounds for believing that the accused has committed such offence. In the latter case the accused should be admitted to bail but not in the former—21 Cr 161 (A)

5. **What are sufficient grounds for release on bail.**—(1) that the offence was said to have

6. **Favourable police report will not necessarily justify bail.**—Where a Police Officer had remarked that the evidence against the accused did not justify his being sent up before the Magistrate and reported a non-bailable case for orders after admitting the accused to bail, held that the Magistrate being of opinion that there was a *prima facie* case made out, had power to direct the accused to be re-arrested and forwarded to the Magistrate in custody. The admission to bail by the Police was a purely provisional arrangement—Cr. R 213. 76

Analogous Law.—*Quære*—Whether the proviso to S 114 Cr P C gives a Magistrate power to rearrest and remand a person who has already appeared and has been admitted to bail—32 C. 80

7. **When an accused should not be released on bail.**—An accused person should not be

admitted to bail, where the possibility of his conviction being wrong, depends on a mere technical ground—Rat 480

8. **Facts necessary to justify remand.**—It will not be necessary on the first occasion accused persons are produced before the Court to go fully into the charge. It is ordinarily sufficient to show by the evidence of a police officer that the police are in possession of information which they believe to be reliable, that an offence has been committed and that the accused persons are concerned in its commission. When the accused are brought up after a remand, some direct evidence of the connection of the accused with the crime should be required to justify the Magistrate in refusing bail, and with each remand the necessity for the production of implicating proof becomes more strong—6 M 69 6 M, 63: 1 B 60 (61)

[**Note.**—Where there is no evidence, the Magistrate should not remand the prisoner in the expectation that evidence might turn up [17 W R 55] The prisoner should be brought promptly before the Magistrate, and the Magistrate has then no authority to further detain him in custody, or to remand him to prison without some reasons made manifest to him other in the shape of *sworn testimony* given before him or in some other form, can be put upon the record—11 B L (Appx) XVIII

9. **Order for remand should be passed in the presence of an accused person.**—4 B L (Appx) 1 M H C Pro 106-57.
10. **Bail in cases of contempt of Court.**—In a case of contempt of Court, if sufficient bail be tendered, the Court before which the contempt was committed is bound to accept bail—12 W R 18.

11. **Accused**
in P C (= are further has not

been discharged—10 B L 34

12. **Cancellation of bail.**—A Magistrate may commit an accused person who has been released on bail if a *prima facie* case is made out against him by the sworn testimony given before him.—36 C 166 36 O 174

13. **District Magistrate has no power to supersede an order for bail.**—A District Magistrate has no power to order re-arrest of a person, accused of an offence under S 304 I P C, released on bail by the Sub divisional Magistrate—4 Bar T 70 22 B 519

14. **Revision.**—The proceeding in which it has to be determined whether an accused person has to be admitted to bail by a Magistrate is a judicial proceeding, and as such cognizable by the High Court as a Court of Revision [6 M. 63 (65) See 2 M. H 396 29 M 100] It is no doubt open to the High Court to grant bail, when both the trying Magistrate and the Sessions Judge have refused bail [37 C 174] but as a rule when the Sessions Judge, after considering the evidence, comes to the conclusion that there are no reasonable grounds for believing the accused guilty, and admits him to bail, the High Court will not go beyond the order [10 M. J. 411].

498. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Notes.

1. **Discretion of the High Court.**—The High Court, when passing orders under S. 195 Cr. P. O. is not limited by the restrictions imposed by S. 197 (1), but bail should not be taken in non-bailable cases except in special circumstances. What those special circumstances are, is a matter which does not admit of precise definition, and the discretion given under S. 195 is one that should be exercised according to the exigencies of each case—10 S. 208 S. B. R. 420 See (70) A. N. 195 2 Weir 657.

2. **Note per contra.**—"We think that the rule laid down in S. 497 Cr. P. C. for the guidance of Courts other than the High Court is a rule founded upon justice and equity and one which should be followed by us as well as by every other Court unless anything appears to the contrary. The extended powers given to the High Court are certainly not to be used to get rid of this very reasonable and proper provision of the law"—*Holmes and Sharada J. J.* in 42 C. 25 But See 37 C. 139

2A. **Caution in interference.**—The High Court will be very cautious in interfering with the discretion of a Magistrate in case of bail under S. 497 Cr. P. C. specially where the prosecution has not tendered evidence to connect the accused with the offence—Rat 892 6 M. 63 6 M. 69

3. **Bail in non-bailable offences.**—S. 494 Cr. P. C. gives the Court of Session and High Court very wide powers to admit an accused to bail even when he is charged with a non-bailable offence. The admission to bail is a matter within the discretion of the Sessions Judge.—(70) A. N. 195.

4. **High Court is not merely to consider whether the accused will abscond.**—It is not correct to say that, in exercising its discretion under S. 498 of the Code in granting bail to under-trial prisoners, the High Court should confine its attention only to the question whether the prisoner is or is not likely to abscond.—36 C. 166.

5. **Accused tried under the Criminal Law Amendment Act (XIV of 1908).**—The power of the High Court to grant bail to an accused person under S. 498 Cr. P. C. is untouched by the provisions of the Criminal Law Amendment Act. But the conditions for release on bail provided by S. 497 will apply [S. 12 of the Act]—37 C. 412 37 C. 439.

6. **Can Court grant bail on appeal.**—The 498 Cr. P. C. passed by it, whether on the Original, Appellate or Revisional side and to release the prisoner on bail on his

asserting that he intended to appeal to H. Majesty in Council. The section does not refer to a case where the Court is *functus officio* but to cases where the Court has still some power left as regards the sentence of the accused.—15 P. R. 1905 (F. B.).

[Note.—When there has been an appeal to Privy Council—Where the prisoner had got special leave to appeal to the Privy Council, the High Court has jurisdiction to release him on bail—26 M. 161 See *Ex parte Carver*, L. R. 1897 A. C. 719

Grounds on which the High Court will interfere and grant bail.

7. (1) that no reasons whatever were given by the Magistrate for cancelling the original bail—(11) 2 M. N. 135

8. (2) that the charge against the prisoner cannot be tried without any unreasonable delay—13 C. N. 43 6 M. 63

9. (3) that the facts on record do not sustain the charge of murder contained in the warrant.—see *People v. the Sheriff of Westchester I Part 139* See *People v. Perry* 8 Abb. 25. *People v. Hyle* 2 Park 570

10. (4) that a case has been twice tried and the jury in both cases disagreed.—*People v. Perry* 8 Abb. (N. S.) 27

When bail should not be allowed.

11. (1) Where the probability of the conviction being wrong depends on mere technical grounds—Rat 480

12. (2) where there is no reasonable doubt of the prisoner's guilt—*Ex parte Taylor* 5 Cow 39.

Power of Sessions Court.

Bail pending appeal.

13. (1) The provisions of S. 390 (—S. 495) do not empower a Sessions Judge to order a Magistrate to admit to bail a person who has been convicted, before the admission of his appeal to his Court and that he has no such power where no appeal lies to his Court—1 A. 151 (F. B.) 3 C. L. 404 3 C. L. 405 (N.) 24 W. R. S. 23 W. R. 40. See 17 B. 334

14. **Note.**—(f) A person sentenced to one month's imprisonment by a Magistrate from which sentence no appeal is allowed, is not an "accused" person within the meaning of S. 436 Cr. P. C. 1861 (—S. 498), so as to be admitted to bail by the Court of Sessions, when his case is referred to the High Court under S. 434 Cr. P. C. (—S. 434)—1 B. L. (A. C.) 7 24 W. R. 7.

(n) Although a Sessions Judge cannot release a prisoner on bail pending an appeal, yet he may suspend the sentence.—3 W. R. 57

Person accused of non-bailable offence.

15. (2) A Court of sessions has power under § 390 (Act X of 1872) to admit a person committed for trial for a non-bailable offence to bail.—[52] A. N. 231.

Bail after conviction pending appeal to High Court.

16. (3) A Sessions Judge has no jurisdiction to release

176 (F. B.)

Special powers of the High Court.

17. (1) **Coroners' Act 1871.**—After a coroner has drawn up an inquisition and committed the person to jail refusing bail, the only Court which has power to grant bail is the High Court.—31 C J
18. (2) **Extradition Act XV. of 1903.**—As regards allowing bail to a prisoner, against whom proceedings are pending under the Extradition Act of 1903 the High Court has the fullest discretion having regard to the provisions relating to bail in the Cr P C by which the matter must be regulated.—15 C N 736
19. (3) **Sind Frontier Regulation III of 1892 S. 8.**—An application for bail on behalf of an accused who is being tried by a Jirga or Council of Elders under § 8 of the Sind Frontier Regulation (III of 1892) does not lie under S. 498 Cr P C. to the High Court.—5 S 105
20. (4) **Criminal Law Amendment Act (XIV of 1908).**—See Note No 5 above
21. (5) **Explosives Act (VI of 1908).**—On a question whether bail should be granted by the High Court to certain persons undergoing trial under the Explosives Act (VI of 1908) held that the decisions of English Courts are not necessarily a safe guide in interpreting sections of the Cr P C. There may be other circumstances than the likelihood of absconding which may affect the question 36 C 116.

Procedure.

23. **Stage at which bail may be granted.**—In granting bail under § 495, High Courts and Sessions Court have unlimited judicial discretion

This power can be exercised soon after the arrest of the accused by the Police, even before the case is sent up to a Magistrate.—7 Bar 86

24. **Defamatory petitions.**—Where an application for bail contained defamatory allegations and irrelevant attacks on the trying Magistrate and other Government Officers, the Court refused to allow the petition to be filed [15 B 488]. The Courts have power to delete the defamatory portions from the applications presented to them. [Rat 460]

Practice.

25. **Petition to High Court to discharge bail.**—Where a Sessions Judge, after considering the evidence, comes to the conclusion that there are no reasonable grounds for believing the accused to be guilty, and admits him to bail, the High Court will not go behind the finding and discharge the bail either under § 432 Cr P C. or any other provision of the law.—10 M J 411
26. **Transfer on the ground that by granting bail the Magistrate has shown leniency.**—A transfer is not justified because the Magistrate's action, in exercising a jurisdiction vested in him by law, viz., releasing an accused on bail, shows a tendency to treat the accused with undue leniency.—22 B 549
27. **Power of a Single Judge of the High Court.**—A Single Judge of the High Court may order the release of a prisoner on bail pending the hearing of an appeal.—W R (Sp) 19
28. **Order refusing bail is not a judgment within the meaning of cl 15 of the Letters Patent.**—An order of a High Court refusing to grant bail to an accused person is an order in a criminal trial. It is not a judgment within the meaning of cl 15 of the Letters Patent and is not appealable to a Division Bench.—19 M J 478
22. **Amount of bond.**—The section refers to the amount of the bond indicating that the accused should bind himself in a specific sum, and that the sureties should bind themselves jointly and severally, or jointly, as the case may be, to pay the amount of the bond [6 Bar R 75]. Where the accused person is released on bail with sureties, the sureties should ordinarily be made jointly and severally liable for the same amount as the accused and cannot be made liable for more. The total of the sums receivable from them must not exceed this amount. [2 L B 235 (1905) 1 B 31 But See 36 C 562]

499. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Notes.

1. **Form of Bail bond.**—See Sch. V. Form No 42.

2. **Construction of Bail bond.**—"The petitioner stood bail for a person charged with an offence under S. 395 * * The bond is in Form No 42 which is in accordance with S 499 Cr. P. C. * * The part (of the bond) which is signed by the petitioner is in these words. "We jointly and severally declare ourselves and each of us sureties for the said A. T. that he shall attend Court every day of the preliminary enquiry, and as the case has been sent for trial to the Sessions Court, Madura, that he shall appear before the said

some oversight apparently, the words in the form as given in the Code "that he shall attend Court every day of the preliminary enquiry" were left standing, although the case had already been committed * * . The date when the accused was to appear at the Sessions Court is given in that part of the bond which is signed by the accused. The argument before us of the learned pleader for the petitioner is that we must treat the portion signed by the petitioner as two separate bonds quite independent of each other * * . That is not a sound contention * * . It (the bond) is to be regarded as one document * * . The surety who stands bail must be taken to know the date on which the accused has undertaken to appear and if the accused does not appear the surety bond is liable to be forfeited."—*Per Abdur Rahim and Napier JJ.* in 14 Cr 657 (M)

3. **The general rule.**—Only one bond is to be taken from the accused and his sureties for one determinate amount, the sureties engaging to be bound jointly and severally for the same amount as the accused so that it may be realizable from any one of the obligors. There is no warrant in law for taking separate bonds from the accused and his sureties individually and severally, exceeding the aggregate the amount for which the accused is liable—30 P. R. 1890

4. **Breach of verbal direction may lead to forfeiture.**—By the terms of a bail bond, the defendant bound himself to appear "on the first enquiry or at other times required" He appeared on the first day of the inquiry and was verbally directed to appear on a subsequent date but failed to do so. *Held* that the amount secured by the bond could be legally forfeited by reason of such non-attendance—2 Weir 658

5. **Bond to appear before the Police is valid.**—The wordsings of S 499 and of S 514 of

the Code make it abundantly clear that a Police Officer in charge of a Police Station has power

any person bound by the bond can be called upon to pay the penalty thereof—22 P. R 1913

6. **Magistrate cannot hold to bail a person to appear before foreign tribunal.**—Neither the Code of Criminal Procedure nor any provision in the Extradition Act (XV of 1903) authorises a Magistrate to hold a person to bail to appear before a tribunal in a state to which the Act applies—33 C. 1032

[**Note.**—He can bind over the prisoner to appear before himself and then after receiving the warrant from the Political Agent of the state, can proceed to execute it under S. 7 cl. (2).—*Ibid*]

7. **Bail bond must specify the Court where the accused is to appear.**—A bail bond by which the sureties bind themselves to be responsible for the appearance of the accused during the preliminary investigation, cannot be forfeited if the accused abscond after the preliminary enquiry and during the trial at the Sessions Court [9 W. R. 36 See 105 P. L. 1903, 36 C 749]

8. **Contents of the bond.**—(1) It must provide for money penalty.—17 C. P. 113 (2) Time and place must be mentioned in the bond itself—(3) A. N. 44

Terms of the bond cannot be varied without consent of the surety.—Where the surety undertook to produce an accused person before a certain Magistrate, he cannot be made liable for the default of the accused to appear before another Court to which the case was transferred after the execution of the bail bond—13 W. R. 53. 30 C 107.

[**Note.**—A surety is not liable for default made by the accused on a date subsequent to that for which he had rendered himself liable. If the accused attends on the date specified in the bail bond, the liability of the surety ceases.—2 Weir 663]

9. **Bail-bond may be conditioned to involve attendance from day to day.**—There is nothing illegal in requiring the accused to bind themselves to appear from the date of the execution of the bail-bond on every day until the case is disposed of. No notice is necessary before proceeding to enforce the penalty, if default is made—6 M. H. (app) xxxviii.

500 (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed

1. **Note.**—For Form of Warrant.—See Sch V Form No 43

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail

Notes.

1. **Application of S. 501.**—S 501 applies to a case where there are sureties and where through mistake, fraud or otherwise, insufficient sureties have been accepted. The section is inapplicable to a case covered by S 90 Cr P C—38 M 1088
2. **Increase of bail.**—A Magistrate is justified in increasing the amount of bail, if, by further proceeding, the case turns up more serious than at first imagined.—[66 P L 1912]
3. **Cancellation of bond.**—Where a surety furnished by a person directed to furnish security for good behaviour has been offered and accepted, the Magistrate has no authority to require fresh security merely because he is dissatisfied with the old security already accepted.—1 C N 391 16 P R 1935 28 P R 1901 See 8 O C. 245 2 L B 76

502. (1) All or any sureties for the attendance and appearance of a person released on Discharge of sureties. bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties and, if he fails to do so, may commit him to custody

Note.

- 1 **There is no warrant for hearing the application on the merits.**—Where a surety applies for a cancellation of his bond, under S 502 of the Criminal Procedure Code, there is no such thing as hearing the application on the merits. The presentation of the application itself imposes upon the Magistrate the duty of issuing a warrant for the arrest of the accused

Hence, where a surety, after once presenting an application for cancellation of his bail-bond, fails to appear in person or by pleader, such failure cannot deprive him of his right to treat the bond as cancelled. When once the application is presented and received, there is no option left to the Magistrate but to act under S 502 Cr P C. 1899—9 B R 1285

CHAPTER XL

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES

503 (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness

can not be procured without an amount of delay, expense or inconvenience which, under the
 Issuance of commission and procedure circumstances of the case, would be unreasonable, such Magistrate
 thereunder, or Court may dispense with such attendance and may issue a

commission to any District Magistrate of the first class, within the local limits of whose
 jurisdiction such witness resides, to take the evidence of such witness.

(2) When the witness resides in the territories of any Prince or Chief in India
 in which there is an officer representing the British Indian Government, the commission
 may be issued to such officer.

(3) The Magistrate or officer to whom the commission is issued, or, if he is the
 District Magistrate, he, or such Magistrate of the first class as he appoints in this behalf, shall
 proceed to the place where the witness is or shall summon the witness before him, and shall take
 down his evidence in the same manner, and may for this purpose exercise the same powers, as in
 trials of warrant-cases under this Code.

(4) Where the commission is issued to such officer as is mentioned in sub-section
 (2), he may delegate his powers and duties under the commission to any officer subordinate to him
 whose powers are not less than those of a Magistrate of the first class in British India.

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency
 Commission in case of witness being Magistrate, the Magistrate or Court issuing the commission
 within presidency town may direct the same to the said Presidency Magistrate, who
 thereupon may compel the attendance of, and examine such witness as if he were a witness
 in a case pending before himself.

(2) Nothing in this section shall be deemed to affect the power of the High Court to
 issue commissions under the Slave Trade Act, 1876, section 3

Proposed amendment to the section.—In sub-section (1) of section 504 of the said Code, for the words
 "the said Presidency Magistrate," the words "such Presidency Magistrate" shall be substituted.

(ii) After the same sub-section, the following sub-section shall be inserted, namely:—

"(1a) When a commission is issued under this section to a Chief Presidency Magistrate, he may delegate his
 powers and duties under the commission to any other Presidency Magistrate subordinate to him."

Note.—Slave Trade Act—39 & 40 Vic c 46

505. (1) The parties to any proceeding under this Code in which a commission is issued
 Parties may examine witnesses may respectively forward any interrogatories in writing which the
 Magistrate or Court directing the commission may think relevant
 to the issue, and the Magistrate or officer to whom the commission is directed, shall examine the
 witnesses upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or if not
 in custody in person, and may examine, cross-examine and re-examine (as the case may be) the
 said witness.

Proposed amendments to the section.—In sub-section (1) of section 505 of the said Code, after the
 word "directed" the words "or to whom the duty of executing such commission has been delegated" shall be
 inserted.

506. Whenever, in the course of an enquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reason for the application, and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

507. (1) After any commission issued under section 503 or section 506 has been duly executed it shall be returned together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872 may also be received in evidence at any subsequent stage of the case before another Court.

508 In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

ARRANGEMENT OF NOTES.

S 503=S 330, paras 1 and 2 (1872) S 504=S 76 of Act X, of 1873 para 4 S 505=S 330 para 4 (1872) S 506=S 330, para 5 (1872) S 507 S 35 Act XI of 1874 S 76, para 6 Act X of 1875

I. Application of the Sections 503-508 Cr. P. C.

II. Power to issue Commissions.

III. Purdannahin Ladies.

IV. Practice and Procedure.

- (1) Witness residing within jurisdiction
- (2) Admissibility of evidence taken on Commission
- (3) Objections to evidence taken on Commission

(4) Is Commissioner a Court within the meaning of S 195?

(5) Issue of Commissions by Subordinate Courts [S 506]

(6) Examination of witnesses. [S 505]

(7) Reading in evidence [S 507]

(8) Adjournments [S 508]

V. Grounds for refusing Commissions.

VI. Miscellaneous.

I. APPLICATION OF THE SECTIONS, 503-508 Cr. P. C.

1. When Commission should be issued.—

Witnesses in criminal cases should not be examined by Commission except in extreme cases of delay, expense, or inconvenience—5 A 92 See 12 A 68

2. Power of District Magistrate.—A District

Magistrate has no jurisdiction to direct a Subordinate Magistrate before whom a case is pending to examine a particular witness in the case, in her own house. Sec 503 applies only to cases pending before the Courts therein specified. A District Magistrate cannot make any such order except on a reference made to him under S 503 Cr P C. 2 S 8

3. Scope of S. 507 Cr. P. C. enlarged.—

Under the Code of 1852 evidence taken on commission issued by a Court would be used only by that Court. It was held that evidence taken on commission issued by the Chief Presidency Magistrate during the course of an inquiry before him cannot be admitted on the trial of the same case at the High Court Sessions under S. 507 of the Code. [19 C 113]. In 19 D. 749 it was held that the deposition of a witness obtained on a Commission issued by the committing Magistrate and forming part of the record was admissible under S. 33 of the Evidence Act at the trial at the Sessions. This view has been incorporated in

identification of the stolen property to which they deposed, was a most material point in this case, held that the Judge had acted improperly in

issuing the commission under S 503 Cr P. C., more especially as the accused could not arrange for their cross-examination. 6 A. 221.

III. PURDANASHIN LADIES.

17. **Purdanashin lady.**—The High Court in exercise of its powers of revision, has powers to direct a Magistrate as to the mode in which the evidence of purdanashin ladies may and should be taken. If she would take a house or suite of rooms not far from the Court and pay all costs, the Magistrate should not enforce her attendance in Court but should examine her in such place.—24 C. 551 12 Cr. 501.

18. **Rule with regard to pardanashin ladies.**—Although purdanashin women are not of right exempted from personal attendance at Court the word "inconvenience" in S 330 Cr. P. C (1872) empowers the Courts to allow examination by commission in criminal cases, where a witness according to the customs and manners of the country ought not to be compelled to appear in public.

But where the purdanashin lady was herself the complainant in a case of defamation,—held—that the fact materially altered her position as regards the question whether she should be exempted from personal appearance, and the accused had a right and privilege to have her evidence taken in his presence in such Court.—5 A. 62 See 12 A. 60

19. **Application by purdanashin ladies should be allowed whenever possible.**—An application made by a Pardanashin lady summoned as a witness to be examined by commission

should take into consideration the customs and habits of the people.—15 C 775 1 S 5

20. **Examination of pardanashin ladies on commission.**—A pardanashin lady has a right as a witness in a criminal case, to be exempted from personal attendance as a Court and to be examined on commission [4 C 20]

[*Note per contra.*—It would be weakness to surrender as a general principle to be adopted in all cases that purdanashin ladies whose evidence is required in criminal trials are to be allowed to compel the Court to examine them at some other place than the Court house itself.—12 A. 69.]

21. **Pardanashin ladies ought not to be compelled to appear in public.**—Although there is no provision in the Criminal Procedure Code which protects purdanashin ladies from appearing in a Court of justice, nevertheless, it is very undesirable to compel the attendance of such persons [12 A. 69.] Although the purdanashin women are not of right exempted from personal attendance at Court, the word "inconvenience" in S 330 Cr P. C (=S 503) empowers the Courts to allow examination by commission in criminal cases, where a witness, according to the customs and manners of the country, ought not to be compelled to appear in public [5 A 92. 19 P. R. 1903 1 S 5 See 4 S. 257]

22. **Daughter of a prostitute may be a pardanashin lady.**—The mere fact that a woman is the daughter of a prostitute is insufficient to show that she is not a pardanashin lady. If she has been married to a respectable person, in whose family women observe purdah, she is entitled to be treated with respect, despite her lowly origin.—43 P L 1913

23. **Examination in chambers.**—In the case of pardanashin women cited as witnesses, the better course would probably be for the Magistrate to examine them in chambers after making provision for maintaining their Parda.—4 S '57

24. **Commission to complainant (pardanashin lady).**—The terms of S 503 Cr. P. C are very wide. They refer not only to an enquiry and a trial but to any other proceeding. The section authorises the examination of any witness and a complainant is certainly a witness. In the case of a pardanashin lady, S 503 Cr P C should be applied.—42 C 19 2 Weir 658

IV. PRACTICE AND PROCEDURE.

(1) *Witness residing within jurisdiction.*

25. **Witness residing within jurisdiction.**—The ruling in G B 285 (a ruling under S 76 of the High Court Criminal Procedure Act X of 1875) to the effect that there is nothing in the language of this section to support the contention that the court has no authority to examine a witness by a commission when he is within jurisdiction, was dissentient from in (1897) 24 C 551 on the ground that S 76 of the High Court Criminal Procedure Act 1875 was somewhat different from S 503. "Although it is doubtful whether S 503 authorizes a Presidency Magistrate to issue a commission for the examination of a witness residing within

his own jurisdiction, there is nothing to prevent him from examining him at some other place than the court house"—[24 C 551]

(2) *Admissibility of evidence taken on Commission (S. 507).*

26. (1) The deposition of any witness, obtained by a commission issued by the committing Magistrate and forming part of the record of the enquiry, is admissible under S. 33 of the Evidence Act, provided that the requirements of that section are satisfied notwithstanding Ch. XL, Cr. P. C.—19 B 749

38. **Expert witness.**—Where an expert witness appears to be the principal witness in the case, his examination on commission should not be granted.—(11) M. N. 97
39. **Issue of commission interfering with**

trial.—An application for commission applied for commission applied for by the prosecution during the trial and after the jury had been sworn, was refused on the ground that the trial and commission could not go together.—19 C. 113.

VI. MISCELLANEOUS.

40. **Rules of procedure—onus.**—If a commission is issued for the examination of witnesses, the party who alleges that the evidence recorded by the commission is proper evidence must show (1) that the place where the witnesses resided and where the commission was issued is within British India as defined by S. 3 subs (27) of the General Clauses Act or that the place belongs to a Prince or Chief in India in which there is an officer representing the British Indian Government.—7 C. N. 635
41. **Consent of the witness.**—There is no authority to compel a person to allow a commission to be held in his house without his consent.—6 C. N. 927.
42. **Examination of Mint Master in Bombay.** When the evidence of an officer, connected with the mint of the currency department is required as to the genuineness or as to the spuriousness of a coin or currency note, the courts and Magistrates, are recommended to send the coin or the note to the Mint Master or the Commissioner of Paper Currency, or as the case may be, under cover of their court-seal or by a messenger whose evidence can afterwards be taken, and at the same time to issue a commission for the examination of such officer or a witness under the provisions of this section.—This rule prevents the great inconvenience of officers being called away from their duties on mere ordinary occasions.—Bomb Bk. Circ. p. 35.
43. **Can powers and duties under commission be delegated?**—Subs (4) expressly allows delegation of commission issued under subs (3) to an officer representing the British Government in a Native State. Under the older Codes delegation could not be made. In (1896) A. N. 106, it was held that the Resident of Gwalior was a person to whom the provisions of this section applied, and if a commission was issued to him in accordance with law, he was bound to execute such commission and could not delegate his functions as commissioner.

44. **Commissions to Hyderabad (Nizam's State).**—As a rule, such commissions should be addressed to "the First Assistant Resident" and all remittances should be made payable to "the First Assistant Resident" without giving the name of the gentleman holding the appointment. No commission should ordinarily be addressed to the Resident, nor should any remittance be made payable to him. No commission should be sent direct to His Highness the Nizam's Minister without the intervention of the Residency office.—C. P. Cr. Cir. Pt. II No 53.

45. **Translation.**—Commission sent for execution to any place, where the law is not the same as that of the court, must be accompanied by a translation of the commission into the language of the place or in English.—[para. 93.]

46. **Interrogatories American Law.**—An objection to the interrogatories cannot be made at the trial [*Francis & Ocean Insurance Company v. Cow 401 Hall & Barton 25 Barb 274*]. An objection to a question as leading must be made on settlement of interrogatories or it is waived [*Hastings v. Hemmings 3 Th and C 787*]. If the witness refuse to answer a question, the court may order him to answer.

ANSWER TO A DIRECT INTERROGATORY BE PROPERLY EXCLUDED, all cross-interrogatories if dependent thereon must also be excluded [*Fleming & Hollenback 7 Barb 271*]. The mere fact that the witness was permitted to peruse both sets of interrogatories, prior to his examination, is not sufficient ground for the rejection of the evidence. [*Butler v. Flanders 56 How Pr. 312*]. The party who took out the commission may read the answers to the cross-interrogatories, though the other party objects [*Marshall v. Waterhouse 5 E. Coy. 10 Linn 463*].

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the Power to summon medical witness subject-matter of his deposition.

Notes.

S. 509=S. 321 (1872)=S. 368 (1861).

1. **Medical evidence should be recorded with the utmost care and accuracy.**—The rule regarding the admission of medical evidence in the Sessions Court departs in a very marked particular from the ordinary rules of evidence, in that, the statement of the medical witness, if duly taken and attested by the Magistrate in the presence of the accused, is admissible as evidence in the Sessions Court, although the medical witness not himself called. It ought therefore to be recorded with the utmost care and accuracy. The evidence should be carefully scrutinised by the Judge: and if it appears that the deposition is essentially deficient or requires further explanation or elucidation, the Judge should summon and examine the witness—20 O C 61-9 C 135 See Ag N (7th June 1862) 122

2. Medical evidence in murder cases—

- (1) The testimony of the medical witness, especially in the case of murder, must be of great weight.

testimony is true.—[Rat 782]

- (2) As a matter of precaution, medical evidence as to the cause of death should never be dispensed with in a case of murder, although the prisoner admits having killed the deceased—Ag N. (2nd Jan. 1862) 1.

(3)

Rules of Practice

3. **Effect of change in law.**—The words "or taken on commission under Chapter XL," enable the deposition of a medical witness on commission to be put in evidence, which could not have been done under the previous Code of 1872—18 C 129

Rules governing admissibility of medical evidence under S. 509 Cr. P. C.

4. (1) To render the deposition of a Civil Surgeon or other medical witness admissible in evidence under S. 509 of the Criminal Procedure Code, it must be shown to have been taken and attested by the Magistrate in the presence of the accused. These facts may be proved by calling the committing Magistrate or any other person who was present at the enquiry before him and is able to testify thereto. But the Court, in the absence of such evidence, is not bound to presume, either under S. 80 or S. 114 ill. (c) of the Evidence Act that the deposition was so taken and attested—18 C 129; 9 A. 720-10 A 174; See 8 C 739
5. [Note].—But if the Magistrate records a statement at the foot of the deposition to the effect that the deposition was taken and attested by

him in the presence of the accused, and such statement, the Court is bound, under of the Evidence Act, to presume that such statement was true, and to admit the deposition under S. 509 Cr. P. C.—[18 C 129-10 A] In order that such evidence may be admissible against an individual accused, it must be that it was taken by the Magistrate in that particular accused's presence [8 C. 739]

6. (2) The attestation may be by Magistrate.—S. 509 does not require it to render the evidence of a medical witness admissible at the trial before the Court of Sessions it should be recorded by the Magistrate making the inquiry into the case, but not expressly the deposition of a medical witness taken and attested by any Magistrate in the presence of the accused, to be given in evidence in any inquiry, trial or other proceeding.—A. N. 160

7. (3) Evidence interpreted to counsel accused.—The circumstance that the evidence of the Civil Surgeon given in English was interpreted to the accused was held to be of importance, where it was understood by prisoner's counsel, and all necessary questions put to the witness.—24 W. R. 50.

8. (4) Medical evidence given at the preliminary enquiry.—Under the rules issued by the Calcutta High Court the evidence of a Medical Officer given before the committing Magistrate cannot be admitted under this Section, unless there be a certificate attached that the evidence was taken in the presence of the accused [4 C N. 49] Except in the case provided for by S. 327 Cr. P. C. 1872 (=S. 512) the examination of a medical witness taken in the absence of the accused is inadmissible in evidence. However, there is sufficient *prima facie* evidence to warrant a commitment to the Sessions Court and the evidence of the medical witness is to be admissible at the trial and must be taken into consideration.

Before the Sessions Court must be secured. In all other circumstances, the Magistrate should invariably record his evidence before him [Rat 81]

What is no evidence.

9. (1) The substance of a report from subordinate Medical Officer with an express concurrence by his superior, cannot be received in evidence under S. 368 (=S. 509)—11 W. R. 2
10. (2) A letter of a Medical Officer, expressing opinion, is not evidence under Ss 368 and Cr. P. C. (=S. 509 and 510) 12 W. R. 40 C. 455; 8 C 211.

11. (3) The report of the *Post mortem* written in the form usually filled up by a Civil Surgeon may be used by him to refresh his memory, but the report itself cannot be admissible in evidence.—*D C 455* 6 C N 99 27 C 295 10 C P 122 see C P Cr Cir Pt II No 55
12. (4) The only opinion of the Civil Surgeon which can be considered in judicially dealing with the case, is an opinion expressed by him, when examined as a witness under the usual tests to which witnesses are subjected. *A copy of a letter from the Civil Surgeon containing expressions of his opinion is inadmissible in evidence, as it is extrajudicial*—S C 211.
13. (5) The Certificate of a Medical Officer—as to the cause of the death of a person and of the fatal character of the wounds is no evidence. He should be examined regarding these points. Where the deposition of the medical witness who has given a certificate did little more than attest its accuracy as to the nature of the wounds, held that such deposition would not be sufficient.—2 Weir 659
14. (6) A Sessions Judge is not authorized to allow a surgeon to describe the post-mortem appearances merely from the knowledge acquired by him from a perusal of the notes left by another surgeon.—*Wat 549*
15. (7) An inquest report is not admissible in evidence.—6 B II, 75.

Medical evidence should not necessarily outweigh facts positively proved.

16. (1) It is not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved.—11 W. R. 25.
17. (2) A Judge is not entitled to discard the whole of the direct evidence of credible and unimpeached witnesses, who depose that with their own eyes they saw certain things done, merely upon the strength of the opinion of a medical witness to the effect that these things could not have been done.—(89) A. N. 74
18. Judge should not pose as a medical expert.—A Judge should not elect himself into an expert nor should he lightly treat proper medical evidence.—(83) A. N. 189
19. Procedure in cases depending entirely on medical evidence.—In a sessions case, depending almost entirely on the medical evidence, the examination of the surgeon before the Magistrate should not be tendered or accepted as sufficient. All the evidence as to the symptoms before the committing Magistrate should be retaken and the Civil Surgeon should be examined as an expert in regard to the case of those symptoms.—2 Weir 660.
20. Rules of practice.—(1) The record should contain a vernacular translation of the Civil Surgeon's deposition [Ag. N. (June 7, 1862) 620: *Ibid* (Oct. 1862) 200] (2) If the deposition of

a medical witness be relied on by the prosecution, it should be detached from the record of the preliminary enquiry and attached to that of the trial [Cal H C Cr. O No 11 of 1867] The deposition of a medical witness which may be given in evidence, under the section, should, if relied on by the prosecution be put in and read in Court, before the accused is called upon to enter on his defence [Cal H C Cr. O of 2nd Sept. 1867.]

Evidence of Civil Surgeon who has or has not seen the corpse.

21. (1) A Medical man, who has not seen the corpse, is only in a position to give evidence of his opinion as an expert. The proper way of eliciting expert evidence (of such a medical witness) is to put to the witness, hypothetically the facts, which the evidence of the other witnesses attempts to prove, and to ask the witness' own opinion on those facts.—*D C 455*
22. (2) The evidence of a medical man, who has seen the corpse and made its post mortem examination is admissible in an enquiry regarding the death, to prove the nature of the injuries observed by him, and as expert evidence as to the manner of the infliction of the injuries and as to the cause of death.—*Ibid*.
23. Court should not hold private communication with medical expert.—In a trial for murder, in which the soundness of the accused's mind was in issue, the Sessions Judge after closing the case and taking the opinion of the assessors, reserved judgment, and subsequently held interviews with and received a letter from the Civil Surgeon as to the mental condition of the accused. Held that such private discussions were illegal. The Civil Surgeon should have been examined as a witness.—(89) A. N. 181.
24. When a previous deposition of the medical witness examined at the sessions may be admitted in evidence.—The evidence of a medical officer before the committing Magistrate, whether attested or not by the Magistrate ought not to be admitted under S. 284 *supra*, unless he resides from his original deposition.—4 C N. 49. Bat See 8 C 733.

25. cross-examine. In order to ensure that the

presence of the accused who had an opportunity of cross-examining the witness. The deposition was read and was and was P. Cr. Cr. para. 38

510. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under the Code.

Notes.

S 510 = S 325 (1872) = S 370 (1861)

1. **Report of chemical examiner.**—May be acted upon as evidence by all criminal courts—6 M. H. (Ap.) 11. The original report must be put in evidence—Under S 370, Code of 1861, (= S 510), the original report of the Chemical Examiner bearing his signature and not a copy of the report should be put in evidence—6 B. L. (Appx.) 122.
2. **"Any" Chemical Examiner.**—The word "any" was introduced to meet the ruling in 10 C. 1026 in which it was held that the report under the hand of an "Additional Chemical Examiner" upon the matter or thing submitted to him for analysis and report cannot be received in evidence under S. 510 Cr. P. C.
3. **Report should be signed by the officer certifying out of personal knowledge.**—In order that the report of the Chemical Examiner or of the Assistant Chemical Examiner may be used as evidence under S 510, it must purport to be signed by the officer or officers who detected the poison and who, from personal knowledge, could certify to the correctness of the results embodied in it—2 Weir 661.
4. **Identity of the articles sent for opinion.**—When committing cases, a Magistrate must take care to send up evidence to prove that a body sent to hospital for post mortem examination is really the body of the person referred to in the case under trial or that an article analysed by the Chemical Examiner was actually the article sent to him for analysis in the case under trial. Sessions Judge must insist upon being furnished with such evidence, and must not record either the chemical analysis report or

the evidence of the medical officer uniting connecting links requisite to render admissible have been established—1 Burf. Sec. (10) M. N. 77 (99).

5. **Failure to charge the Jury as to identity amounts to misdirection.**—Charge was vitiated by misdirection. A Sessions Judge is bound to warn the Jury that using the Chemical Examiner's report, they be satisfied on the evidence that the substances examined were in fact what they were to be—*Chitty and Trunton JJ.*, in 18 C. N. 11.
6. **Documents not admissible in evidence.**—See 8 C. 211. 12 W. R. 23. 14 W. 2 Weir 659 [Noted under S 509 *Supra*].
7. **Information which should be supplied to a Chemical Examiner.**—Besides the report of the post mortem examination, the Chemical Examiner should be furnished with replies following queries, which replies the officer in the investigation has been directed to enter in his special diary—(a) What interval was between the last time that the person, supposed to have been poisoned, ate or anything and the first appearance of symptoms of poisoning? (b) what interval was between the last time of eating or drinking, the death of the person (if death occur)? (c) Did the person become drowsy or fall asleep? (d) What were the first symptoms? (e) vomiting or purging occur? (f) were cramps or twitching of the limbs absent? (g) tingling of the skin or the throat complained of? (h) Mention any other symptoms noticed—and Ord. N. W. P. S. 10 p. 364.

511. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

- (a) by an extract certified under the hand of the officer having the custody of the record of the Court in which such conviction or acquittal was had to be a copy of the sentence or order, or
- (b) in case of a conviction, either by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered; together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Notes.

1. **Proof of previous conviction before Presidency Magistrates.**—Presidency Magistrates are not absolved from the ordinary rules

of evidence, in taking proof of previous convictions. Whenever it is required to prove a previous conviction against a man, whether it be for

purposes of enhancement of punishment under S. 751 P. C. or in proceedings under Ch VIII of the Cr. P. C., such previous conviction must be proved strictly and in accordance with law. Unless, they are so proved, no Court, whether it be that of a Presidency Magistrate or not, can properly take such previous convictions into consideration against an accused person—43 G. 1128

2. **Previous conviction must be strictly proved.**—Before passing sentences, it is desirable and necessary that if there are previous convictions, they should properly be proved [17 Cr. 179 (M)]

3. **Proof of previous conviction by comparison of finger prints.**—If the identity of the accused is to be proved, by a comparison of finger prints,—the one taken in Court being to be in the finger prints as those of the person who has been previously convicted.—21 O. N. 469

4. **Proof of identity.**—S 511 Cr. P. C. does not require identity to be proved by calling witnesses or in any particular way. It is not necessary that identity should be conclusively established before the accused is questioned. If it were so

necessary, the questioning would be superfluous. The moment there is some evidence of identity, accused may be asked to explain it. [4 N. 163] The manner in which a previous conviction may be proved is not limited to the method laid down in this section. Any relevant evidence upon which a Court can properly base a finding that the accused before it was on a previous occasion convicted of an offence, will do as well as the methods indicated in this section. The papillary ridges on the balls of the fingers and thumbs, by means of which finger impressions are made, while proved to be almost beyond change from birth to death, are never wholly repeated in the case of the fingers of any other person and they therefore furnish a surer test of identity than any other comparable bodily feature. Where two prints, made on different occasions resemble one another in the minutiae, and contain no points of disagreement, an irresistible conclusion arises that they were made by the same finger.—3. N. 1.

[Notes.—As to comparison of thumb impressions—See 1 C. N. 33-32 C. 739; 3 P. L. 1906; compare 26 C. 49]

5. **Proof of previous conviction.**—See Notes 27-30 under S. 22 *Supra* (p. 418) Notes 11 to 14 under S. 310 *Supra*. (p. 579).

512. (1) If it is proved that an accused person has absconded, and that there is no Record of evidence in absence of immediate prospect of arresting him, the Court competent to accused, try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or transportation has been committed by some persons unknown, the High Court may Record of evidence when offender unknown, direct that any Magistrate of the first class shall hold an enquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of British India

Notes.

1. Sec 512 applies only when the witness is dead or cannot be procured.—S 512 of the Criminal Procedure Code will apply only when the witness is dead or cannot be found [157 P. L. 1911]. Before evidence of any witness recorded under this section can be admitted in evidence, it must strictly be proved that the witness is dead or cannot be found or cannot be procured without an unreasonable amount of delay or expense [Cr. A. 890 of 1903 (A)]. The witnesses for the prosecution should again

be examined when practicable, notwithstanding that their statements have been recorded.

2. " . . .

be concealed in order to avoid any of their processes—(90) A. N. 100 See Note No. 3 under S. 88 at p. 84 *Supra*.

3. **Applicability of S. 512 to case of accused absconding after the framing of the charge.**—It is irregular to proceed with the trial

of the accused who has absconded after the charge has been framed and the case adjourned for defence evidence, and to record a conviction and pass sentence against the absconding accused in his absence. The Court may no doubt proceed under S. 512 Cr. P. C., if the evidence for the prosecution is incomplete. [Rev. Case No 1126 of 1916 Fd] : 36 P. R. 1917. See Rat 325

4. **Dying declarations.**—It is not necessary to examine the Magistrate who recorded the dying declaration, in the absence of the accused, in order to make it admissible in evidence. — 16 Cr 759 (M)

[**Note per Contra.**—When a dying declaration is recorded by a Magistrate, the writing itself is not evidence, but the precise statement made by the deceased must be proved by the Magistrate who recorded the statement or some one who had heard it. S. 91 of the Evidence Act does not apply to such a document.—36 C 659. 8 C. 211. 6 C. N. 72. 34 C 698. 17 P. R. 1911; 239 P. L. 1912]

The fact that the accused has absconded must be alleged, tried and established—

5. (1) In a case, where it is alleged that an accused person has absconded, evidence can be recorded against him under S. 512, in his absence, only if the fact of absconding is alleged, tried and established before the deposition is recorded.—10 C 1097. See 21 W. R. 12. Compare 6 L B 57.
6. (2) The section must be interpreted, as giving a Court jurisdiction to record evidence in the absence of the accused, only in cases in which it has been proved to its satisfaction that (1) the accused has absconded, (2) that there is no immediate prospect of arresting him.—(90) A. N. 100. (96) A. N. 182.
7. (3) To render, evidence recorded under this section, admissible in evidence, it is necessary that there should be a finding to the effect that the accused had absconded, and that he could not be arrested after due pursuit.—21 P. R. 1893.
8. (4) A person accused of murder in 1897 absconded and was not heard of till he was arrested in 1915. The evidence recorded in his absence under S. 512 was held to be inadmissible, as there was no finding to the effect that the accused had absconded and that there was no immediate prospect of arresting him as required by that section.—13 A. J. 1043
9. (5) Out of six persons accused of murder, five were arrested. The sixth accused absconded at the

Judge did not record that the sixth accused had absconded and evidence was recorded by him against the persons under trial only. Two years afterwards the absconding accused was arrested and tried. Held that the depositions given before the committing Magistrate in the previous case were admissible under S. 512 Cr. P. C. (but

not under S. 33 of the Evidence Act) but that the depositions of the deceased witnesses who had been taken before the Sessions Judge were admissible.—S. A. 672.

10. **Noto.**—Where however a Magistrate had evidence that the accused was absconding, evidence from which he might reasonably infer that there was no immediate prospect of arrest, (and he expressly stated in his order that he was taking action under S. 512 Cr. P. C.) mere fact that he did not recite a finding to effect does not render the evidence inadmissible 41 A. 60.

10A. **Where the conditions laid down S. 512 are not fulfilled, the Sessions Judge must summon witnesses.**—If, the course of a trial, the Sessions Judge is of opinion that the prosecution has not had a fair opportunity for the reception of the depositions taken before the committing Magistrate in the absence of the accused, he should adjourn the trial under S. 512 Cr. P. C. and under S. 351, summon such witnesses as he may deem material.—(82) 12 G. L. 120

11. **Mode of proof.**—The facts required to go to the Magistrate jurisdiction under this section must be proved by evidence, and not merely by the report of the Police, unless that report is given in the shape of evidence before Court (90) A. N. 300

12. **Procedure under this Section is optional.**—It is not open to a Magistrate decline to call for the documents desired by complainant or to record any evidence on behalf, on the ground that the accused has absconded, and no enquiry was then conducted, he is bound in such a case by provisions of S. 512 Cr. P. C.—2 B. R. 707

13. **Object of subs (2).**—“The Bombay High Court suggested that the provisions of this section should be extended to cases where offender is unknown and should not be confined to cases where he had absconded. We think however that a distinction should be drawn between the two cases, and therefore in adopt the Bombay High Court's suggestion, we have provided that its procedure shall only apply in cases of great gravity, that it should only be in force under an order of the High Court, and that mere delay, expense or inconvenience obtaining the presence of the deponent, should not be sufficient ground for making the deposition evidence against the person subsequently accused.”—See *Sci Com Rep.* para. 74

14. **Evidence should be duly attested.** Before depositions under this section are received in evidence, care must be taken to see that they are in proper form and duly attested or otherwise strictly proved.—S. A. 672.

15. **Circulars and orders.**—

- (a) For Central Provinces Rules.—C. P. Pol. M. p. 177
- (b) Punjab Rules.—See *Panjab. Cir. Vol.* pp. 150 151.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Notes.

1. Person required to furnish security

account of himself. He was therefore ordered by the first class Magistrate to execute a bond for Rs 25 and to deposit as security the sum of Rs 7 found in his possession. *Held*, that the order as to the deposit was illegal.—*Rat 671*

2. [Note.—The reason for the difference is that

the object of the law providing for security for good behaviour in that sureties should be responsible for the good behaviour of persons called upon to furnish security, while in the case of other bonds, the object is merely to ensure attendance. *See 2 N P 295*

3. S. 513 applies to the principal and not to sureties.—The deposit permitted under S 513 Or. P C is allowed in substitution only of the principal's bond and not in lieu of the bond which the surety executes.—32 B 449

514. (1) Whenever it is proved to the satisfaction of the Court by which bond under this Procedure on forfeiture of bond Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class

or, when the bond is for appearance before a Court, to the satisfaction of such Court, that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it, and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

Proposed amendments to the section.—In section 514 of the said Code—

(i) In sub-section (3), for the word "distress," the word "attachment" shall be substituted.

(u) In sub-section (5), the words "but the party who gave the bond may be required to find a new surety" shall be omitted, and after the said sub-section, the following sub section shall be inserted, namely, —

"(7) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, the fact of such conviction shall be conclusive as to such breach, provided that in any case where such person has been convicted on his own plea, it shall be open to the surety to prove that he was not guilty of such offence, but the burden of so proving shall be upon the surety."

After section 514 of the said Code, the following sections shall be inserted, namely, —

"514 A. When any surety to a bond becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court by whose order such bond was taken, or a Presidency Magistrate or Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate proceed as if there had been a default in complying with a such original order."

514B When the person required by any Court or officer to execute a bond is a minor, such Court or officer may in lieu thereof a bond executed by a surety or sureties only

ARRANGEMENTS OF NOTES.

S 514—Ss. 396, 397, 398 paras 1 and 2; S 502 paras 1 to 5 and 7.
503. 514 (1872)—Ss. 219, 220, 221, 203, 294, 305 (1861)

- I. Object and scope of the section.
- II. Sureties should be treated in a concordant manner.
- III. Liability of surety and principal.

- IV. Reduction of money forfeited under S. 514 Cr. P. C.
- V. Practice and procedure.
- VI. When surety is absolved.
- VII. Construction of bonds.
- VIII. Miscellaneous.

I. OBJECT AND SCOPE OF THE SECTION.

1. Object of surety bonds.—The object of the surety bonds is, as far as possible, to ensure that an accused person shall not evade justice in the ordinary sense, that is to say, by flying (sic) the country or the jurisdiction of the Court—18 B R 683.

Scope of the section.

2. (1) A bond to secure the attendance of the accused before a Magistrate is not invalid because it was taken by a Magistrate, other than the one before whom the appearance is to be made—2 B. R. 589 But See 4 M. H. (ap) 17; 4 M. H. (ap) 18
3. (2) The powers contained in Ss. 396 and 397 Cr. P. C. (=S 514) extend not only to recognizances taken by a Magistrate for the appearance of an accused person by a surety, but also to such recognizances when taken by a police officer.—22 W R 74
4. (3) The provisions of the section apply to all bonds whether executed by principals, sureties or witnesses—2 M. 169
- 4A. (1) A bond containing a condition that the accused shall appear before a Magistrate or a Police Officer, shall be valid, notwithstanding that the bond is taken by a person who is not a Magistrate or a Police Officer.
5. Bond becomes extinct as soon as penalty is paid.—The bond becomes extinct as

soon as the penalty due upon default is exacted and it ceases to be in force.—(13) U. B. L. (97-01) U. B. L. 20. 26; 117 11 P. R. 1889.

6. The word "distress."—It is difficult to say that the word "distress" is used in sections 514 Cr. P. C. with reference to other tangible moveable property.—(17) M. N. 105

Bonds taken for appearance before police.

7. (1) Bonds taken under section 106 and 107 of City of Bombay Police Act, for appearance before the Police, are not bonds taken under the Code of Criminal Procedure, or for appearance before a Court and such bonds cannot, therefore, be dealt with under S 514 Cr. P. C.—12 B. 400
8. (2) The wording of S 499 and of S 514 Cr. P. C. make it abundantly clear that a Police officer of a Police Station has power to make it a condition of a bond that the accused shall appear before a Magistrate or a Police Officer. It is not necessary that the bond has been forfeited, person bound by the bond can be called upon to pay the penalty thereof.—22 P. R. 1913. 11 C. 77.

II. SURETIES SHOULD BE TREATED IN A CONSIDERATE MANNER.

9. (1) The man who stands surety for another (a person bound over under S 110 Cr. P. C.) should always be treated in a considerate manner, and it is contrary to all principles of justice that he should be liable for a sudden act of violence, especially when he himself belongs to another village, and has no possible opportunity of controlling the every day life of the offender.—15 P. R. 1913; 13 P. R. 1913. [See the ruling in 15 P. R. 1913 discussed in 7 P. W. 1914]
10. (2) On 14th Oct 1912, one P. R. was put on Rs. 1000, security for a year under S 110 Cr. P. C. as a reputed thief and burglar. S and B were his sureties. On 25th June 1913, F B was convicted under s 323 I. P. C. and sentenced to imprisonment for 2 weeks and a fine of Rs 20. Upon this, the Magistrate ordered the confiscation of Rs 250 security money from F B, and his sureties jointly. Held, "under the circumstances explained, there was no real ground for dealing heavily with the sureties." They could not possibly prevent F B from committing a petty offence of this kind and to hold them responsible is to set up a standard of conduct which is unattainable by human beings of any class, much less by rough peasants." [The order against S. and B was set aside in full]—6 P. R. 1915 See 22 P. W. 1907.
11. [Note.—Where however the sureties stood for a man placed on security, not merely as being a receiver of stolen property but also being a dangerous man and the son of a notorious dacoit, and was subsequently convicted under S 325 I. P. C. of a bad offence Held that the sureties must have known quite well that they ran a serious risk in becoming sureties for a man of this class, and their liability can be properly enforced to the full extent.—10 P. R. 1915.
12. (1) The fact that a person who is under a bond of security to be of good behaviour, is convicted of an offence under S 13 of the Gambling Act, is a sufficient ground for calling on him to show cause why the bond should not be enforced under S. 514 of the Cr. P. Code. But the nature of the offence is such that the Magistrate can, in the proceeding under S. 514, exercise the discretion given in sub s 5 to make a considerable remission of the penalty.—(06) A. N. 13
13. (1) A bond to keep the peace, cannot be forfeited except on proof of the commission of an offence involving a breach of the peace, and the use of the word "probably" in Form 10, Sch. V, of the Cr. P. C. limits the forfeiture to cases in which breach of the peace is the 'probable' and not merely the 'possible' result of the act of the person bound over. Thus, a conviction for theft, wrongful confinement and extortion for the abduction of a woman, or a secret attempt to poison a person cannot justify a forfeiture of such a bond. 22 P. R. 1914. See 18 W. R. 63; 19 W. R. 48 7 P. R. 1906
14. When no leniency should be shown.—When a badmash's friend, saves him from jail by standing surety for him, and then his conduct shows that he has not turned over a new leaf, and that the surety is exercising no real supervision over his movements, no leniency should be shown to the surety.—3 P. R. 1917.

III. LIABILITY OF SURETY AND PRINCIPAL.

(1) The liability of principal and surety is joint and several.

15. The principal and sureties to a bond are, on forfeiture, jointly and severally liable for the amount fixed in it. If the Magistrate thinks it desirable, he may call on the principal, first to pay the amount, but if he fails or refuses to do so, he should not take any action against him, until he has called on the sureties to make good the amount and they have failed to do so. It is not for the Magistrate to say how much each surety shall pay both may pay a part, or one may pay the full amount. If the amount which the Magistrate directs "shall be forfeited," is not paid in full, he may then proceed against one or all the parties to the bond under S 514 Cr. P. C. The usual practice should be to require the principal and the sureties together to pay the amount to be forfeited (13) U. B. 1 159 (01—06) U. B. 1 13 (01—06) U. B. 1 31.
16. (3) "In my opinion the sureties to such are ordinary sureties. When A. promises in a bond to pay Rs. X to B on a certain contingency arising and C. and D. subscribe an undertaking to be sureties for A., it can only mean that B. at most is entitled to a penalty of Rs. X which he can recover on the said contingency arising from any one or all of three persons concerned, it is left to him the option of the Government to select from among the three men that one against whom it will proceed or if it pleases, it may proceed against all three or any two and recover such fractions from each as it may think fit"—*Per Johnston J* in 226 P. L. 1811 See 26 P. R. 1894 30 P. R. 1890.
- (2) Liability not co-extensive.
17. (1) When a person executes on a bond for keeping the peace, and another stands surety for him, on the breach of the bond, both the surety and the principal are liable to pay the penalty of their respective bonds, quite irrespective of the crime, and the liability of the surety is not co-extensive with that of the principal, as in the ordinary cases of a surety for a debtor for the payment of his debt.—36 C. 562 U. C. J. 200 See 20 A. 206.
18. (2) A person who undertakes to produce an accused person before Court when called upon,

and in default, to forfeit a sum of money to Government, is not discharged by the fact that the accused has paid the amount of his own bail bond.—10 Cr. 291 (M).

18A. Immovable property given in security—

- (1) "While it is true that so long as a surety is alive,

only movable property, can, for default under S. 514 Cr. P. C. be attached and sold for recovery of penalty, yet I agree with the learned Sessions Judge that if the house offered as security is worth Rs. 500; and the surety is reported by the Teshildar to be a respectable person, the security should be accepted"—16 A. J. 503.

IV. REDUCTION OF MONEY FORFEITED UNDER S. 515 CR. P. C.

19. (1) In G P R 1915, a person bound over for good behaviour under S 110 in the sum of Rs. 1000 was on conviction for hurt under S 323 1 P. C. called upon to forfeit the sum of Rs. 250. The

amount of recognizance was excessive, had to refer the matter to the Government. [19 W. R 1 3 O 737]

20. (2) Enforcement of a portion of the penalty—is allowed by the terms of subclause (5) under the corresponding section 293 of the Code of 1861, a Magistrate had no jurisdiction to direct the forfeiture of a portion of the penalty. [19 W. R 1 Rat 20] Under the Code of 1872 (see S 302) neither the Magistrate nor the High Court, had power to reduce the amount of forfeited recognizances [3 O. 737 & C. L. 72. 2 P. R 1853] The Magistrate if he thought the

21. (3) Where a security bond is taken from a surety for the appearance of a witness, the forfeiture of the whole sum mentioned in the bond is a harsh measure in the absence of anything to show that the security is really responsible for the witness' disappearance—23 P. W. 1907.

22. (4) When a person enters into a personal recognizance to attend and give evidence, but fails to appear, an enquiry should be made into the excuse given by him for his non appearance, before enforcing the penalty therefor, in order that the discretion conferred upon the Court by S 221 (=S 514) may be said to be fairly exercised 2 N. P. 113

V. PRACTICE AND PROCEDURE.

(1) General.

23. Order for confiscation must be made at the time of conviction.—If a Criminal Court knowing that the person charged before it, is under security to be of good behaviour, in sentencing that person in the case before it makes no reference to any confiscation, it is not competent for that court or any court, in a subsequent and separate proceeding to take such steps—13 P. R 1913 (F. B.); 6 P. W. 1915 23 P. R 1904. 1 C L 134. 3 C L 406 Com 26 A 202

Note.—When the rule will not apply—

24. (1) If the Magistrate who tries the accused is aware of the existence of the security bond, and does not pass any order regarding it, no other Magistrate can in subsequent proceedings confiscate the bond. But if he is unaware, this rule would be of no avail—3 P. R. 1917

25. (2) Where in convicting the principals for having joined in a serious riot, the Magistrate plainly wrote in his judgment, that in as much as they would forfeit some Rs. 4000; presently, he refrained from passing a heavy sentence. He then issued process to the sureties and having heard the case, in re forfeiture of security, he confiscated in full. Held that the order of forfeiture was correct.—15 P. R 1917

- (3) If on failure of the accused to appear on the day fixed for hearing him, an order of forfeiture of the bond is passed the next day, it is not invalid—2 B R 559.

28. Order of forfeiture cannot be passed by Court other than that which took the bond.—Where the bond in question was taken

by the second class Magistrate of Kurat, on default of appearance, the same Magistrate issued notice to petitioner to show cause but subsequent proceedings under S 514 Cr. P. C. were before the Magistrate at Khalalpur, who passed the order of forfeiture. Held that the latter Magistrate had no jurisdiction to order the forfeiture under S 514 Cr. P. C.—16 B R 84 See 14 C. N. 274 (85) A. N. 44

(2) Notice to show cause.

27. Notice must be given.—A notice must be served on a surety calling upon him to pay the amount of his security bond, or to show cause why he should not pay the same, before an order can be made to levy the sum from him. [9 W R 1] The fact that such notice was issued must appear clearly on the face of the record—[15 W R 82]

28. ... held on in the present to show cause why his bond should not be forfeited, and he fails to be present on that day, the proceedings taken by the Magistrate on the subsequent day, are not, thereby alone, vitiated—2 B. R. 559.

29. Estreating of recognizances.—Where the accused were bound over by recognizance to appear from a certain date until the close of the trial and do not appear on that date but appear on a subsequent date, and the Sub-Magistrate after hearing what they had to say, directed the penalties on the forfeited recognizances to be

levied, held that no notice was necessary before proceeding to enforce the penalty [6 M. H. 1170].

(3) The Enquiry.

30. Prima facie evidence that bond is forfeited necessary before calling upon to show cause.—S 502 (1872) [= S 314] requires that no person who has entered into a recognizance bond should be called upon to show cause why he should not have his recognizance declared forfeited without *prima facie* proof, that is, evidence on oath, that the bond has been forfeited.—11 B H 170 D C P 8

Procedure.

31. (1) In proceedings under this section, no charge is required to be drawn up [2 M 169]
32. (2) The person against whom proceedings are held, is competent to give evidence in his own behalf, on oath, as such proceedings are of a civil nature.—[15 W R 87]
33. (3) An order for estraitment of a recognizance or bail bond must be made upon evidence in the case, and not upon evidence taken in other cases.—[10 C L 571]
34. (4) There must be a regular judicial trial and legal enquiry before an order to forfeit recognizances can be passed, and the evidence taken should be recorded in the presence of the accused, or in the presence of an agent of the accused duly authorised to appear in such enquiry.—12 W R 51 - 3 B L (4p) 155 7 N P 375 (91) A N 163
35. (5) A Magistrate is not justified in forfeiting a recognizance to keep the peace under this section, unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause has been issued.—4 C 865 (P. B.) 25 C 440
36. (6) Before a recognizance can be forfeited, it must be proved that the person accused has either personally broken the peace, or abetted some other person or persons in breaking it.—11 W R 62
37. (7) Proceedings for breach of the peace between the

evidence, against the surety in a proceeding under S 514. [See also 11 C 77] This view is opposed to 21 A, 86, 32 P. R 1003 and 226 P. L. 1911, in which it is laid down that proof of conviction of the principal and if necessary proof of identity is sufficient.

38. (8) The order of forfeiture must be made by the

court has jurisdiction to do so. Therefore, when a surety executed a bond for appearance at a certain accused before the Court of Sessions, and an order was made by a Deputy Magistrate that the bond be forfeited as the accused failed to appear. Held that the Deputy Magistrate had no jurisdiction to make the order [14 C N 239]—See Note No 26 above

39. What amounts to a breach of the recognizance.

- (1) There is a breach of the recognizance if the defendant, though corporally present, does not answer when called [People v. Higgins 5 Den 58] or fails to appear and answer, if called at any stage of the trial [People v. Pety 2 Hill 523] or when, though the defendant appear, if he depart before the conclusion of the trial.—[People v. Mc Coy 39 Barb 74]
40. Reasonable notice must be given, if surety has undertaken to produce when called upon.—Where the condition of the bail bonds given by the defendants, and of the security bond given by their surety is, that the defendants should appear when required to answer the charge made against them, they are entitled to reasonable notice of the time at which the defendants will be required to attend.—4 M H (appx) xlv 5 M H (appx) xv M H C Pro 4th December 1875

[Note.—Where a bail bond has neither the time for the production of the prisoner nor the place, it cannot be forfeited on the non appearance of the prisoner.—(83) A N 44]

- 40A. Bond cannot be taken from an agent.—Where the personal attendance of an accused is dispensed with, a recognizance bond, if deemed necessary, should be taken from him, and not from his agent, the accused being bound under the terms of such recognizance, to appear either in person or by agent if the agent neglected to attend when the case was called on, the bond might be held to have been forfeited, and the accused made liable for the payment of the penalty. A Magistrate has no legal authority to secure the attendance of the agent by a bond taken from the agent himself.—5 B H (C. C.) 61.

VI. WHEN THE SURETY IS ABSOLVED.

41. (1) Suicide.—The object of the surety bond is as far as possible, to ensure that the accused person shall not evade justice in the ordinary

sense, that is to say by flying (ac) the country, or the jurisdiction of the Court. But if he elects to die sooner than face his trial, that can hardly

be a sufficient reason for forfeiting the surety bonds, since, that was an event which his sureties could not have had in contemplation, and which is not of the kind, which would impose on them any moral obligation or responsibility to the courts."—*Beaman, J.* in 18 B R 63. 37 M. 156; 16 C N 550. See *Merrick v. Vander G* Term Report 50 *Robertson v. Patterson*, 7 East 405. *Falkner v. Critico*, 13 East 457.

42. (2) Where the warrant itself is illegal.—In a case under S. 495 Cr. P. C. a Magistrate is competent to issue warrant in the first instance, but is bound to record his reasons under S 90 Cr. P. C. If he fails to do so, the warrant is wholly illegal [See 35 C 789] and the bond given by the surety has no legal force and cannot be

forfeited if the principal fails to appear—30 P. 1. 1915; 22 P. W. 1907.

43. (3) Variation of terms without the surety's consent.—Where a surety agrees to the condition that he would be responsible for the continued presence of the accused at Nawada it was held that the surety was released from case to another Court—13 W. R. 53.
44. (4) Where the bond itself is bad in law.—Where the bond which, ought to have in the form prescribed for cases under S. 110, is taken under S. 107, the sureties cannot be held liable—32 P. R. 1903

VII. CONSTRUCTION OF BOND.

45. (1) Where a person stands surety for the appearance of a person proceeded against under S 110 Cr. P. C. "upto the conclusion of the case," his liability does not cease until the culprit has, after the case has been completed and held to be proved, appeared with his sureties and executed his bond—32 P. R. 1914

46. (2) A penal bond must be construed literally and strictly.—The subjects of the rulers of an independent Native State are not the subjects of His Majesty the King Emperor. A bond executed by a surety in the form presented by Schedule 5, Form XI of the Cr. P. C. cannot be forfeited, on the principal committing an offence in an independent Native State, in as much as by transgressing the laws of the Native State, he does not make any default in his undertaking to be of good behaviour towards His Majesty—26 P. R. 1918, 30 P. R. 1859 37 P. R. 1881 20 P. R. 1878

47. (3) Where a person enters into a personal bail-bond binding himself to appear before the Court of a particular Magistrate, the fact that he fails to appear before a Magistrate, other than the one named in the bond is no ground for directing forfeiture of the bond—21 Cr. 632(A) 35 C 749 30 C. 107.

48. (4) B having bound himself by personal recognizance to appear at a Magistrate's court on the 17th Jan'y 1890 or 'until the disposal of the case' A executed a bond as surety for B's appearance "at the aforesaid court on the aforesaid date," but the bond was not in accordance with Form III or Form XI (11) prescribed by Schedule V of the Cr. P. C. there being no provision in it for the continued attendance of B, until otherwise directed by the court or for B's attendance "on every day" of the inquiry. B failed to appear on the 3rd June 1890, to which day the hearing

had been adjourned. Held that the surety bond must be construed strictly and according to the grammatical construction of the bond. A did not bind himself to secure the attendance of B on any date other than the 17th January 1890. A's bond was not forfeited—Hut 547 As to the American Law—*People v. Blankman* 17 Wend 252

49. (5) Where a defendant, charged with an offence bound himself to appear, before a Magistrate on the 10th June and did appear on that date but made default on the 11th June, held that there was no forfeiture of the recognizance—4 M. H. (a) 44
50. (6) Where a person has been bound down by recognizance not to commit a breach of the peace, the amount of the recognizance cannot be recovered from him, if he is guilty of an offence, such as theft which does not amount to a breach of the peace, or which is not likely to occasion a breach of the peace 15 W. R. 63 19 W. R. 37 See 19 W. R. 48; 7 P. R. 1906

[Note.—But where the terms of a bond to keep the peace are general, the recognizance may be forfeited on any breach of the peace, whether the assault be committed against the person on whose charge the bond was originally taken or not—[15 W. R. 14] A bond executed in District T may be estreated on a breach of the terms being committed in District S [2 B. L. 11 But See *People v. Bartlett* 3 Hill 570]

51. (7) Surety bound to cause appearance

the non appearance of the accused on the succeeding day (Monday) 2 C. N. 519. 2 Weir 663 See *People v. State* 67 N. Y. 585

VIII MISCELLANEOUS.

52. Partial enforcement of bond wholly extinguishes it.—The partial enforcement of a security bond extinguishes it wholly. A.

furnished security in Rs. 150 for good behaviour for 3 years. He committed a breach of his bond and Rs. 25 of the bond was forfeited. He again

committed an assault under S 152 I P. C. within the said three years and the Magistrate proceeded to enforce a further sum of Rs 25 out of the said bond. *Held* that the order was bad in law — 11 P. R. 1589

53. Bond not providing for money penalty cannot be enforced.—Every bond taken under the provisions of the Code, as security for the performance of a promise must necessarily include a money penalty for the breach of such promise. A document which does not provide for a penalty or forfeiture of any kind, is mere waste paper.—17 C. P. 113.

54. Once there is a breach, the sureties must be asked if they agree to bond continuing.—When a bond for good behaviour is broken and the punishment for such breach is completely suffered before the period named in the bond expires, the sureties, when paying the forfeiture should be asked, whether they agree to the bond continuing in force. If they do not agree, the Magistrate should proceed under S 126 (7), and demand fresh security.—[40] U. B. 13]

[Note.—A security to keep the peace once given is sufficient for that purpose, so long as it is in force, in respect of every act of the person bound over to keep the peace breaking any of the conditions [4 C N 121] This ruling is hardly consistent with the language of Sch 1 Form No. 11]

55. Order not appealable.—Where a Deputy Magistrate, deciding that bond for keeping the peace had been forfeited, levied the penalty under S 502, and the Sessions Judge on appeal, reversed the order, *held* that the order of the Magistrate was not open to appeal.—2 M 169. But see S 515 *infra*

56. Recovery of penalty no bar to regular prosecution.—There is nothing in this section which prevents an accused person who has forfeited his bail-bond by default of appearance, from being proceeded against under S 174 I P. C. notwithstanding his surety has paid the penalty mentioned in the recognizance.—10 W. R. 4

57. Representative of deceased surety.—The words "person bound" in S 514 do not include the representative of a deceased surety, and such representative is not liable to be proceeded against in a summary proceeding under Chap XLII.—22 P. R. 1894.

[Note.—But note the words "or his estate if he be dead" in sub s (2) of 514 Cr P C 1894]

58. Composition of offence will not prevent forfeiture.—A Magistrate is not prevented from taking steps under this section in cases in which

a breach of the peace has been committed and the parties acting privately had compounded the offence.—26 A. 202

[Note.—In America, it has been held that a judgment entered on a forfeited recognizance taken in a special session in a prosecution for assault and battery will be voidable, where it is shown that the complainant appeared and acknowledged satisfaction for the injury and requested discharge of the defendant.—*People v. Grossman* 5 N. Y. Sup 446]

59. Order for imprisonment.—A Magistrate is not competent to direct that, in default of payment, the person whose recognizance is forfeited, should be imprisoned, without first issuing a warrant for the attachment and sale of his movable property.—10 C. L. 571

60. Ss. 514 to 518 apply to bonds under Madras Abkari Act (I of 1886).—A Magistrate enforcing a penalty on the application of an Abkari Inspector who forwards under S. 43 of the Abkari Act, a bail-bond by reason of the default of the person bailed out to appear before him, must follow the procedure laid down in S 514 Cr. P. C. The Magistrate should proceed in the same manner as if the default has been made by a person bailed to appear before his own court. He should call upon the defaulter to show cause why the penalty should not be enforced. [18 M. 48]

61. Rules observed in Madras.—(1) There is

a recognizance so taken is a nullity [H. C. Cr. No 480 dated 18.3.03] (2) But such a course is permissible in the case of the defendant. [H. C. Pro No 1808 of 17.9.71] (3) A Magistrate is bound to form a reasonable opinion that there has been a *willful default* before issuing process. [H. C. Cr. No 686 dated 9th April 1899] When default is made on a date other than that mentioned in the recognizance, the penalty cannot be enforced [H. C. Pro Nos 1369 and 1327 Oct. 1866]

62. Contract by principal to indemnify surety.—An indemnity bond executed by the

depositor by principal with the surety cannot be recovered [1 A 751]

63. Informality in bond.—The security bond contemplated by law is a single bond but it is not necessarily illegal because the bond of the principal and sureties are taken on two separate pieces of paper [Per *Phear J*] in 19 W. R. 29

515 All orders passed under section 514 by any Magistrate other than a Presidency

Magistrate or District Magistrate, shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Notes.

1. District Magistrate acting under this section can not make reference under S. 438 Cr. P. C.—Where a District Magistrate

instead of disposing of an appeal against forfeiture under S 515 Cr P C., reported the matter to the Chief Court, because he entertained some

doubt about the correctness of the rulings in 15 P. R. 1905 and 15 P. R. 1913: *Held* that neither S. 438 Cr. P. C. nor any other provision of the Cr. P. C. authorises the procedure adopted. The Appellate Court cannot divest itself of its powers, merely because it misunderstands or disapproves of certain rulings of the High Court—7 P. W. 1914

2. **First class Magistrate not competent to hear appeal.**—A first class Magistrate, not being a District Magistrate has no jurisdiction under S. 515 Cr. P. C. to hear an appeal against an order of a second class Magistrate under S. 514 Cr. P. C.—Rat 184

3. **Power of the High Court.**—The jurisdiction of the High Court under S. 439 and 123 (C.) is very wide and gives it power to revise orders under this section. This general power is not taken away by the power of revision given to the District Magistrate by S. 515 Cr. P. C. as the jurisdiction of the Superior Court cannot be taken away except by express words or necessary implication [See 1 B 624]—5 S 179

[Note.—The cases reported in 19 W. R. 1 3 C 537 are no longer law]

4. **As to change of law.**—See Note No. 20, under S. 514 Cr. P. C.

516 The High Court or Court or Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session

Note.

1. **Scope of S. 516.**—S. 516 Cr. P. C. is only concerned with the power to direct levy of the amount (which power may be delegated) and

not with the forfeiture which is a condition precedent to the levy.—*Per Jenkins C. J.* in 14 C. N. 259

CHAPTER XLIII

OF THE DISPOSAL OF PROPERTY

Proposed amendment to the section.—In Chapter XLIII of the said Code, before section 517, the following section shall be inserted, namely:—

"516A When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any criminal Court during any inquiry or trial the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of"

517. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District magistrate.

(3) When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

Explanation.—In this section the term "property" includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same

may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Proposed amendments to the section.—In section 517 of the said Code—

(i) In sub-section (1), after the word "disposal," the words "by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof or otherwise" shall be inserted.

(ii) For sub-section (3), the following sub-section shall be substituted, namely,—

"(3) When an order is made under this section, such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of."

(iii) After sub-section (3), the following sub-section shall be inserted, namely—

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal."

518 In lieu of itself passing an order under section 517, the Court may direct the property Orders may take form of reference to to be delivered to the District Magistrate or to a Sub-divisional District or Sub-divisional Magistrate Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

519. When any person is convicted of any offence which includes, or amounts to theft or Payment to innocent purchaser of receiving stolen property, and it is proved that any other person money found on accused. has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has no arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him

520. Any Court of appeal confirmation, reference or revision may direct any order under Stay of order under section 517, 518 section 517, section 518 or section 519. passed by a Court subor- or 519 dinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

521. (1) On a conviction under the Indian Penal Code, section 292, section 293, section 501 or Destruction of libellous and other section 502, the Court may order the destruction of all the copies matter of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed.

522. (1) Whenever a person is convicted of an offence attended by criminal force and it appears Power to restore possession of im- to the Court that by such force any person has been dispossessed moveable property of any immovable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit,

Proposed amendments to the section—In section 522 of the said Code—

(i) In sub-section (1), after the word "force," whereof it first occurs, the words "or show of force or by criminal intimidation" shall be inserted, and after the word "force" where it occurs for the second time, the words "or show of force or criminal intimidation" shall be inserted

(ii) In the same sub-section, after the words "thinks fit," the words "when convicting such person or at any time within one month from the date of the conviction" shall be inserted

(iii) After sub-section (2), the following sub-section shall be added, namely:—

"(3) An order under this section may be made by any Court in appeal, or by a High Court when exercising its powers of revision."

523. (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be Procedure by police upon seizure of property taken under section 51 or stolen forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which property consists and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation

524. (1) If no person within such period establishes his claim to such property, and if the Procedure where no claimant appears within six months, person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie

525. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or the Magistrate Power to sell perishable property. to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of section 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

Proposed amendments to the section—In section 525 of the said Code, for the words "or the Magistrate" the words "or if the Magistrate" shall be substituted, and after the word "owner" the words "or that the value of such property is less than ten rupees" shall be inserted,

DISPOSAL OF PROPERTY. ARRANGEMENTS OF NOTES.

S. 517=S 418 (1872)=S. 132A (1861) S. 518=S 420 (1872)=132-C (1861); S. 520=S. 419 (1872)=S. 132-B. (1861) S. 522=S 531 (1872). S. 523=Ss 415, 416 (1872)=Ss 130, 131 (1861). S. 524=S 417 (1872)=S. 132 (1861), S. 525=S 415 para. 2 (1872).

I. Object and Application of Chapter XLIII.—

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- (2) Scope of S. 517.
- (3) Object and application of S. 522
- (4) Scope of S. 523
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- (6) Application of the section.
- (7) Property in Currency notes and coins
- (8) " " " " " "
- (9) " " " " " "
- (10) " " " " " "
- (11) " " " " " "

whenever required

produce

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- (7) Revision by Sessions Judge
- (8) Where both original and appellate Courts have failed to make an order regarding the disposal of property
- (9) Effect of orders under Chap. XLIII.
- (10) Limitation of suits
- (11) Analogous Law

I. OBJECT AND APPLICATION OF CHAP. XLIII.

(1) Select Committee's Report.

1. To enable a Court to act under S. 517, the property or document in question (a) must be produced before it (b) be in its custody (c) it must appear that an offence has been committed regarding it or (d) it must have been used for the commission of any offence, and one of these conditions at least, must exist in an inquiry or trial in such court. The operation of the section has been enlarged so as to enable the Magistrate to pass order for the disposal of any property produced before him

See Statement of objects and reasons

(2) Scope of S. 517.

2. (1) The object of the section is to enable the Magistrate to direct the property to be given to some person, to whom it appeared to belong or to allow it to continue in the possession of the person in whose possession it was found or to make some order of that character. The orders regarding the confiscation and payment of compensation were illegal—9 C. N. 597; But See 24 M J 1
3. (2) An order under S. 517 Cr P. C. does not decide the question of ownership of the property. It merely decides the question of the right to possession till a Civil Court has decided the question of ownership—11 Bur T 267.

4. S. 517 applies to the actual possession in respect of committed.

plaintain was into gold bang to one A for Rs 124-4-0. The latter reconverted the bangles into gold and sold it in different parts. The Court directed A to produce Rs. 184-4-0 and made an order making over the sum to the complainant. Held that the money was not the actual coins or notes received by A for the bits of gold bangles he sold. See 517 Cr P C did not therefore apply to it—20 B R 604

5. Court should not proceed under S. 517 when question of title is involved.—Three debentures, the property of S was stolen

convicted 11 P. C. produced that the order, as there were questions between N and S as to which of them was the rightful owner which could be determined only by a Civil Court, (2) that in order to prevent N from dealing with the debentures till the decision of the Civil Court N, should be directed to deposit them with an officer of the Court for three months—19 Cr, 788 (C)

6. Order can be made only if the property comes into the hands of the Magistrate.—W. R. (Sp) 5. 19 W R 3.

7. Discretion not to be exercised arbitrarily.—The discretion granted to the Court by S 517 Cr P. C. is not an arbitrary one. The property must be returned to the person entitled to the possession thereof. The Government can not lay any claim to such property so long as there is any one entitled to the possession thereof.—2 B R 768. 14 C. P 60.

Ss. 517 and 523 Cr P C cannot both apply to the same property.—17 B 748.

8. Magistrate's discretion under S. 517 Cr. P. C.—S 517 invests the Magistrate with discretionary power and it is a rule of law that such power must be exercised judicially—i. e. according to sound principle of law and not in an arbitrary manner. If there are materials, the Magistrate's discretion comes into operation, if there are none, the Magistrate ought to have returned the property to the person from whom it was produced.—11 B R 16.

9. Limit to the powers conferred by S. 517 Cr. P. C.—S 517 must be limited to the offence actually under investigation. Property used for the commission of any offence not under investigation or property regarding which no offence appears to have been committed, cannot be disposed of by an order under the section.—Rat 500.

10. Can a Magistrate make order for disposal of property which is not the subject of an offence?—S 523 must be confined to property seized by the police, of their own motion, in the exercise of powers conferred on them by law, which seizure requires to be reported to a Magistrate, for instance, seizure under S 57, 54(4), 165 and 166. S 523 cannot be held to apply to property which is produced before a Court in the course of an enquiry under a search warrant issued by it. To such property S 517 alone would apply, and if no offence is found in respect thereof, the Court can make no order; the property must be given back into the possession from which it came. [17 B 748] This view of the law is—that the Court can make no order in respect of property, which has not been proved to be either the subject of or the means of committing an offence, is based on the narrower scope of S 517 in the older Codes. Under Ss 415 and the two succeeding sections of the Code of 1872 order could be made only if the Court was of opinion that "any offence appears to have been committed" [See 1 B 630] The scope of the section as re-enacted in S 517 in the Code of 1882 was enlarged so as to include property or document "which has been used for the commission of any offence" [See 8 B. 335 Rat 365] But for all practical purpose, the narrow interpretation put on the scope of the section in 1 B 630 held the field [See Rat 500 951 Cr R. 18 of 90 46 P. R 1888. 14 O. 834 24 O. 499 (93-00) L B 324. 14 O P 60. (89); 2 Weir 668 (91) Weir 2 668; 2 Weir 667. 2 Weir 665. (13th Feby 1874); 2 Weir 665 (20th June 1874); 2 Weir 666 Con 22 B 844 The ruling in 30 C. 690 a case decided in 1903

follows this view but fails to taken into account the effect of the introduction of the words "produced before it or in its custody", which undoubtedly enable the Magistrate to pass an order regarding any property produced before it or in its custody, even though no offence has been committed in respect of it [34 C. 347] Where K. charged her daughter R with the theft of jewels
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the Magistrate had jurisdiction to pass an order for restoration in favour of the daughter or the mother or in favour of both [34 M 94] An order under S 517 may be passed even though the charge has failed and no offence has been proved [2 Weir 666; 16 M. J. (Sh. N.) 4] The rulings in Cr. Rev. No. 476-B of 1918 and Cr. Rev. No 74-B of 1919 of the Lower Burma Court which follow 1 B 630 and 14 C. 834 were disented from in 21 Cr. 561 (L.B) which adopts the same view as in 34 C. 347 and follows 5 P. R 1895 (F.B.). In 9 C. N 549; the accused who was tried for the theft of an elephant, was acquitted and the Magistrate, although he found the elephant to belong to the complainant, directed it to be made over to the accused in whose possession it was at the time of the institution of the proceedings

11. Rule governing disposal of property after acquittal.—S 517 invests the Magistrate with a discretionary power and it is a rule of law that such power must be exercised judicially according to sound principles of law and not in an arbitrary manner. If there are no materials before the Magistrate enabling him to come to a finding about the ownership of the property he should return it to the person from whom it was produced. But if there are materials, then the Magistrate's discretion comes into operation and it is for him to say what order ought to be passed having regard to all the facts in the case.—11 B R 16 See Rat 536

12. S. 517 applies only when there is enquiry or trial.—See 517 Cr P. C applies only when an enquiry or trial in a Criminal Court is concluded. Where a complaint is dismissed under S 203, it cannot be said that there was any enquiry or trial in the Magistrate's Court.—24 M J 1 See 6 C J. 707. 5 O J 229

[Note.—But in such a case when there are grounds
was used by
se evidence
jurisdiction
or directing

13. Magistrate cannot under S. 517 direct party to produce property when called upon.—An order under S 517 Cr P Code cannot direct the party to whom property is delivered to produce it when called upon.—19 M 519

Note.—But in the case of a mistake it has the power call the recipient to return it.—37 P. W. 1913]

(3) *Object and application of S. 522.*

4. The object of the provision of S. 522 is to enable the criminal court by a summary order to *restore the state of things which existed at the time of the dispossession* by the convicted person or persons. It cannot go behind the state of affairs at the time of the forcible ejection leading to the criminal prosecution. Where an auction-purchaser was forcibly ejected by certain persons, held (upon a conviction of the latter) that the auction-purchaser was entitled to be restored to actual possession which he held of the house at the time of the ejection.—3 C. N. 374.

- 14A. *Condition precedent to application of S. 523 Cr. P. C.*—Where there is no finding that any criminal force has been used, S. 522 Cr. P. C. has no application.—38 P. W. 1917

15. S. 522 does not apply to a case within the purview of S. 145 Cr. P. C.—Where neither party is in actual possession, an order under S. 522 cannot be made. It is open to the Court to grant a writ of habeas corpus.

(4) *Scope of S. 523.*

16. S. 523 does not relate to the disposal of property which has been the subject matter of a criminal trial, that is a matter to be dealt with under S. 517. Where an accused was convicted under the Mysore Mines Regulation for having unwrought gold in his possession, and the Superintendent of the five Kolar Gold Field Mines claimed that the gold should be made over to their common agent, as being the produce of one of the said mines, held that the petition should be enquired into and disposed of on its merits.
15 Mys. 299

17. *Difference between Ss. 517 and 523, Cr. P. C.*—S. 523 must be confined to property seized by the police of their own motion in the exercise of powers conferred on them by law, which seizure requires to be reported to a Magistrate, for instance, seizure under Ss. 51, 54 (4), 165 and 166. S. 523 cannot be held to apply to property which is produced before a Court, in the course of an enquiry under a search warrant issued by it. To such property, S. 517 alone would apply, and if no offence is found in respect thereof, the Court can make no order, the property must be given back into the possession from which it came.—17 B. 748, (93—00) L. B. 324

[*Note.*—The above rulings were under the Code of 1852, under which an order under S. 517 could be made only in respect of the subject of an offence. Under the Code of 1899, it is no longer necessary that the property to be disposed of, should have been used for the commission of an offence or that some offence should appear to have been committed regarding it, the Court has now power to make an order for the disposal of any property "produced before it or in its custody."—21 Cr. 414 (N.)]

18. *Application of S. 523.*—It matters really little under which of the sections either S. 105 or 550 Cr. P. C. a seizure of property was actually made, for in either case it would be obligatory to proceed under S. 523 Cr. P. C.—23 B. 314.

(5) *Meaning of property in S. 517.*

19. The word "property" in S. 517 means *moveable property*.—"We have no hesitation, after comparing section 517 with S. 522 in saying that the former section has no application to immoveable property"—Per *Imani and Chapman J J* in 18 C. N. 1147, 36 C. 44, 22 Cr. 110 (M). (00) A. N. 81. But see 4 L. B. 229 [Compare—23 C. 372]

(6) *Application of Ss. 517—523.*

20. *Property produced in the course of enquiry under Ss. 109 or 110.*—Courts acting under the preventive sections (Ss. 107 to 110) have power to make an order under S. 517 with regard to a property which has been properly produced before it, in the course of the enquiry under S. 117 Cr. P. C., though there was no proof that any offence has been committed with reference to the property.—42 M. 9, 34 C. 347. *Com.* 16 Cr. 811 (M)

21. *Property produced by a witness.*—The word "property" in S. 115 of Act X 1875 (Corresponding to S. 517) includes not only property that has been seized by the police or has been found on the person of the prisoner, but also property produced before the Police Magistrate by a witness.—12 B. II 217

22. *Printing Press.*—The words "which has been used for the commission of any offence" refer to instruments like guns, daggers, swords etc., produced in Court. They cannot include a printing press, in which seditious matters have been published.
34 C. 950, 5 N. 59

23. *Boat used for committing theft* is not an instrument used for committing an offence within the meaning of S. 517 Cr. P. C.
8 C. N. 567. See 37 P. W. 1907

24. *Cart, pony and harness.*—The accused being convicted of rash driving under S. 279 I. P. C. the convicted Magistrate acting under S. 517 Cr. P. C. that the cart, harness and pony which the accused was driving, should be sold and the sale proceeds to be handed over to the complainant as compensation.—Held the order was illegal.
9 P. L. 1904

25. *Property produced in part as sample.*—When a portion of an article in bulk is produced and received in evidence, as a sample of the bulk, the whole bulk is to be taken to have been produced before the Court within the meaning of S. 418 (1852) = S. 517.—2 Weir 670

26. *Property produced under a search warrant within the purview of Ss. 517.*—See 23 M. 525

27. *Right to goods obtained fraudulently.*—The proviso to S. 578 Contract Act does not

apply, when property (e.g.—jewels) are wrongfully converted having been obtained by fraud. The Magistrate acting under S 517 can direct them to be handed to the true owner—3 Bur. T. 111

28. **Jewels entrusted to a broker for sale.**—was sold by him to a person S who pawned them with another person T. The broker misappropriated the money which he received from S. Held—(upon a conviction of the broker for misappropriation) that T was protected by the exception 3 to S. 108 Contract Act, and was entitled to have the jewels returned to him under S 517 Cr P C 4 Bur T 170. See 3 Bur T 111 4 L B. 25 4 L B. 13.

29. **Money tied in gambler's cloth.**—Money or coins can be said to be used for the purpose of gaming under S 3 of the Madras Town Nuisances Act 111 of 1889 only if they are actually staked. To justify their confiscation, the money or coins should have been actually used or displayed in the act of gambling. Money tied in gambler's cloth not actually staked, therefore, cannot be the subject of an order under S 517 Cr P. C.—41 M. 644 See 26 B 611 26 A 270

30. **The words "conversion" and "exchange" in S. 517 Cr. P. C.**—The words "conversion" and "exchange" must be taken in their ordinary sense. They apply to such acts as the melting down of gold and silver ornaments and the exchange of notes for cash.

A garden purchased at a sale in execution of *ex parte* decree, obtained on the basis of obtained on the basis of a forged pro-note, cannot be regarded as property acquired by the conversion or exchange of the forged promote into a decree within the meaning of S 517 Cr P. C 4 Bur T. 211.

(7) Property in currency notes and coins.

31. **Property in currency notes.**—It was held in (1873) 2 Weir 684 = 7 M. 11, 233 that property in money or currency notes passes by mere delivery and the rule of law that possession by the taker in good faith is no defence against the owner of a chattel whose possession was lost through theft, does not apply in the case of money or a currency note. In 25 B 702, the above ruling was distinguished and held to be inapplicable when the coin in question is not the current coin of the realm, and is neither by statute nor by the law of merchants in British India shown to be legal tender

- 31A. **Currency notes**—The property in a bank-note or currency note passes like that in cash by delivery, and a party taking it *bona fide* and for value, is entitled to retain it as against a former owner from whom it was stolen. 5 S. 153 17 B R 922 (111) M N. 370 See 19 C. 52 (62) 1 N. P. 294. 7 M H 233 3 O 379 But the rule is limited to cases where the receipt of the money etc. is *bona fide* [1 S. 254; 3 Bur T. 111] When the buyer of certain goods made over to the seller the halves of certain currency notes as security for the payment of goods delivered, having previously parted with the other halves to

a third person, held that the seller was entitled to recover possession of the halves originally made over to him (the third person) from the third person to whom they had been delivered under an order of the Court—27 A. 630

32. **Counterfeit Coins.**—A coin which is beyond doubt counterfeit, ought not to be restored to the possession of a person convicted of having passed another like counterfeit coin, merely because it has not been proved that he has attempted to deliver it. The only proper course is to destroy it—2 Weir 669

33. **Badshahi coin.**—When a badshahi coin comes before the Court as part of the stolen property, and no custom is set up to show that it is a legal tender in British India, the Court is at liberty to award the same to the complainant under S. 517 Cr. P. C.—25 B. 702

[Note.—The property in such money does not pass by mere delivery as it is not current coin within the principle of the decision in 3 O 379]

34. **Current coins.**—Property in current coins passes by mere delivery. A sum of money alleged to be a part of the proceeds of cheating and paid by the accused to his creditors in satisfaction of a lawful debt cannot be made the subject of an order under S 517 Cr P. C. 1 P. R. 1915 [See 7 M H 233 3 O 379; 83 P. L. 1890; *Ex parte Footcherhampton* (1881) Q. B. D. 32; (36) 8 E. Foster v Green 6 H. and N 793; *Goodman v Hailey* 4 Ad and E. 879.

(8) Power of Appellate Court.

35. **Power of appellate Court.**—The appellate Court is competent to pass an order for the disposal of the stolen property under S. 517.—35 A 374

(9) What amounts to being subject of offence.

36. **What amounts to being used for the commission of an offence.**—In 9 M 448, *Bandu J* was of opinion that property used for fabricating false evidence might be disposed of by the Court. In 1 Weir 534 *Collins v J* and *Muthusami Aiyar J* directed the confiscation and forfeiture of money used by the accused in the case to bribe a public servant [See also 2 Weir 665, 2 Weir 685 (F N)]. In 19 M. J. 254 *Wade v J* and *Miller J* held that a bottle of brandy which was to have been smuggled by the accused who was convicted under sections 55(a) and 58 of the Madras Abkari Act could not be forfeited under S 517 Cr P. C. In S. C. N 887, *Pratt and Handley JJ* held that a boat in which the accused escaped after committing an offence could not be confiscated but *luthis* and other instruments used for committing the offence could be dealt with under S 517 Cr P. C. In 9 O N 597 the accused was convicted for giving false information regarding theft of ornaments which were found upon search in his own house. *Henderson and Gault JJ* held that no order for forfeiture of the jewels could be passed under S. 517 Cr. P. C. In 31 C 946, the direct question was whether a printing

press used for the printing of seditious matter could be dealt with under S 517 and the actual decision which proceeded on the ground that as an offence was one of publication of seditious matter, the press could not be said to have been used in the commission of the offence. * * On principle, the view taken by this Court in 1 Weir 534 and 8 M. 448 and by the Calcutta High Court in 8 C. N. 887 appears to be sounder than the contrary view in the other case referred to above. *Per Benson and Sundara Ayyar JJ.* in 24 M. J. 1. For typical cases—See Rat 685; 9 P. L. 1904; 4 P. L. 1904; 27 P. W. 1907 5 N. 59

(10) History of Legislation.

37. History of the Legislation on the subject of disposal of stolen property.—An examination of the history of the legislation on the subject will show that the power of the Court to order the disposal of stolen property to be made according to the requirements of the law.

and production of such property as he thinks

proper and there was no provision giving him a general power of disposal of the property. The decision of the Courts on this question has not been uniform. In 2 Weir 665 it was held that under S. 418 Cr. P. C. of 1872, a Magistrate who convicted a public servant of receiving an illegal gratification under S 161 I. P. C. had no power to direct the forfeiture of a sum of Rs 20 which was given as a bribe. But S 418 of the Code of 1872 has been enlarged in S 517 by the addition of the words "or which has been used for the commission of any offence" and the case is, therefore, not an authority under the present Code—*Per Benson and Ayyar J. J.* in 24 M. J. 1.

(11) Magistrate cannot require security to produce whenever required.

38. Where a Magistrate thinks that a criminal offence has been committed in respect of certain articles, he has power to proceed under S. 94 Cr. P. C. and S 96 of the same Code. There is no section of the Code enabling him to demand security from the person in possession of the articles, for their production when required.—7 C. N. 522 See 19 M. J. 510

II. ORDERS.

(1) Orders not within the Scope of the Chapter.

39. (a) removal of a building in respect of which an offence has been committed—(100) A. N. 81
40. (b) order directing the property to be sold and the proceeds to be credited to the Government—9 C. N. 597
41. (c) order directing the forfeiture of property "which has been used for commission of any offence"—34 C. 986
42. (d) order directing the forfeiture of a press upon conviction of the accused under S 121 P. C. [ibid.]
43. (e) order, allowing one of the parties to a proceeding under S 145 Cr. P. C. (which has been cancelled) to reap the crops to the exclusion of the other—3 C. J. 573.
44. (f) order for destruction of obscene books surrendered by a person convicted for their sale and distribution—S A 837
45. (g) ordering the property to be detained until the title of the rightful owner was proved, before a Civil Court—22 B. 814
46. (h) ordering the property to be delivered to the complainant from whose possession it had not been taken—Ibid
47. (i) order directing that a particular firm should not honour a hundi drawn on it, on suspicion that the parties to the hundi, had been guilty of some offence—1 A. J. 607
48. (j) order to the effect that the accused (who was charged with theft and discharged) be given a part of the property on furnishing security of Rs 100—Cr. R. 24-4-84

40. (k) An order under S 517 Cr. P. C. directing the party to whom property is delivered to produce it when called upon to do so—19 M. J. 510
50. (l) S 418 (=S 517) does not place the property at the disposal of the Magistrate in the sense of enabling him to bestow it in charity. He is to make such legal disposition thereof as seems right, i.e., to direct its restoration to some one to whom it seems to belong, or permit it to continue in the possession in which it is found or otherwise.—(75) 2 Weir 666
51. (m) A Magistrate cannot under S 517 Cr. P. C. make an order regarding the custody of minor children in as much as children are not property—1 Weir 348
52. (n) A Magistrate cannot in a proceeding under S. 145 Cr. P. C., order boundary marks to be laid down in respect of the disputed lands, as the property cannot be said to be either in the custody of the Court or one in respect of which an offence has been committed within the meaning of S 517 Cr. P. C.—27 A. 300
53. (o) where the accused was convicted of rash driving, the Magistrate cannot pass an order directing the sale of the pony, harness and carriage and order the sale proceeds to be paid to the complainant as compensation—4 P. L. 1904.

(2) Orders within the scope of the Chapter XLIII.

54. Delivery of stolen property on joint

daughter and mother—held—the Court had jurisdiction under S. 517 Cr. P. C. to order delivery on their joint receipt. It could make an order in favour of either the daughter or the mother or in favour of both—34 M. 94.

55. Disposal of property without recording any evidence.—An order by a Magistrate for the return of certain stolen property to the complainant without taking any evidence in the case is legal under S. 523.—144 M. 365
56. Property stolen in British hut seized

in Foreign territory.—A Magistrate is competent to pass orders regarding property stolen in British territory notwithstanding that it may be seized in foreign territory and brought into British territory by the police.—20 P. R. 157

57. Money realised by Police from person to whom the same has been lent.—An order of a Magistrate directing that the money obtained by the Police from the persons to whom the same has been lent by the thief, should be paid to the complainant is authorised by S. 517-2 Weir 440.

III. CONDITION PRECEDENT TO ACTION UNDER Ss. 517 AND 522.

58. Commission of offence.—

- (1) Magistrate has authority to make an order for disposal of property only when the record shows that an offence has been committed in regard to it—24 C. 499 39 C. 690 46 P. R. 1888 Rat 981 10 Cr. 811 (M); *Contra* 34 C. 847

- (2) When there is no proof of the commission of an offence, orders under Chapter XLIII, cannot be passed. The Magistrate cannot direct that certain produce should be delivered to the parties thereto—5 M. II XXI But *See* 2 A. 270 9 M. 448.

Note.—The section has no application merely because the property was found in the possession of a habitual thief who has been bound down for good behaviour under S. 110 Cr. P. C.—10 Cr. 811 (M)

59. Where an order directing delivery of property is made by a Magistrate without any criminal proceeding but merely on the application of the

person in whose favour such order is made, such an order is entirely without jurisdiction, S. 517 Cr. P. C. cannot apply to the case—40 C. J. 70 5 C. J. 229

60. The property must have come into the hands of the Magistrate.—W. R. (Sp) 1 19 W. R. 3

61. Condition precedent to an order under S. 522.—In order to justify an order under S. 517 Cr. P. C. the Court must find, first that the offence of which the accused is convicted was attended with criminal force as defined in S. 31 I. P. C. and secondly that a person has been dispossessed of immovable property by the use of such force [25 A. 341 12 P. R. 1806] The words "an offence attended by criminal force" means an offence in which criminal force forms an ingredient—[25 C. 434; 27 C. 174; 5 C. J. 250 *Con* 11 C. N. 467; 26 M. 49 (30) 21 C. 110 (M)]

IV. PRACTICE AND PROCEDURE.

(1) General Notes.

62. Scope of the enquiry under S. 523 Cr. P. C.

- (1) Magistrate acting under S. 523, may in the enquiry, proceed on such evidence as is available and make an order for handing over the property to the person he thinks entitled—9 B. 131.

- (2) Magistrate bound to hold independent enquiry and to come to a finding as to who is entitled to the possession of the property.—17 B. 748.

- (3) But he is not bound to hold an enquiry simply for the purpose of deciding the ownership of the property.—29 M. 375.

63. Procedure where case falls through owing to the death of the accused.—The accused was charged with criminal breach of trust in respect of certain jewels but died before the commencement of the trial. The complainants thereupon applied for the restoration of the jewels. The Magistrate held that Ss. 517 and 523 did not apply and ordered the return of the property to its original custody—held—that the Magistrate's order was right—29 M. 375.

64. Stage of the case at which an order can be passed.—An order under S. 517 Cr. P. C. can

be made at any stage of the proceedings before the Magistrate.

65. No notice necessary.—The accused is not law entitled to any notice before an order made under S. 523 Cr. P. C.—14 Cr. 172 (C).

66. When the accused is acquitted an claim the subject matter of the charge it cannot be delivered to the complainant (even if it is found that it belonged to the latter) as must be delivered to the accused person in whose possession it was found.—9 C. N. 549; 5 W. R. 55 But *See* 7 M. T. 179; 2 A. 270 9 M. 448 14 C. P. 60

67. Time of passing an order under S. 523 Cr. P. C.—It is not essential in law that an order restoring possession should find a place in the actual judgment. It must be immediate that is directly arising out of the Court convicting the case and without any fresh materials having in the meantime been produced—14 Cr. 172 (C)

68. Fresh enquiry not necessary before making order under S. 517 Cr. P. C.—"The Magistrate had before him the evidence

given for the prosecution in the inquiry, and there is nothing in the Code which requires that the passing of the summary order under S 517, [which order ought to be made at the time of passing of the judgment in the criminal case itself—19 W R 3] should follow a fresh enquiry after giving opportunity to the party to produce new or further evidence—18 Cr 469(M.).

69. Order under S. 522 Cr. P. C. need not

be made at the time of the trial, but it must be made before the conviction in the criminal case and not as a separate proceeding. Where there was a delay of 20 months before the order was passed, but the delay was fully explained, the order under S 522 Cr. P. C. was held to be perfectly legal—15 F R 1914 14 Cr 172(C) 16 A J 459. 23 B 494 C 4 C N 309

70. Where the ownership is uncertain.—Where a case of theft is dismissed on the ground that the ownership of the property is uncertain, the Court should direct that the property be sold and the proceeds be retained by the Court, until they are shown to be payable to one or the other of the parties, either in virtue of a decree of Court, or in virtue of an agreement amongst themselves 16 B R 951

[Note.—Where currency notes etc. were seized in the course of a Police raid on a gambling booth, *Held*, that if they cannot be traced to their owners, they might be treated as property, the owner of which was unknown.—16 Cr 254 (M)]

71. Loss resulting from the fraud of a third party.—When a question arises between two persons as to who shall bear the loss resulting from the fraud of a third person, the one, who has been guilty of negligence which enabled the fraud to be perpetrated, should suffer—27 A 630

(2) Stay and annulment of order.
(S. 520.)

72. An illegal order made under S. 517 Cr. P. C., is to be set aside under S. 520 Cr. P. C.—3 C J 373 18 C N 859 (99) A N 40

73. Condition precedent to jurisdiction.—The order of a Magistrate merely directing that a certain property should be handed over to an

74. A Court of Appeal within the meaning of S. 520 Cr. P. C., is the Court to which an appeal lies in the particular case and not the Court to which appeals would ordinarily lie from the Court deciding the particular case—42 B 664

74A. The words "Court of appeal" in S. 520 Cr. P. C.—merely imply the court to which appeal would ordinarily lie and do not mean that an appeal must lie in the particular case in which

an order has been passed as to the property.—26 P. L. 1911.

75. Appeal under S. 520, is an appeal in the full sense of the term and must be governed by the rules regulating appeal, generally—(81) A. N. 150

76. The Superior Court under S. 520—may be what is also the appellate Court, but this is not indispensable 17 C P. 107

77. Where the order is made by a Court of Session, it is not necessary that it should be made by a Court of Session.

which the order was passed—9 M. 444 See 3 C 379

Note per contra.—Where the accused has been acquitted, the Sessions Judge is neither the Court of Appeal nor the Court of Revision with respect to the case and has therefore no power to make an order under S. 520 Cr. P. C. in such a case—12 B 664. 35 B 253

78. Object of enlarging the scope of S. 520.—The intention of the legislature in adding to S. 520 Cr. P. C. was obviously to enable a superior Court to give effect to an order setting aside the order of the lower court, if that order has been carried out by directing restitution of the property—5 S 153. 1 S. 465.

79. Application to lower appellate Court—under S. 520 must precede an application to the High Court for the exercise of its revisional powers—2 A 270

80. Modification of order passed by lower Court on acquittal on revision.—Certain properties were found in the petitioner's house which the complainant alleged had been stolen from his house. The petitioner was convicted on 11th March and the Sessions Judge upheld the conviction in appeal on the 21st April. On the 29th April, the trying Magistrate passed an order to the effect that the properties then in the custody of the Court, should be made over to the complainant. Subsequently the High Court set aside the conviction and acquitted the applicant on revision. *Held* that, after the accused had been acquitted of the offence of theft or burglary, the proper order to make is, to direct that the property found in the possession of the accused should be restored to him—18 C N. 859

81. District Magistrate.—A District Magistrate is a Court of Revision as regards all Magistrates in his District, and, as such, has full powers to act under S. 520 regarding orders of Subordinate Magistrates under S. 517—2 Weir 673

82. Mode of restitution.—Where a remedy is allowed by law, it must be assumed that the Legislature intends that the tribunal invested with jurisdiction shall enforce its order in the manner it considers most suitable, even though there is no express provision for doing the same.—19 Cr. 995 (Pat)

83. Where notice is necessary.—Although S. 520 Cr. P. C. does not prescribe the issue of notice

to any person before an order under that section is passed, yet it is a general principle of law that an order duly passed by a competent authority in favour of any person should not be set aside without that person being heard—20 Cr. 823 (N); See 35 B. 253

84. The words "and make any further orders that may be just" in S. 520 Cr. P. C enable the appellate Court to restore the property wrongly delivered to the complainant.
14 C P. 60. 18 A. N. 40.

85. Order not falling under S. 517 Cr. P. C. is not appealable.—An order directing the restoration of property in respect of which no offence has been found to have been committed to the person in whose possession the property was found is an order passed under S. 517 Cr. P. C. and is therefore not appealable.
30 C 690

86. Effect of revorsal of lower court's order.—When an order restoring possession has been set aside by a superior court, the lower court is empowered to take steps to recover the property and restore it to the previous possessor.
—5 P. R. 1893

87. When no order has been passed under S. 517 (=132 A) the appellate Magistrate has no powers of revision under S. 132 B (S. 520)

(70) 5 M. II. xxi.

88. Order passed before the expiry of time of appeal.—In a case in which the property is wrongly delivered to the complainant before the expiry of the time allowed for appeal, the Magistrate may recover it from the complainant, if need be, by a civil suit.—19 A. 112.

89. Where District Magistrate differs in opinion from the subordinate Magistrate who has made an order under S. 517, he should direct the order to be stayed under S. 520. He cannot treat the property as subject to an order under S. 523 Cr. P. C. and set it aside. 8 B 575

90. When the appellate Court (Session Judge) has left untouched the Lower Court's (Magistrate's) order under S. 517—the District Magistrate had no jurisdiction to interfere under S. 520 Cr. P. C.—32 B. 235.

91. Power of High Court to interfere with orders under S. 520 Cr. P. C.—Where a subordinate Court makes an order under S. 520 Cr. P. C. directing the disposal of any property regarding which an offence has been committed, the High Court can interfere in revision with that order and make any further orders that may be just—(95) A. N. 40. 27 A. 630

[Note.—But the High Court can interfere only as a Court of last resort—(97) C. P. 47; (04) G. P. 17; 35 B 253]

92. Power of the High Court.—

- (1) The High Court has ample powers under S. 520 Cr. P. C. to pass any order which may be just on the facts of the case with regard to the disposal of property.—16 Cr. 813 (M.)

- (2) An order under S. 517 may be amended by the High Court under cl (4) of S. 423 Cr. P. C.—18 C. N. 459

- (3) Sec. 520 of the Cr. P. C. 1895 differs from the corresponding provision of the Code of 1882 and contemplates that the court of reference or revision shall order restitution if justice so requires.—19 Cr. 895 (Pat)

93. The object of the section.—The object of S. 522 Cr. P. C. is to enable the Court, by a summary order, to restore the state of things which existed at the time of the dispossession by the convicted person or persons.—5 C. N. 374

[Note.—In 23 B. 494, it has been held that the section gives the Magistrate power to order the complainant to be restored to possession and that the section evidently contemplates in the case of a person in possession (the complainant) being dispossessed by force by another person (the accused) and the latter being in possession at the date of conviction]

94. Jurisdiction of Criminal Courts.—The criminal courts cannot go behind the state of affairs at the time of the forcible ejection which led to the prosecution.—5 C. N. 874.

(3) Restoration of immovable property (S. 522.)

95. As to restoration of immovable property of which any person has been dispossessed by criminal force—See S. 522 Cr. P. C.

96. The words "offence attended by Criminal force"—in S. 522 Cr. P. C. mean an offence of which criminal force forms an ingredient. The words "by such force" mean the actual use of it and not merely the show of criminal force.—25 C. 434. 5 C. N. 250. 432 259 23 B 494 *Contn*—26 M. 49. 31 C. 691 (P. B.) Doubtful—11 C. N. 467.

97. The word "criminal force" in S. 522, is the same as defined in S. 350 P. C.—25 C 434 5 C N 250 25 A. 341.

98. When an order under S. 522 is justified.

- (1) In order to justify an order under S. 522, the court must find—(i) that the offence of which the accused is convicted was attended with criminal force as defined in S. 350 P. C. and

1:
9:
4
9.
3 L B. 20 See also: 2 Weir 674. 1 C N. celvi.
2 C N. clxxvi. 4 C. N. 57.

- (2) The foundation of the order under S. 522 Cr. P. C. should be the finding of the court [23 W. R. 54 14 Cr. 172 (C.)] When there is no finding that the complainant has been dispossessed of any immovable property, an order under S. 522 Cr. P. C. cannot be made [18 C. N. 390]

99. Cases in which orders under S. 522 Cr. P. C. cannot be passed.
- (a) On conviction for being members of an unlawful assembly (S. 143 P. O.)—25 O 431.
 - (b) On conviction for criminal trespass.—12 P. R. 1906; 26 M. 49.
100. Proper time for passing orders under S. 522 Cr. P. C.—An order, under S. 522 can only be made simultaneously with the order of conviction and not subsequent thereto—4 O N 308; *Contra* 23 B. 491.
101. Restoration of property on order under S. 517 may be set aside.—Where, the Magistrate's order directing the Police to deliver an immovable property, was set aside by the High Court, the Magistrate had jurisdiction, on an application being made, to restore through the Police, the possession of the property in question to the party ousted under the order so set aside.—18 O N 1146.
102. The anomaly due to a narrow interpretation put upon the section in the leading case of *Ram Chandra v Jivundra* (23 C. 434)—It has been held so far back as in *Mohunt Lachmi Das*, 23 W. R. 54 that the foundation of an order under S. 534 (corresponding to present section 522) should be the finding of the court to the effect that the person in whose favour the order is made has been dispossessed of a specific property by use of criminal force which forms the material ingredient in the matter of criminal conviction. The leading case of *Ram Chandra* 23 O 434 reiterated that principle.
- It may be mentioned here that the inequity of such an interpretation of the section and perhaps of the expression used by the Legislature has been felt by more Judges than one, notably in the case of *Chinkoo*, 11 O N 467, where the anomaly has been fully dealt with. The words in the section put a peaceful man who yields to the threats and show of force and gives up possession of property to a great disadvantage and hardship. The Full Bench case of *Mohun* 31 C 691 (F. B.) felt that the construction put upon the section is too narrow—"Per *Juala Prasad J.* in 4 Pot W 329
- [Note.—In 3 U B 111 *Saunders J C* held that the provisions of S. 522 Cr. P. O are applicable to a case where the complainant, is forcibly dispossessed from land, although no criminal force is used in the sense that no assault is committed, and the complainant is not bodily removed from the land]
- 102A. Contents of the order.—The order under S. 522 must in terms restore the possession of the property to the person who has forcibly dispossessed of the same.—23 W R. 54 23 B 494
- (4) Procedure under S. 523 Cr. P. C.
103. The discretion under the Section must be judicially exercised.—The discretion given by the words "such order as he thinks fit respecting the disposal of such property" in S. 523 Cr. P. C must be judicially exercised.—8 S. 141.
104. Object of S. 523.—It was not intended by S. 523 Cr. P. C to take any final steps only upon the expiry of the six months from the date of the proclamation prescribed by subs (2) con the provisions of S 524 Cr. P. O. come in—See 23 C. 761.
105. The discretion given by the words "such order as he thinks fit respecting the disposal of such property" in S 523 Cr. P. C. must be judicially exercised and where there is nothing to show the right to the property produced, it should be ordered to be delivered to the person in whose possession it had been at the time of attachment—5 B. R 25.
106. Order before adjudication.—A Magistrate can, in order to avoid the risk of severe loss, make an order under S 523 before formal adjudication, especially when the case has broken down by reason of non-prosecution and when both the parties press the Magistrate for such an order—5 C N 415.
107. Opportunity to show cause must be given.
- (1) Before making an order under S 523, a Magistrate must hold an investigation touching the rights not of property but of possession thereof. No order should be passed without giving a person full opportunity of showing cause why the property should not be delivered to the other claimant instead of being redelivered to him—9 Bur 61
 - (2) Where the petitioner was charged with theft of money and acquitted, and the Magistrate thereupon issued a proclamation for claimants to come in and claim the property but no one came forward and the accused asked the Magistrate to summon certain witnesses in support of his claim, held that the Magistrate was bound to summon the witnesses named by the accused and acted wrongly in refusing to do so.—18 W R 5 2 A 276
108. Procedure under S 523 cl (2).—See 523(2) Cr P O does not require a Magistrate to make any inquiry at all. He proceeds on such materials as are available before him and has to decide the question not who was in possession at the time the property was seized by the police but who was entitled to possession—12 Cr. 108 (S) But See 17 B 748.
109. Magistrate need not enquire how the third party came to be in possession.—Where certain property was recovered from the house of a person charged with theft but the complainant disclaimed it and no specific charge was preferred against such person, a Magistrate acts wrongly in entering upon an enquiry of an immaterial nature as to how it came to be in his possession. It is not for the Magistrate to enquire how he came by the property does not satisfy the Magistrate, will not justify an order under Ss. 523 and 524 Cr P C—17 B R 79
110. Scope of the enquiry.—S 523 says that a Magistrate may order its delivery, if he thinks fit,

to the person entitled thereto. The Magistrate does not decide the question of title but merely decides the question of possession. The fact that the accused had been in possession of the property when the charge was made is not conclusive. The question is who is entitled to possession—12 B R 232 9 Bar 61; See 4 L R 14

111. In case of doubt as to the person legally entitled to the property in question, the Magistrate should proceed under S 523 Cr P C.

Cr R 62 of '89

112. Variation of the order.—When a Magistrate has once passed an order under S 523 Cr P C it is not open to him subsequently to vary the order so made—4 B R, 12

113. Scope of the Secs. 523 and 524 Cr. P. C.—Ss 416-17 (1872)

The two sections contemplate proceedings preliminary to a trial.

The Criminal Court, that court is bound to restore the property in dispute into the possession of the person from whom it was taken unless as provided for by S 418—(S 517) such court is of opinion that "any offence appears to have been committed regarding it when such order appears right for the disposal of the property may be made"—1 B 630, 14 C 831.

114. The discretion given by S. 523.—Clause 1 of S 523 gives Magistrate a power either to deliver the property to a person entitled to its possession or to pass such order as he deems fit respecting its disposal. If he adopts the first alternative, he has to find out the person entitled to possession, and if no one succeeds in establishing his title to possession, the property should be at the disposal of Government. If he adopts the second alternative, the section does not specifically state what the nature of the order regarding the disposal of the property should be. If an order that the property should be at the disposal of the Government would be proper in the circumstances of the case, there is nothing in the section which prevents him from passing such an order. Whether such an order would be proper or not must be decided by the general principles of law and the light thrown from other sections of the Criminal Procedure Code—21 M J 1.

115. Magistrate bound to investigate claims of third parties.—Where a third party appears before a Magistrate and alleges that the things seized by the police under a search warrant are his property and are not the subject of the alleged offence, the Magistrate is bound to hear him and if necessary, to restore the property to him. There is a power inherent, apart from S. 523, in every court, to satisfy himself that the things produced before it under a search warrant, are the things which, it is necessary or desirable, should be kept in custody. 26 H. 522 [The ruling in 17 H 714 having shown that in such a case S. 517 only would apply was disented from.]

Distinction between S. 517 and 523 Cr. P. C.

116. Where no offence has been committed—

(1) When no offence has been committed regarding the money produced in a case,—held that the Magistrate rightly refrained from making an order under S 517 but that if necessary, proceedings might be taken under S 523—Rat 536

117. Action on mere suspicion—

(2) A Magistrate acting under S. 517 cannot on mere suspicion that an offence has been committed with respect to the property produced in the course of a criminal trial, order its forfeiture. He can only do so after a separate judicial enquiry in which the complainant has an opportunity to explain all the circumstances. There is no doubt as to the person or persons legally entitled to the property, the Magistrate should proceed under S. 523—Rat 492; 24 M. J. 14 Cr 27

118. Powers under S. 523.—Sec 523 enables the Magistrate to enquire into the ownership of the property seized by the police and deliver it to the person entitled to, instead of to the person from whom it was taken—S B 339; See Rat 365; See however 22 B 844; 14 C P 60

(5) Reference under S. 518, Cr. P. C.

119. Condition precedent.—It is only in respect of property regarding which an offence appears to have been committed or which has been used for the commission of an offence, that an order of reference can be made under S 518 Cr P C—Rat 406

(6) Procedure when the owner cannot be found (S. 524.)

120. Scope of S. 524.—[In Sec. 524 Cr P. C. the words "at the disposal of Government" may reasonably be interpreted as meaning that the Government shall be free to sell the property or to hold it as a trustee for the true owner. The Statute does not profess to bar the ordinary legal remedies, and there is no reason for reading into it something which is not there. I think the title of the plaintiffs is still alive.—Mallik J in 21 Cr. 475 (Pat); 9 B 131; 40 B 200 4 L B 13 See 2 Weir 606

[Note the ruling in 19 B 668—S W. R. 207 9 W. R. 13 were distinguished in 21 Cr. 475 (Pat)]

121. When S. 524 applies.—It is not intended that any final steps should be taken by the

only when those six months have expired that the provisions of S 524 come in and the person in whose possession it was found, can come forward and show that it is his own—22 C 761 [Dist in 3 L. B. 197.]

[Note.—When the person legally entitled is known, the Magistrate need not wait for six months—3 L B. 197]

122. *When the accused is acquitted or discharged, the property should be restored to the person in whose possession it had been at the time of the attachment.* 8 S 141.

held, the Magistrate was bound to summon the witnesses named by the petitioner—18 W R 5

123. **Procedure.**—The procedure prescribed by this and the preceding section must be followed before making an order to confiscate the property
9 W R 13

124. **What is an unsustainable claim.**—No claim as regards property seized by the police under this section can be sustained on the ground that the claimant was the owner of the soil in which the property was found—18 B 668.

125. **Presumption should be in favour of the possessor.**—When, in spite of a proclamation being made regarding the suspected property over six months ago, no one comes forward to claim it, and there is nothing to show the title

to the property produced, it should be ordered to be delivered to the person in whose possession it had been at the time of the attachment. 8 S 141.

126. **Meaning of the words "is unable etc."**—The words "is unable to show that it was legally acquired by him" in S 524 Cr. P. C. must be read consistently with the ordinary Law of Evidence and not as intended to supersede anything in that law—8 S. 141 [5 B. R. 25 R].

127. **Disposal of property which, though not claimed by complainant or proved to be stolen, is not properly accounted for by the accused.**—Although under S. 523 or S. 524 Cr. P. C., a Magistrate may direct that the property seized by the police, and which though not claimed by the complainant, or proved to be stolen is not satisfactorily accounted for by the accused, be placed at the disposal of the Government, after following the procedure in S 523 Cr. P. C. the mere fact that the accused gave an account of how he had acquired the property, which did not satisfy the Magistrate, would not justify such an order.—17 B R 79

V. WHEN THE ACCUSED IS ACQUITTED OR DISCHARGED.

128. **When the accused is acquitted—and some property, the subject matter of the charge found in the possession of the accused was brought before the court—held—the proper order to be made is one under S 517 Cr P C and the property should be returned from whose possession it came—1 C N. 561 14 C P 60**

129. **Effect of discharge by a court of appeal.**—

(1) When the Sessions Judge sets aside a conviction under S 411 and acquits the accused, he may order under S 520 the restoration of the property (caused by the Magistrate acting under S 517 to be delivered to the complainant) to the accused—(95) A N 40

(2) Where on a charge of theft of certain currency notes the accused was convicted and the notes were handed over to the complainant but on

person who is charged with *illocity*, but the accused is found not guilty of the offence charged, the proper order regarding it is one to return it to the party from whose possession it has been produced [1 C N 561 See 16 M. J. (S N) 24] When the court acquits the accused, the property taken out of their possession ought to be restored to them in the absence of a finding that the same belongs to somebody else [3 M. T. 334] Where the accused has been discharged under S 353, Cr P C no offence is proved against him, the property therefore should be restored to the accused from whom it was taken [2 Weir 667 and 668 See also 2 Weir 538 and 669] It would be of considerable interest to note that it was the *only* order permissible under the old codes, the court not being empowered to deal with the property unless it was the subject of an offence [See 1 B 630 10 B. 197. 17 B 748 22 B 514 5 W R 55 14 C 834 24 C 499 (96) A N 56 (93 '00) L B 20 46 P R 1881 Rat 500 1881 (Can K B 335 2 A. 276 9 M 448 (93) A N 61] The ruling in 30 C 690, proceeds upon a narrower interpretation of S 517, than the express terms of the section justifies Where however the property is not claimed by the accused, it cannot be restored to him even if he is acquitted [37 P. W 1913] It should be noted however that under the Code of 1898, a Magistrate is fully competent to refuse, if he thinks proper to do so, to refuse to restore the property to the accused [16 M J (8h N) 4 7 M T 179] Even where the charge of theft is dismissed and the accused discharged, an order for delivery of property to a party other than the party from whose possession it was taken, can be made under this section [34 M 94 See Mad Cr Rev case 477 of 1905] In 20 P R 1573 it was held that property suspected of being stolen can be confiscated under S 517, though the accused may be discharged

A N 26.

130. **Property should, in case of acquittal, be ordinarily restored to the person from whose custody it was taken.**—Where the accused has been acquitted of the offence of theft, the proper order is to direct that the property found in his possession should be restored to him [18 C N 879] When a Magistrate finds that no act of *illocity* has been committed, he should make no order for the disposal of the property produced before the court, other than one giving it back into the possession from which it came [14 C P. 60 (61)] Where property is produced from the possession of a

But this ruling is of doubtful authority. In *Rat* 492 it was held that S 517 Cr P. C. does not contemplate detention of property by Government. A Magistrate cannot order forfeiture of the

complainant's money on the suspicion that it had been used for the purpose of purchasing stolen property; he should return it to the person entitled thereto

VI. APPEALS.

131. **Change of Law.**—(1) Under S 423 cl. (d) of the Cr. P. C. of 1898, an Appellate Court has power to make any consequential or incidental order that may be just or proper. Therefore a Magistrate exercising power has jurisdiction to interfere with an order under S. 522 [29 C. 724 36 C. 44 78 C. 28] An accused person may upon his acquittal by the appellate court be restored to the possession of a property of which he has been deprived in favour of the complainant [27 A. 415: 3 A. J. 770. (106) A. N. 256 See 17 B. R. 922] Under S 423 (d) Cr. P. C. which authorises the Appellate Court to make any incidental order, it can set aside an order under S 522 Cr P C [19 C. N. 990]

Note.—The case reported in 25 C. 630 to the contrary, was made under Act X of 1882, and is now obsolete 29 C. 724 27 A. 415.

132. **Note per contra.**—In confirming a conviction passed by a subordinate Magistrate the District Magistrate cannot pass an order for delivery of possession under S 522 Cr. P. C. when no such order was passed by the trying Magistrate.—39 C. 1050 [The soundness of this ruling was doubted in 14 Cr. 172 (174) (C) but followed in 14 P. R. 1019]

133. **Appeal lies to the Sessions Judge.**—An appeal lies to the Sessions Judge from an order of a Magistrate under S 57 Cr P. C. 14 C. P. 60 9 M. 448. See 17 C. P. 107

134. **Power of the Appellate Court.**—"It is argued that the only court which could pass orders under this section is the court trying the case." * It seems to me that S 520 gives the Appellate Court full power to pass such an order" *Per Ryles J.* in 35 A. 574. 9 C. N. 519: *Con* 22 B. 844

[Note.—"Where a Magistrate has made an order under S 520—2 Weir 674"

135. **First class Magistrate specially empowered to hear appeals.**—S. 423 of the Code of 1898 provides for the making by an appellate court of any consequential or incidental order that may be just or proper. Therefore, a Magistrate of the first class specially empowered to hear appeals from subordinate Magistrates have jurisdiction under S 423 (d) to hear an appeal and pass orders with reference to an order under S 522.—29 C. 724. *But* Ser M. H. O. Cr. Rev. 525 of 1905 and 84 of 1908.

136. **Appellate Court cannot interfere with lower courts' order restoring possession without reversing the judgment.**—When the property has been restored to the accused on their acquittal, the Appellate Court, when it does not set aside the order of acquittal has no authority to revise the order for its restoration. It could stay the execution of the order by the lower court under S 520, but could not treat property already restored as subject to an order under S 523 infra—8 B. 373 [decision under the Code of 1882].

137. **Acquittal by appellate Court.**—High Court's power to revise—An order of a Sessions Judge acquitting a person convicted of theft and ordering restoration of property delivered by the lower Court to the complainant, is an order under S 520 of the Code and not under S. 517. The remedy against orders of the appellate court is by a petition of revision and not by way of appeal (18) A. N. 40 See 27 A. 630.

138. **Appellate Court cannot treat property claimed by the complainant as unclaimed property.**—Where on the conviction of the accused for the theft of certain currency notes the Magistrate handed over the notes to the complainant, but the Appellate Court in the course of appeal, sent for the notes from the Magistrate to whom they were voluntarily handed over, and after acquitting the accused, returned the notes as 'unclaimed' property—held—that the Appellate Court in the circumstances, should have returned the notes to the complainant—(97) A. N. 26

VII. POWERS OF THE HIGH COURT.

139. **High Court cannot interfere with finding of fact.**—The High Court cannot in revision interfere with the finding of fact by the District Magistrate, as to the person from whose custody the property was taken.—2 Weir 673.

140. **The words "any proceeding" in S. 435** are wide enough to empower the High Court to revise an order made by a Magistrate under S. 517 Cr. P. C.—2 Weir 538.

141. **High Court cannot interfere with finding of fact.**—The High Court cannot in revision interfere with the finding of fact by the District Magistrate, as to the person from whose custody the property was taken.—2 Weir 673.

142. **High Court declined to interfere with an order for delivery of property under S. 517 Cr. P. C.** although the order was based on a confession by the accused to a police officer concerning its ownership. Such a confession would be admissible under S. 18 of the Evidence Act—(1) B. 131

143. Power to interfere with the order of a subordinate Court under S. 520 Cr. P. C.—See 1V (2) Stay and annulment of order.

Remedy against an appellate court's order under S. 520 "by a petition for revision and not by way of appeal"—(98) A N 40 See 27 A 630.

144. Power of High Court to pass order under S. 517 Cr. P. C.—When the applicant under false pretences obtained delivery of

the Chief Court on the case coming before it in revision, held, that the Court had power under S. 517 Cr. P. C. to pass order as to the disposal of the money, (2) the club was directed to apply to the Magistrate who was directed to proceed to recover from the accused in the manner provided for the recovery of fines, and on recovery to pay the money to the Club—15 Cr. 533 (L B)

145. An order under S. 517 Cr. P. C. is open to revision by the High Court under

S. 430 Cr. P. C.—[1 P. R. 1915]. Although orders under S. 517 Cr. P. C. are discretionary, the discretion is open to correction, where it has been exercised in violation of accepted judicial principles [17 B. 11. 962]

146. High Court ought not to revise order under S. 522 Cr. P. C. without notice to the complainant.—An order under S. 522 Cr. P. C. ought not to be declared as of no effect without hearing what the complainant who is the party most interested in the maintenance of the order, has to urge in support of it—23 C. N. 862

147. Revision of order under S. 520 Cr. P. C. Where a subordinate court makes an order under S. 520 directing the disposal of any property regarding which an offence has been committed, the High Court can interfere in revision against such order, make any further orders that may be just.—27 A 630.

148. Orders under Ss. 519 and 519.—The High Court cannot interfere with orders passed under Ss. 517, 518 or 519 in the exercise of its powers under S. 520 except as a court of last resort.—17 O P. 107

VIII. POSITION OF INNOCENT PURCHASER OF STOLEN PROPERTY [S. 519].

149. Application of S. 519 Cr. P. C.—It is not competent to a Court to award compensation to innocent purchasers to whom the property stolen had passed out of the fin imposed, but under S. 519, compensation can be awarded out of the moneys found in the possession of the accused.

3 B R 704

150. Application of S. 519.—S. 519 does not confer the power of restoring the stolen property to the innocent purchaser (e.g., bullocks) The only power conferred by the section is to award the whole or a portion of such money as has been found in the possession of the thief at the time of his arrest [The stolen property must be restored to the true owner]—(66) A N 291

151. Stolen currency notes.—Where a stolen currency note has been delivered to a bona fide holder for value, the Court will not, on conviction for theft, restore the note to the person from whom it was stolen. It will be delivered to the bona fide holder for value in as much as it honestly came into his hands—3 C 379 18 P R 1905

152. Badshahi Coin.—A badshahi coin not being a current coin of the realm, the property in it does not pass by mere delivery. The principle laid down in 3 C 379—1 C L 339 (above) does not therefore apply—25 B 702

153. Money stolen from Govt. Treasury.—Where a person received money in current coins (stolen from Govt. Treasury) in payment of a lawful debt due to him, and the court cannot direct him to hand over the money to Govt. under S. 517 Cr. P. C.—83 P R 1890

154. Disposal of calf horn after the cow was stolen.—A cow stolen from X, was sold by the thief, to Y, who transferred it for value to Z. While in the custody of Z, for about a year

a calf was born.—Held that no order can be legally made upon Z, to deliver the calf.—10 M 25.

155. Rule in India is different from that in England.—The rule of English law protecting bona fide purchasers for value in market overt does not apply in India, and on conviction of the accused, the property with respect to which the theft was committed should be delivered to the original owner and not the bona fide purchaser. [20 W R 38 2 P R 1908 See 9 C N 607: 4 L B 13 3 Bur T 111 But See 7 P R 1872: 8 P R 1872] But where the original owner had parted with the property and made it over to the accused to sell it on his behalf, and the latter commits criminal breach of trust, the bona fide purchaser is protected [4 L B 25 12 Cr. 407 (L B)] Where the subject of the theft is in the possession of a bona fide purchaser, it should be left where it is, leaving the complainant to seek his remedy in a civil court [21 P. 11. 1878]

156. Compensation to the innocent purchaser.—An order on conviction for theft, that the stolen property should be delivered to the owner, after the innocent purchaser is paid a sum out of the fine imposed on the accused, was held illegal on the ground that no such condition can be imposed on the return of the property to the owner—[3 B R 449. See 9 P R 1873] An order for compensation cannot be made in favour of the pledgee of a stolen property, as the theft does not cause any injury to the pledgee or give him a right of action [2 Weir 672] S. 519 only authorises payment to a purchaser of stolen property, who buys in ignorance of theft, of compensation out of money found in possession of the party guilty of theft. Where no money is found in possession of the party convicted, the

purchaser cannot be compensated out of the fine imposed upon the accused. [2 Weir 671] Compensation can be paid only out of sale proceeds if any, of property found in the possession of the accused and not out of the fine imposed on him. (under S. 545).—Rat 631.

157. Stolen bangles.—One K. R. was convicted by a Magistrate of dishonest receipt of certain stolen bangles, and the bangles were on the same day ordered to be restored to the owner.

On appeal K. R. was acquitted, the court finding that though the appellant had clearly displayed the most gross want of caution in buying such articles of a comparative stranger, it was not proved that he knew or had reason to believe that the bangles were stolen. The appellant then applied for a restoration of the property to him.

A. N. 61.

IX. MISCELLANEOUS.

(1) Suit to set aside the order under S. 524 (1).

158. As S. 524 allows an appeal from an order under S. 524 (1), it is doubtful whether the law contemplates a remedy by suit.—19 B 669

(2) Remedy of the rent owner.

159. He may proceed against the holder of the articles handed over, under S. 523, for damages for conversion.—7 B 131 96 P. L. 1911

(3) Suit to set aside order under S. 522.

160. Third persons affected by the order have their remedy by a civil suit.—23 B 494.

(4) Suit to recover money wrongly made over by the Magistrate.

161. A suit brought to recover money said to have been taken by the police as stolen property from a person suspected of having committed an offence and not returned to him after he had been acquitted of the charge, but wrongly made over to another person presumably under S. 517 Cr. P. C., is a suit of the nature cognizable by the Court of Small Causes and where the amount claimed does not exceed Rs 500, no second appeal would lie.—9 C N. 493

(5) Failure to report is an offence under S. 217 I. P. C.

162. The failure to report to the Magistrate either directly by himself or through his Superior Officer under S. 523 Cr. P. C. for the recovery of stolen property, found in the course of search by a police officer, constituted an offence under S. 217 I. P. C.—16 Cr. 543 (M.) See 34 C. 123.

(6) Infructuous order under S. 522 Cr. P. C. no bar to order under S. 145 Cr. P. C.

163. An order under S. 522 Cr. P. C. which was infructuous and was never carried out is no bar to the jurisdiction of the criminal court under S. 145 Cr. P. C.—19 C N. 1088

(7) Revision by Sessions Judge.

164. If the property is, under S. 517 restored to a wrong person by the Magistrate, the Sessions Judge as a Court of appeal, is the proper person to deal with the application for the reversal of the order.—3 C 379

(8) Where both the original and appellate Courts have failed to make an order regarding the disposal of the property.

165. Where neither the original court convicting a person of theft nor the appellate Court acquitting him, made an order as to the disposal of the property forming the subject of theft, the High Court as a Court of Revision, could only quash the order but make no order as to the disposal of the property. The party aggrieved should be left to have his remedy by a Civil Suit.—(90) A N 56 1 B 630

(9) Effect of orders under Chapter XLIII.

166. When an order has to be made under S. 523, the Magistrate may in the enquiry, proceed on such evidence as is available and make an order for handing property to the person he thinks entitled. This does not conclude the right of any man. As the real owner may proceed against the holder of the articles for damages as for conversion, the High Court would not interfere. 9 B 131. Rat 365 Cr. R 11 of '88 Bnt Sec 19 B 668 See Bullock v. Dunlop, L. R. 2 Ex D 43 Dwyer v. Child L. R. 1 Ex D 172.

(10) Limitation of Suits.

167. Under Art 47 of Sch. II of the Limitation Act (IX of 1908), a suit to set aside an order under S. 523 Cr. P. C. must be brought within three years from the date on which it is passed.

(11) Analogous Law.

168. By virtue of rule made under the powers conferred by S. 29 (N) of the Abkari Act (I of 1886) the Magistrate who adjudges the confiscation has power to direct that the confiscated article may be sold or destroyed. The rule may reasonably be construed as not only authorising the Magistrate to direct the sale of the article but as also authorizing him to give directions as to the mode of sale.—19 M. J. 214.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

526. (1) Whenever it is made to appear to the High Court :—

High Court may transfer case or itself try it.

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses, or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code ; it may order—

(i) that any offence be enquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence ;

(ii) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ,

(iii) that any particular criminal case or appeal be transferred to and tried before itself ; or

(iv) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

(6) Every accused person making any such application shall give to the Public Prosecutor notice in public Prosecutor of application under this section. notice in writing of the application, together with a copy of the grounds on which it is made , and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8) If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 341 in such a manner as will afford a reasonable

time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or in the case of an appeal, before the hearing of the appeal.

Proposed amendment to the section.—In section 526 of the said Code—

(i) In sub-clauses (ii) and (iii) of sub-section (1), the word "criminal" before the word "case," and in sub-clause (ii) the word "such" before the word "cases," shall be omitted

(ii) After sub-section (6) the following sub-section shall be inserted, namely :—

"(6a). Where any application under this section is rejected or dismissed, the High Court may order that any costs incurred by any person opposing the application shall be paid by the applicant. All costs so directed to be paid shall be recoverable as if they were fines."

(iii) For sub-section (5) the following sub-section shall be substituted, namely :—

(5) If before the commencement of a day's hearing in any trial or inquiry, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of such case or appeal, the Court shall, before the accused is required to enter upon his defence, or before the appeal is heard, adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order obtained thereon

Provided that, if in any such case, after the accused has entered on his defence, he desires to apply to the High Court for a transfer of such case on the grounds specified in sub-section (1) (a), he shall be entitled to an immediate adjournment of the hearing upon his entering into a bond, either with or without a surety, conditioned upon his making, within fifteen days thereafter, such application supported by an affidavit by himself or by the pleader appearing on his behalf in which the grounds of such application shall be fully set forth.

Notwithstanding anything heretofore contained, a Sessions Judge shall not be required to adjourn a trial under this sub-section if he is of opinion that the complainant or accused, as the case may be, has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it."

ARRANGEMENTS OF NOTES.

S 526=S 64 (1872)=S. 35 (1861).

I. Object and Application of the Section.

- (1) Object.
- (2) Nature of proceedings under S 526.
- (3) Meaning of terms.
- (4) Application of the section.
- (5) Miscellaneous proceedings
- (6) Power of the High Court to direct commitment to itself.
- (7) Application made after commencement of hearing.
- (8) Transfer no slur on the trying Magistrate
- (9) S. 185 compared with 526
- (10) Transfer of Appeals
- (11) Order of the High Court how to be interpreted.
- (12) Miscellaneous.

II. Practice and Procedure—

- (1) Application how to be made
- (2) Affidavits.
- (3) Who may apply for transfer.
- (4) Duty to file application without delay.
- (5) Miscellaneous rules of practice
- (6) Costs

III. Adjournments—

- (1) The General Rule
- (2) Meaning of "commencement of hearing"
- (3) Is the Magistrate bound to adjourn the case?
- (4) Duty of the Magistrate.
- (5) Effect of refusal to adjourn
- (6) Time for applying for adjournment.

(7) What is not sufficient adjournment.

(8) Costs of adjournment.

(9) Practice of putting applications under S. 526 without bona fide intention of applying for transfer.

(10) Adjournment not obligatory pending application to superior Magistrate.

IV. Subordinate Court—instances.

V. Grounds of Transfer—General Principles—

(1) Duty of Magistrates to conduct themselves properly

(2) Meaning of 'bias'.

(3) No transfer will be granted in the absence of bias on the part of the Magistrate himself

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- (14) Where Magistrate tries to usurp a jurisdiction he does not possess.
 (15) Ignorance of the Magistrate of the language.
 (16) Unpleasantness between Court and counsel for the accused.
 (17) Question of convenience.
 (18) Private information gathered during prolonged enquiry.
 (19) Executive zeal of the Magistrate.
 (20) Substantial interest in the case.
- VI. Grounds for transfer—what are good grounds.
- VII. Grounds for transfer—what are not sufficient

VIII. Transfer of cases before Presidency Magistrates.

IX. Miscellaneous.

- (1) Trial of offence committed in Railway lands situate in Jhind Native State.
 (2) Special Jurisdiction of the High Courts
 (3) Transfer of a Session case from a jury to a non jury district
 (4) Power of single Judge to transfer
 (5) Transfer under the Letters Patent.
 (6) Finality of order passed by Divisional Bench
 (7) Commitments transferred cannot be quashed
 (8) False and scandalous allegations in transfer petition not privileged.

I. OBJECT AND APPLICATION OF THE SECTION.

(1) Object

1. One of the most important duties of a High Court is to create, and maintain confidence in the administration of justice and this can only be done by giving to every citizen an assurance that so far as practicable, he will never be forced to undergo a trial by a Judge or Magistrate whom he has reasonable grounds of suspecting to be prejudiced against him 1. S. 8 - 20 C. 577.
2. [Note.—"The law in laying down this strict rule, has regard not perhaps so much to the motives which might be supposed to bias the Magistrate as to the fact that the Magistrate is a 'titanic' paragon of all events, engender and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security"—*Per Lord J in Sergeant v. Dale* (1877) 2 Q. B. D. 558, (567)]

(4) Application of the Section.

7. The transfer of a criminal case can only be directed from a Court having jurisdiction to receive and try it 10 B 274, 3 B R 121.

(5) Miscellaneous Proceedings.

8. Transfer of proceedings under S. 110 Cr. P. C.—The Chief Court is not empowered under S. 526 Cr. P. C. to direct the transfer of proceedings under S. 110 Cr. P. C. 3 P R 1914 25 B 179 [Fd.] See 30 A 47 (07) A N 269 19 A 291 16 A 9

[Note.—The Allahabad High Court acting under S. 526 Cr. P. C. transferred proceedings under S. 110 pending before the Joint Magistrate of Meerut to the Court of the District Magistrate

in his mind that he is not likely to have a fair and impartial trial in the Court below.—12 A J 736]

(See Chapter XVI Transfer under S. 110 *supra* (p 160)

9. Transfer of proceedings under Chapter XII.—The provisions of S. 526 have no application to proceedings under Chapter XII. of the Code A party to a proceeding under S. 145 is therefore not entitled to an adjournment of the case under sub (5) of S. 526—15 C N 393 see 28 C 709 25 B 179 2 C J 614 8 S 215 Con 26 M 184 34 A 533

See Note No. 536 under S. 145 *supra* (p 252).

10. Proceeding under S. 107 Cr. P. C.—A proceeding under S. 107 Cr. P. C. is subject to the application of Cl 8 of S. 526 Cr. P. C.—41 C 719 8 S 215 Con 5 P R 1914 See Note No. 245 under S. 107 *supra* [p 129]
11. Proceedings under S. 195 Cr. P. C.—See Note No. 373 under S. 145 *supra* [p 251]
12. Does S. 526 apply to extradition proceedings?—"I am not at present satisfied that this Court would have jurisdiction to act under S. 526 of the Cr. P. C. having regard to the decision in 38 C. 517, but I do not express

(2) Nature of proceedings under S. 526

3. An application under S. 526 Cr. P. C. by an accused in a case for transfer of the case is a criminal proceeding within S. 5 of Indian Oaths Act—2 Weir 686

(3) Meaning of terms.

4. "Commencement of the hearing".—meaning.—The words "commencement of the hearing" in S. 526 Cl. (8) means the commencement of the hearing in the Court objected to, or in other words, the Court to which the word "notifies" in the clause refers—S C N 77-4 Bar T 213 35 M 701 : See Notes No. 39 to 41 *supra*
5. The word "hearing" explained.—For the purposes of S. 526 (8) Cr. P. C. the hearing or trial must be taken to include all proceedings taken to determine a case, and the first step in the hearing at a Session trial, is the reading and explaining of the charge to the accused.—35 M 701
6. (1) The expression "Criminal case" in S. 526, includes a proceeding initiated under S. 145 "An accused person" is one over whom a Criminal Court exercises jurisdiction—34 A 533
- (2) Meaning of Criminal case.—A criminal case means a 'prima facie' criminal case—[See 1 M H (Ap) 51]

[As to effect of false affidavit being sworn by accused. See 28 A. 331]

(3) Who may apply for transfer.

27. (1) The Crown, the accused and the parties conducting certain proceedings of a quasi-civil nature are the only persons who can apply for a transfer. The person who merely set the law in motion by lodging an information with the Police (not being the complainant), has no right to intervene under S 526 Cr P. C as a party interested—4 Pat J 616, Sec 5 B R 869

28. (2) Relation of the accused.—A person merely by his relationship with the accused does not become competent to apply for a transfer

5 B R 869.

29. (3) The complainant in a Crown Case.—“Any private person, in the absence of statutory provision to the contrary, can commence a criminal prosecution, but the prosecution is always at the suit of the Crown. Hence it is that criminal proceedings were called pleas of the Crown. The Crown only can stay criminal process or remit a punishment awarded by any Court” [Per Bayley J in *Burdett v. Abbot* (1811) 12 R R 450 Halsbury's Laws of England Vol IX, p 233. See 13 B 389] Where a private complainant applies for the transfer of a Crown case, and the Crown opposes such application, the opposition itself is sufficient to justify the High Court's refusal of the application [4 Pat J. 656. See *Hari Prasad Pandey v. Jagannath Singh* Misc Case No 96 of 1916 (C)]

(4) Duty to file applications for transfer without delay.

30. “The impression appears to have got abroad, that the processes and orders of the Mofassil Courts can be ignored if the parties chance to telegraph to their legal advisers either that an order has been passed by this Court or that they are all. We must protest against the practice which has become common in this Court to file these petitions of transfer on the last day, when parties are given a fortnight or three weeks to move. It is the absolute duty of parties to come to us as soon as possible, and we shall be in future unable to stay proceedings ordinarily, unless sufficient time is given to issue a rule and obtain an explanation”—Per Holtwood and Inam J. J. in 17 C. N. 536 & C N 77 910 31 C 715 19 M 375

31. Application must be put in at the earliest opportunity.—“All applications for transfer under S 526 Cr P. C ought to be put forward at the earliest possible opportunity after the occurrence of whatever facts or circumstances are alleged, as affording reasonable basis for such application. If an accused person with materials in his hands, upon which he feels satisfied that he can at any moment make out a good case for an order of transfer, elects to sit quiet and

allows the trial to proceed until the examination of all the prosecution witnesses is concluded and

order of transfer was expedient in the interests of justice, the application was refused.—15 Cr. 369 (A) See 12 A. J 33; 26 A 536 (97) A. N. 17.

(5) Miscellaneous Rules of Practice.

32. Must be dealt with in open Court.—Wherever a transfer is considered expedient, the matter is one which should be dealt with in open Court and upon proper evidence—(91) A. N. 154.

33. “ ”

34. S. 350 does not refer to cases in which
o is trans-
under S.
167 See 12
Contra 35 C.

457 32 M 218

35. Transfer can be made only from a Court of competent jurisdiction.—The transfer of a case can only be directed from a Court having jurisdiction to receive and try it [Per Holtwood J in 10 B 274 See L R 13 L. A. 134 (144) = 9 A 191 30 M 357] In 8 B. 312 however, the High Court transferred a case from a Sessions Court having no territorial jurisdiction to the proper Sessions Court See 18 A. 350, 6 C. 30 9 M 356 3 B R 121 Con 35 M. 387

36. Where the application is opposed by the accused.—Before a criminal case can be transferred to another District against the wish of the accused, it must be proved by the very best evidence available that a fair trial cannot be had in the District—6 C 491

(6) Costs

37. Where the case was transferred at the instance of the accused, he was ordered to pay all the costs incurred by the complainant, before the Magistrate from whose Court the case was transferred [8 C N 549 But see S P W 1911]. Where an order for transfer was made at the instance of the accused and the complainant alleged that he was poor and the transfer would involve expenses beyond his means, the Crown was directed to pay the expenses of his witnesses.—[8 C. N. 75]

III. ADJOURNMENTS.

(1) *The General Rule.*

38. Magistrate should postpone the hearing of a case for the purpose of enabling a party to apply to a higher Court for a transfer and his refusal to do so renders the subsequent proceeding voidable if not void. Although under Subs 8 of S 526 the Magistrate has authority to proceed with the case for prosecution until the accused is called on for his defence, yet it is not desirable that the Magistrate should ordinarily exercise that authority, but he should, unless the case is exceptional in character, grant the prayer for adjournment at once. 33 C. 1181. 1 S 35. 10 O J 218. See 6 C. N 717. 8 C N 77. 11 C N 507. 21 M J 755.

(2) *Meaning of commencement of hearing.*

39. (1) The words "commencement of hearing" mean the commencement of hearing in the Court objected to—1 Bur T. 213. 8 C N 77.
40. (2) For the purpose of S 526 (6), the hearing or trial (at the Sessions) must be taken to include all the proceedings taken to determine a case, and the first step in the hearing at a Sessions trial is the reading and explaining of the charge to the accused—35 M 701.
41. (3) Where an application under S. 526 (6) was put in after a previous application under S 344 had been rejected, held that an application under S 344, could in no sense be regarded as a commencement of the proceedings within the meaning of Cl (4) so as to justify a refusal [85 F L 1904].

(3) *Is the Magistrate bound to adjourn the case?*

42. In the leading case of *Queen Empress v. Lachman*, 19 M. 375 the words "shall exercise the power of postponement were thus explained. Although the words "shall exercise" in S 526 A. of the Code of 1852 (re-enacted as subs (6) of S 526 of the Code of 1895) are obligatory, yet the obligation is not necessarily and under all circumstances, to grant a postponement, but only to give the party a reasonable time for obtaining the orders of the High Court. The postponement is no part of the essence of the obligation. By itself, a postponement might either be useless, if it were for too short a time or superfluous, if there was sufficient time without any postponement. The essence of the obligation is that the party should have a reasonable time to move the High Court and obtain its orders. If he has such reasonable time when the application is made, there is no obligation to grant any further time. The same view is also taken in 6 C. N. 717 and 31 C. 715. The opposite view is taken in 8 C. N. 77. 29 C. 211. 15 C 455. 38 155. 1 S 35. 24 P. L. 1904. 42 P. W. 1912. 2 West 645. 21 M J 755, where all proceedings under S. 526 are held to be void if the Magistrate refuses to adjourn the case.

an exceptional character, postpone at once. "The proceedings may however go on until they arrive at a stage from which if the proceedings are carried on further, the accused might be prejudiced in his defence." The Punjab High Court in 42 P. W. 1912 held that it was competent to a Magistrate to hear and record all the evidence for the prosecution but when the evidence for the prosecution had been completed, it was his bounden duty to afford a fair and reasonable opportunity to the accused to apply for transfer before calling on him for his defence.

(4) *Duty of the Magistrate.*

43. "I am of opinion that the Court is only bound to give such an adjournment as will afford a reasonable time for the application being made and an order being obtained thereon before the accused is called on for his defence. In the present case the accused had not been called on to enter into the defence and had ample time to move the Higher Courts for transfer of the case to the Court of some other Magistrate, so that the legitimacy of the proceedings of the Magistrate is not open to question"—*Gokul Prasad J.*, in 22 Cr 88 (A). (12) M. N. 1121. Bat. See 8 C N. 77. 11 C N 507.

[Note.—*On the day fixed for hearing of this case and before any witnesses were examined, the applicant put in an application for adjournment under S 526 (4) Cr. P. C. The Deputy Magistrate examined four of the prosecution witnesses and took down the statement of the accused on the 23rd July. After this the Deputy Magistrate adjourned the case for the 27th of July. On the 27th the statement of other three accused were taken. On 30th July, the accused applied for transfer to the District Magistrate who started proceedings till disposal of the application. The District Magistrate dismissed the application on the 12th August.]

44. Where the order for transfer does not reach the Court in time—owing to the laches of the applicant, the Court is not bound to stay proceedings—19 M 375.
45. Order for transfer not reaching the Magistrate in time,—the Magistrate proceeded with the case and convicted the accused.—Held, that the Magistrate acted with impropriety in not postponing the case, but the conviction was not illegal. Rat 16. See 19 M. 375.

46. If the Magistrate refuses to adjourn the case, and the accused moves the High Court for a transfer, the proceedings are not illegal. 2 C. N. 495.

(5) *Effect of refusal to adjourn.*

47. The refusal of the Magistrate to grant a reasonable opportunity for the accused to apply for a transfer, before putting him on his defence is illegal under Cr. P. C 526 (6), and his proceedings subsequent to such refusal are also illegal.

38 155 : 1 S. 37 29 C 211 : 15 C. 455 & C. N.
77 : 24 P. L. 1901 12 P. W. 1912 : 21 M. J. 755 :
2 Weir 685

(6) Time for applying for adjournment.

48. (1) The law does not require that an application for postponement under S 526 (8) or an application to the High Court for transfer should be made within any particular period before the date fixed for hearing. If the application is made at however short a time before the commencement of the hearing, the Court is bound to adjourn. The refusal to grant such adjournment is illegal and the whole of the proceeding that follow the filing of the application is void.—29 C 211 : 15 C 455 : 8 C N. 77 : 1 S 35 : 33 C 1163 : 2 Weir 685 See 5 Bar T. 137

49. (2) It is competent to a Magistrate before granting an adjournment to proceed with the case up to the point at which the accused may be called on for his defence.—6 C N 717 : 33 C. 1163 But See 4 Bar T. 213

50. [Note per contra.—S. 526 (5) has no application where the application for transfer is sought to be made not at the commencement of the hearing but after the Magistrate has finished the case for the prosecution [4 Bar T. 213] Where at a Sessions trial, the accused applied for adjournment under S 526 (5) to enable him to apply for a transfer of the case after the charge was read and explained to him. *Held*—that the application was made after the commencement of the hearing and the Court was not bound to grant an adjournment [35 M 701]

51. What does not amount to delay in asking for adjournment.—Where the notice of appeal was issued on the 15th July 1914 and served on the 17th and the date of hearing of the appeal was fixed for the 21st July and the petitioners presented an application for transfer to the High Court on the 20th July 1914. *Held*, that there had been no delay on the part of the petitioners and on being informed on the 21st

that an application had been made, and on a petition under S 526 (5) Cr. P. C being filed, the Court acted most unreasonably in refusing to grant adjournment. 16 Cr 244 (W).

52. Sessions trial.—The hearing at a Sessions trial, of a case in which the accused is charged with a crime, is not a trial in the ordinary sense of the word. It is a trial in which the accused is charged with a crime and is entitled to be tried by a jury. (8), the

(7) What is not sufficient adjournment.

53. An adjournment for six days is not reasonable time to allow for application, for transfer within the meaning of S 526 (8) —2 Weir 686

(8) Costs of adjournment.

54. A Criminal Court's order to an accused person to pay costs of adjournment under S 344 Cr. P. C. to the complainant, on an application being made by the former under S 526 Cr. P. C. is obviously improper and unjustifiable.—8 P. W. 1911 [6 P. R. 1906 R]

(9) Practice of putting in applications under S. 526 (8) without bonafide intention of applying for transfer.

55. The practice of Vakils obtaining an order from the Magistrate staying proceedings on the ground of moving of the High Court for transfer, which they otherwise can never obtain, and without any idea of applying for transfer, is highly condemnable.—3 C N 758.

(10) Adjournment not obligatory pending application to superior Magistrate.

56. —

IV. "SUBORDINATE COURT"—INSTANCES.

57. Bangalore.—Courts of District Magistrates and the Civil and Sessions Judges of the civil and military station at Bangalore are subordinate to the High Court, Madras, within the meaning of S 526 Cr. P. C.—9 M 356

58. Aden.—The Court of the Resident of Aden who is also Sessions Judge of Perim, is subordinate to the Bombay High Court. The High Court

may therefore legally transfer a case from his Court to any other criminal court of equal or superior jurisdiction or to itself.—10 B 273 : 273 But See 23 B 575.

59. Sonthal Perganas.—The Court of a Magistrate in the Sonthal Perganas is as regards the trial of a European British subject, subordinate to the High Court under S 526 Cr. P. C.—18 C 247

V. GROUNDS OF TRANSFER—GENERAL PRINCIPLES.

(1) Duty of Magistrates to conduct themselves properly.

60. —

as to inspire in the minds of the parties a confidence that nothing but absolute justice would be done to them"—28 C. 709 : 23 C 727 : 8 C N 57 : 6 B E 824

61. Magistrate should not make remarks during trial showing that he had already

formed a decided opinion.—Where in a case of gambling, the Magistrate remarked that the name of the accused was notorious as that of a man who advertised for persons to join in gambling—held “The position of the accused person must always be one of great anxiety. It is not right that the painfulness of such a position should be enhanced by anything that could suggest to him that his guilt is a foregone conclusion in the mind of the Magistrate who has to try him. Any incident moreover giving rise to such a suggestion is especially in this country, liable to react upon witnesses appearing in this case. Neither the accused nor his counsel should be put to the necessity of removing any impression from the Court, which is not based upon any evidence in the trial.”—*Per Batty J.* in *G. B. R.* 856 See 11 O. N. cdxi; 10 C. N. xvi; 20 Cr. 539 (Pat.)

(2) Meaning of ‘bias.’

82. “The principle which underlies or is contained in the maxim ‘*nemo debet esse iudex in propria causa*’ is that a person who has a judicial duty to perform disqualifies himself if he has a pecuniary interest in the decision which is about to give or a bias which renders him otherwise than an impartial Judge. In the latter case the question must be a question of substance and of fact whether he has been an accuser. [*Leeson v. Medical Council* (1877) 2 Q. B. D. 558 (367)]. The interest must be substantial [*Reg. v. Meyer* (1875) 1 Q. B. D. 173 (177)], so as to make it likely that the Justice has a real bias, the mere possibility of bias is not sufficient to disqualify. [*Reg. v. Handley* (1882) 8 Q. B. D. 383]. In *Allen v. General Council* [(1914) 1 Q. B. 750 (758)] Lord Esher delivered himself of the following exposition of law. The passage will bear repetition in extenso “Public policy requires that in order that there should be no doubt about the purity of administration, any person who is to take part in it, should not be in such a position that he

persons who cannot be suspected of improper motives’ I think that if you take that phrase literally it is somewhat too large, because I know of no case in which a man cannot be suspected. There are some people whose minds are so perverse that they will suspect without any ground whatever. The question of incapacity is to be one of substance and fact’ and therefore it seems to me that the man’s position should be such that in substance and fact he cannot be suspected. Not that any perversely minded person can suspect him but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biased. I think for the sake of the character of the administration of justice, we ought to go so far as that, but I think we ought not to go any farther.”—*Per Sir G. Knox J.* in 30 A. 239

83. ‘Bias’—Defined.—The most intricate mental tendency is that towards bias. Its ramifications are more extensive than those of impulse or

self-love. Bias is that deep-seated mental attachment which is subtle in its self-infliction of consoling error. Bias rules where the will is weak and the perception small. While the biased mind may be unaware of its prejudicial tendency, this ignorance exists because logic has failed to be brought to bear. This is the case with those minds which we term naturally biased. Where the mind is wilfully biased, or prejudicial against truth, because self-centred and opposed to allowing any opinion to prevail except its own, there is evidenced the unusual will. The abnegation of legal bias requires that there be a thorough mental searching to discover and discard all preconceived notions which have no bearing upon the matter for legal determina-

reference of this matter to moral reason. The most evil form of this vulgar passion is the malignancy with which the Judge regards that display of legal ability by the Attorney, which is above his own comprehension. The mind which elects to be biased is a rank foe to both society and the law.—*W. W. Brewton* on the Legal Mind

84. Incidents which are not sufficient to prove bias.—Where the accused in the first list mentioned only 20 witnesses and in a supplementary list, named 200 persons, and the Magistrate came to the conclusion that the application was one made for the purpose of vexation and delay, he had jurisdiction to reject the application. There is no presumption of bias in such a case and the maxim of ‘*omnia presumuntur rite et solemniter esse acta*’ applies [36 A. 239]. The rule applies when the Magistrate has disallowed a question transgressing S 165 of the Evidence Act [ibid.] A Magistrate is justified in increasing the amount of bail if in the course of further proceeding, the case turns out to be more serious than at first imagined. An increase of bail in such circumstances—*Magistrate had not declined jurisdiction but having exercised jurisdiction committed an error of law.* [2 C. 278]. The impressions recorded in the judgment are impressions derived from the evidence and however erroneous are not to be classed as instances of personal bias which is regarded as a disqualification [6 D. R. 1092 See 18 C. N. 910]

85. Bias—What is not.—Where the impressions recorded in the judgment by a Magistrate are derived from evidence however erroneous they may be, they cannot be classed with instances of personal bias.—*G. B. R.* 1092; See 1 O. N. 426; 18 Z.

68. **Accused not bound to prove actual bias.**—For a transfer of a case on the ground of bias on the part of the Magistrate, it is rarely possible for an accused person to prove actual bias. It is sufficient to show circumstances which may raise a reasonable apprehension in the mind of an accused person that he will not have a fair and impartial trial although the circumstances may be susceptible of explanation and may have happened without any real bias in the mind of the Magistrate—2 Weir 678 21 M. J. (S. N.) 59 See 2 L. B. 220

[Note.—But when the accused makes a specific charge of corruption the rule will not apply.—21 L. B. 220]

(3) *No transfer will be granted in the absence of any allegations against the Magistrate himself.*

67. The accused, a Havildar of Police was placed on his trial on a charge of extortion under S. 384 I. P. C. He alleged that certain undesirable restraints were put on him by the Superior Officers of the Police, which hampered him in his defence, held that the application for transfer was not based on any allegation against the Magistrate in whose Court the proceedings were being conducted, an order of transfer could not be made—23 C. N. 179 But see 23 C. N. 481.

(4) *What the High Court has to consider.*

68. What the Court has to consider, in an application under S. 526 Cr. P. C. for transfer of a criminal case, is not merely, the question whether there has been any real bias in the mind of the Magistrate against the accused, but also the further question whether incidents may not have happened which, though susceptible of explanation and may have happened without there being any real bias in the mind of the Magistrate, are nevertheless calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial—19 A. G. 35 A. 5 23 C. 445 25 C. 727 24 C. 297. 28 C. 709 37 C. 1183 8 C. N. 75 9 C. N. 619 2 Weir 674 25 B. 179 But see 36 A. 279 2 Pat. W. 83

Note.—But in applying this doctrine regard must be had to the circumstances in each case—26 C. 804

69. It cannot be laid down as a general rule that whenever an accused person believes, or says he believes that he will not get a fair trial, that the case should be transferred on his application—10 C. 165

70. **Grounds must be strong and clear.**—The High Court will not, except on very strong and very clear grounds, transfer a case from one Court to another.—6 B. H. 64

(5) *Rules to be observed.*

71. (1) The High Court will not transfer the case out of deference to the susceptibilities of the accused.

(2) It cannot, when making an order for transfer, take into consideration the effect its order could have on the reputation and authority of the magistrate concerned

(1) The High Court will discourage, unreasoning apprehension and distrust

(4) It will decide whether there is cause for a reasonable apprehension by a reference to the mind of the Court rather than to that of the accused 10 C. N. 141 But see 33 C. 1183 12 A. I. 33; 36 A. 239 cited below

71A. When the accused objects to the transfer the prosecution must prove most satisfactorily that a fair trial cannot be had in the District in which it is ordinarily triable. 6 C. 491.

(6) *Meaning of reasonable apprehension.*

72. (1) "When an accused person has a reasonable apprehension that he will not be fairly treated his case should be transferred, but at the same time, I am strongly of opinion that apprehension must be a real and reasonable one. The sole question to be considered is whether the facts disclosed in an application for transfer, give rise to a reasonable inference that the Magistrate who is seized of the case may be wilfully or unwittingly prejudiced against the accused"—Per Broadway J. in 13 P. W. 1917 10 S. 183 See 23 C. 195 37 C. 1183 10 N. 15 4 P. W. 1913 127 P. L. 1915 6 B. R. 856

72A. (2) "In the present constitution of the criminal judicial administration of the country, a sub-divisional Magistrate has to perform some of the functions of the Police as also those of a Judge, and a well balanced mind may not find any bias in the mind of the Judge however incongruous his actions may be. But the appreciation of a mind properly constituted, can not be the standard to judge of the feelings of an ordinary man accused of an offence. If the word used by and the actions of judicial officers, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the minds of the accused, an apprehension and not merely a foolish apprehension that he may not have an impartial trial it is expedient for the ends of justice to transfer the case to another Judge for trial. What is reasonable apprehension is a question which must be decided in each case, with reference to the incidents themselves and surrounding circumstances, abstract reasonableness ought not to be the standard—37 C. 1183

72B. "The standard to be applied in deciding whether there is a reasonable apprehension of bias is not the standard of a person of average intelligence and honesty, but the standard of a person of high intelligence and honesty, who is a member of the class of people to which the applicant belongs."

"have the applicants any reasonable cause for apprehension", regard must be had to the degree of intelligence and the standard of honesty and impartiality of the applicant. Facts which may be insufficient to create even a shadow of apprehension in the mind of people who have a high standard of honesty, may, having regard to the low standard of honesty and fair dealing of the class of people to which the applicant belongs,

cause a fear which is not unreasonable"—*Per Halliday A. J. C.* in 10 N. 15 See 37 C. 1183; 15 C. 455

- 72C. "It is important that parties should have confidence in the Court before which they appear. I think it is also important that nothing should be done to encourage any want of confidence. If we only interfere because one of the parties may say that he has no confidence in the court, and urge that as a sufficient reason for transferring the case, I do not see how the jurisdiction to decide whether a case should be transferred or not, is to be exercised; and therefore ordinarily before a transfer is granted, it is well that we should be satisfied if want of confidence is to be alleged, that there is foundation for such want of confidence"—*Per Aston J.* in 6 B R 836.

73. Consideration of the position of the accused.—However proper the conduct of a Judge may be, the state of the mind of the accused is to be considered and any incidents which are calculated to create in his mind a reasonable apprehension that he may not have a fair and impartial trial are good grounds for transfer. In order to test what is reasonable apprehension, the Court ought to place itself in the position of the accused to consider the facts and circumstances attending his position—33 C. 1183 15 C P 182 154 P L 1013 See 6 B R 836

(6A) Improper motive.

74. Unless it is shown that the Magistrate is likely to be influenced by an improper motive in the decision of the case, the High Court will feel bound to support the Magistrate, in as much as, by transferring it a gratuitous slight will be thrown on the Magistrate—*Rat 323*

(7) Probability of an unfair trial.

75. It is only where there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one Magistrate to another—2 W. R. 54, 18 C 247

Note.—So where the Magistrate did not draw up the order sheet as required by the High Court, and made interpolations in the same—*Held* that his conduct showed bias and a transfer was ordered—2 C. N 639

(8) Conviction in a connected trial.

76. Where accused N and four others were at first tried together, the former under S. 411 I P C. and the latter under S. 391 I. P. C. and the case was afterwards separated and the case against N, under S. 411 I P C. was kept in abeyance pending decision in the S. 391 P. C. case, and all the four accused in the latter case were convicted. *Held* the mere fact that the Magistrate had found the property in question to be stolen property was not a sufficient ground for transfer, as it did not necessarily follow, that the accused would be guilty under S. 411 I. P. C. for that reason, and there was no reason why the Magistrate should not try the case with perfect impartiality.

—15 Cr. 253(A); See 33 A. 583; 12 A J. 33 31 C. 715- 11 C. N. cxlxi

(9) The fact that the Judge tried the counter case is no ground for transfer.

77. It is no reasonable ground for apprehension that there will be a fair trial merely because the Judge, in the former proceeding, arising out of a counter case to the one before him, has expressed certain views upon the evidence in the former case as to which of the two versions is correct 1 O N. 426; 36 C. 904; 8 C. N. 91 33 A. 583; 15 C. P. 182 1 S. 37; 1 Pat J 39 Bnt See 4 C. N. 824; 8 C. N. 641. 30 M 22 (10) M. N. 735 6 B R. 1902

[Note.—The fact that a Magistrate had discharged a cross case between the same parties is a proper or a sufficient ground for transfer. But such order of discharge rested on the evidence which he had heard in both cases, there will be sufficient ground for transfer.—5 S. 264]

- 77A. Presumption of fairness.—Judges are presumed to be upright men who will approach each case from the point of view of that case alone, and not permit their minds to be in any way affected by anything that has gone before that case—1 Pat J. 399.

(10) Trying Magistrate a witness in the case.

78. It has been always regarded as a valid ground of transfer that the evidence of the trying Magistrate is essentially necessary for the accused's defence. But the necessity must be to a bona fide belief that such evidence will benefit the defence. Where the necessity is urged merely in order to create a ground for transfer and good reasons are put forward in support of the allegation, an application for transfer will at all times be disallowed. [See Note No 101 below] Their Lordships of the Privy Council have laid down in very express terms that "it ought to be known and their Lordships wish it to be distinctly understood, that a Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts." [Harpur's case 31 A 259=26 W. R. 55.]

(11) The fact that the Court is acting under the direction of the Crown and not using its own discretion.

79. Where a Justice of the Peace sat in a room in the Police Station and on the request of the Crown Solicitor made an order excluding all persons except the representatives of the accused, and gave as reason for refusing admission to other Justices that he was guided by the Crown and directed by the Crown not to allow other Magistrates to be present. *Held*, that although

(12) Intimidation of witnesses.

80. A witness, after he had given evidence to a certain extent, cannot be made an accused and tried along with the other accused, though his name might have been mentioned in the complaint. A procedure like this is highly calculated to intimidate other witnesses—7 B. R. 472

(13) Transfer from a non-jury to jury District.

81. In transferring a case, no consideration should be had to the fact that by a transfer to a particular district, the accused shall have the benefit of a trial by jury where previously he had none—8 C. J. 59 10 S. 54.

(14) Where Magistrate tries to usurp a jurisdiction he does not possess.

82. Where, the Magistrate has repeatedly endeavoured to dispose, by unauthorised executive action, of matters which the law reserves for judicial determination and has been betrayed into many illegal or irregular acts, some of which are of a highly oppressive character, he disqualifies himself for the discharge of any judicial functions and the case should be transferred from his file 10 C. N. 82

(15) Ignorance of the Magistrate of the language.

83. Where a good deal of evidence in the case, both oral and documentary is in English, and the Magistrate in whose Court the case is pending does not know the language, it may be necessary and perhaps would be advisable to transfer the case to the Court of some Magistrate who knows the language—16 Cr. 73 (A)

VI. GROUNDS FOR TRANSFER—WHAT ARE GOOD GROUNDS.

80. (1) The expression of belief by the District Magistrate and the Sessions Judge that a fair and impartial jury could not be obtained if the case was tried in the District—25 C. 727
80. (2) When by reason of the words or conduct of a Magistrate or Judge before whom a case is pending, any party reasonably apprehends that there is a bias against him in the mind of the officer concerned, (though there may not be any actual bias)—25 C. 709 2 Weir 678 19 A. 64
81. (1) Refusal by the Magistrate to adjourn a case in contravention of Cl. 8 of S. 53 1 S. 35 8 S. 411 10 J. 218 17 A. J. 48
82. (4) Where the trying Magistrate in the course of the trial, makes a report to the Subdivisional Magistrate containing aspersions on the conduct of the accused and even suggesting that he might have committed the very theft—2 S. 33
83. (5) The fact that the accused had written against the Magistrate in the newspapers and had been dealt with both by the police and the Magistrate himself, harshly and severely—3 Home 21.

(16) Unpleasantness between Court and Counsel for accused.

84. It would be wrong to encourage the idea or create the impression that a quarrel or unpleasantness between Judge and Counsel should be allowed to form the basis of an application for transfer—2 Pat. W. 83

(17) Question of convenience.

85. When a transfer can be made without the risk of any improper interference with the course of justice and without much inconvenience to the parties and witnesses, a transfer would be proper as a fair concession to the accused—5 M. H. 212.

(18) Private information gathered during prolonged enquiry.

80. The fact that the Magistrate had in a complicated case, made a very prolonged and careful local investigation, in the course of which he acquired a large amount of private information with reference to the occurrence in question which

(19) Executive zeal of the Magistrate.

87. Where the executive zeal of the Magistrate appears to outrun his judicial discretion, a transfer is desirable to allay the reasonable apprehensions of the applicant for transfer—1 S. 8

(20) Substantial interest in the case.

88. To justify the transfer of a case from a Magistrate it must be established that the Magistrate has such a substantial interest in the result of the hearing, so as to make it likely that he has a real bias in the matter—Rai 653 See Notes under S. 550 infra

84. (6) Where a Magistrate in spite of the fact that an application for transfer is pending before the High Court proceeds with the trial, cancels the bail bond and commits the accused to the Sessions,—his conduct shows bias and it is a good ground for transferring the case—50 N. 110—See 2 C. N. 418—16 C. N. 1031
85. (7) Disregard of an order of the High Court staying proceedings although communicated informally to the Magistrate—2 C. N. 194
86. (8) Where a Magistrate was present at a search by the police during investigation and in all probability he came to know of some facts in connection with the case, it is expedient that some other Magistrate should try the case—5 C. N. 864
87. (3) The fact that the Magistrate had accompanied the prosecutor to the place of offence and there heard from him the facts of the case—32 P. L. 1902
89. (10) Where the defence in a previously tried case forms the subject matter of a complaint to be

tried by the same Magistrate—*held*—the Magistrate having expressed his opinion on the evidence for the defence in the previous case, it was desirable to have the complaint tried by some other Magistrate 4 C N 824

99. (11) Where the District Magistrate had procured the initiation of a number of prosecutions against the applicant—*held*—that an appeal from a conviction in one of these cases should not be heard by the District Magistrate 24 W. R. 55.

100. (12) When the procedure as against the accused person is irregular and illegal and the Magistrate is prejudiced against and antagonistic to him 20 W. R. 23.

101. (13) The fact that the evidence of the trying Magistrate will be required by the accused touching certain matters connected with the case 26 A 536 12 A J 33 15 Cr 368 (A) 1 O J 271

Note.—It is not expedient to order a transfer unless it is clearly shown that the evidence of a Magistrate is essential for the accused's defence and there is a likelihood that he can give evidence which would aid the accused in his defence, 8 S 170, 19 Cr 632 (C).

102. Where none of the grounds by themselves were sufficient, but taken together created the impression that the petitioner might not reasonably apprehend that he might not have a fair trial.—9 C, N 619 4 P W 1913

103. (15) The fact that in a case of theft of bamboos worth Rs 1, only, the Magistrate issued warrants in the first instance without provision for bail and on appearance exacted heavy bail from the accused 8 O N 589

[Note.—But where the mistake is *bona fide* it will not be a sufficient ground for transfer—8 C N 838]

104. (16) The fact that in two previous cases the Magistrate had expressed a decisive opinion on this question of the possession of the property which was in issue in the last case, (case of rioting) 8 C N 641

105. (17) In two cases, in which charges and counter charges have been made, a Magistrate heard the prosecution evidence in one case, and then without hearing the defence evidence in that case, interposed the other case, heard the prosecution evidence in that case, and on that evidence discharged the accused in the former case. In his order of discharge he expressed himself in decided terms, as to the guilt of the prosecuting party in the latter case who are the accused in the former case—*held*—such prejudging of accused's guilt is sufficient ground for a transfer 30 M, 233 see 5 S 264

106. (18) The fact that in spite of an application for adjournment the Court examined 13 prosecution witnesses and then allowed 14 days' time and even after being informed that the High Court had issued a rule under S 526, examined 4 more witnesses and then made an order for adjournment—11 O N, 507.

107. (19) Unnecessary delay in disposing of a simple case [2 Weir 679; see 8 M. T. 222]. Where a

trying Magistrate showed "deplorable weakness" in allowing himself to be drawn to one side or the other by extraneous or irrelevant matters [12 A J. 262], the mere fact of the Magistrate making unnecessary adjournments in the enquiry or trial of such a case, is a sufficient ground for the transfer of the case from his Court [16 A J 234] Inordinate delay in examining the complainant or a disregard of the preliminaries prescribed by the Cr P. C. for dealing with complaint and awaiting the consideration of the evidence in another case with which the accused has no concern, in order to decide whether any action should be taken upon the complaint, are matters which afford reasons to the accused to apprehend that he will not have a fair and impartial trial and such a case is a proper one for transfer.—[1 Cr 504 (Pat)]

108. (20) The fact that the Magistrate had previously dealt with the dispute in an informal manner as a private arbitrator.—18 C J, 159.

109. (21) Where the Magistrate has issued an order contrary to law and so contrary that it was well calculated to create a reasonable apprehension in the mind of the accused that the Magistrate was biased against him—23 C 435 29 C 537 See *Sergeant v Dale* (1877) 2 Q. B. D. 538 (567)

110. (22) Where the Magistrate had been acting on information got out of Court and that he permitted rumours relating to the accused in a pending case before him to reach him out of Court and allowed his mind to be influenced by such rumours—19 A 64

111. (23) Where it appeared that the Magistrate had made private enquiries from persons who were likely to figure later on as witnesses in the case, the High Court directed a transfer of the case from the file of that Magistrate under S 526 Cr P C—17 C N 1218.

112. (24) Where at the close of the examination of a defence witness, the Magistrate asked him if the two accused had been "chained in any badmash case. It appeared that he asked the question as the assurance of the Police peshi clerk attached to the Court—*held*—that the question asked was in the highest degree improper and the Magistrate's conduct was a sufficient ground for an apprehension that a fair and impartial trial will not be held—12 A J 50

113. (25) Where the proceedings were initiated under the orders of the District Magistrate and later also regard to the fact that one of the important witnesses for the prosecution is a Deputy Magistrate attached to the District, the case against the petitioner was transferred to another District.—1 O J 271

114. (26) In a case where a Magistrate made a local inspection for the purpose of explaining the evidence that was given before him but failed to make a note of what he had seen, the High Court ordered the case to be transferred to another Magistrate for trial—3 Pat W. 261; see 27 C 310. 19 M 263. See No. 133 below.

115. (27) That the trying Magistrate stopped the cross-examination of the complainant in the case because in his view the complainant had been

fully cross-examined for an hour.—20 Cr. 559 (Pat) : 20 Cr. 566 (Pat)

116. (28) The refusal by a Magistrate to permit the cross-examination of the prosecution witnesses after all of them have been examined-in-chief, the cancellation of bail-bonds of an accused person made after an application for stay of proceedings pending an application for transfer of the case, and the refusal to furnish the accused with copies of depositions of witnesses for the prosecution, are good grounds for directing a transfer of the case.—[21 Cr. 630 (Pat) 5 C N. 110]. See 7 C. J. 240.]
117. (29) Where the District Magistrate acting on a verbal statement made to him in his Chambers, has the accused forthwith arrested, although the offence is one in which a summons only should issue in the first instance.—21 Cr. 793 (Pat) : See 8 C N 589 15 C. 217 14 C N. 664
118. (30) Where there is some degree of association between the Magistrate and one or other of the parties to a case as, for instance, where a party has a financial hold on the Magistrate, the case ought not to be tried by that Magistrate.—21 Cr. 843 (Pat).
119. (31) The fact that a Magistrate exhibits haste in recording the statement of an accused person before all the evidence for the prosecution is concluded, is sufficient to create an apprehension in the mind of the accused that he will not have a fair trial and to entitle him to a transfer of the case to some other Magistrate.—22 Cr. 84 (A)
120. (32) Where a District Magistrate admitted in his reply to an application for transfer of a case

that he has taken a keen personal interest in the case and was satisfied of the applicant's guilt, held there was sufficient ground for transfer.—32 A. 662.

121. (33) The fact that a prosecution witness was a relation of the Magistrate and was interested in the case, was held to be a sufficient ground for transfer.—13 C N. 1.
122. (34) Where the prosecution was by Calcutta Corporation under Bengal Act IV of 1876 (License) and the trial was being held by a servant of the Corporation as Justice of the peace.—7 C. 322
123. (35) The fact that the opposite party has engaged all the lawyers available at the place.—7 A. J. (S N) 80
124. (36) Where the trying Magistrate refused an application by the accused (*pardaushin ladies* of

C N. 1244

125. (37) Where a Sessions Judge in his explanation to the High Court made remarks shewing that he had taken a very strong view of the case against the accused, and that he had in a great measure formed a very strong opinion of his guilt, and also in view of the fact that it might be desirable to examine the Judge as a witness at the trial, the High Court transferred the case.—3 C N. 623

VII. GROUNDS FOR TRANSFER—WHAT ARE NOT SUFFICIENT.

126. (1) Refusal to grant postponement of case under S. 526, cl 8, where the application has been delayed for nearly two months after the hearing has commenced.—4 S. 42
127. (2) Convenience of parties and witnesses where the accused are themselves in custody and have not disclosed the names of their witnesses.—4 S. 42
128. (3) The mere possibility or probability that difficult questions, whether of law or of fact will arise.—15 W. R. 69; See 7 B R. 637 (639) [But See S. 526 (1) (b) Cr P C]
129. (4) The mere fact that the Magistrate of a District is, in his capacity as Collector, concerned in the management of an estate held by the Court of Wards, is no ground for a transfer from that district of a case brought by a servant of the estate.—28 C. 207
130. (5) The mere fact that the Magistrate of the District is, in his capacity as Collector, concerned in the management of the Raj Estate is no ground for asking for a transfer of the case from the Court of a subordinate Magistrate in that District.—25 C. 207.
131. (6) The mere fact that in another case, on other evidence the Judge may have come to a particular conclusion.—36 C. 104. See 1 C. N. 426.

132. (7) That the Magistrate in another criminal case arising out of the same transaction, had expressed decided opinions not only on the facts but as to the credibility of certain witnesses.—1 S. 37
133. (8) The fact that the Magistrate has personally inspected the locality to test the correctness of evidence and has been made a witness does not disqualify him from trying the case.—13 F. R. 1901 See 19 A. 302 21 C. 920 37 C. 310; 12 C N 744 19 W. 263 See No 111 above
134. (9) The mere fact that a Magistrate in whose Court a criminal case is pending, is or may be summoned as a witness for the defence, is not itself a reason for the transfer of the case from the Court of such Magistrate.—(37) A. N. 17. 19 Cr. 612 (C) : See Note No 101 above.
135. (10) The mere circumstance that the complainant is a private servant of the trying Magistrate.—9 B. 172 (11) 2 M. N. (Jour) 110
136. (11) The fact that the Sessions Judge, who as District Judge directed prosecution of the applicants, was to try the latter on being committed to the Sessions Court.—(87) A. N. 139
137. (12) The mere fact that the Judge who was to try the case of forgery or perjury had formed an opinion that the document has been forged or perjury committed.—5 M. N. 212.

158. On general principles it is most natural and desirable that the High Court should possess the power of transferring a case from the file of a

Chief Presidency Magistrate to that of any other Presidency Magistrate. [The latter Court being of equal jurisdiction].—(11) 2 M. N. 50.

IX. MISCELLANEOUS.

(1) *Trial of offence committed in Railway lands situate in Jhind Native State.*

159. Under Government of India Not No 515-IB, dated 17th March 1913, the Deputy Commissioner of Rhotak has power to take cognizance of an offence committed on Railway lands situate in the Jhind Native State. The Chief Court of Punjab therefore has power to transfer, under S 526, such a case for trial by any Court in the Province.—30 P. R. 1917

(2) *Special Jurisdiction of the High Courts.*

160. (1) Madras High Court—has jurisdiction to transfer cases from the file of the District Magistrate and Civil and Sessions Judge of Bangalore, as those Courts are subordinate to the High Court within the meaning of S 526 Cr. P. C.—9 M 356
161. (2) Bombay High Court—has the power in the case of a European British Subject, of transferring a case from the Cantonment Magistrate at Secunderabad to itself or to any Criminal Court of equal or superior jurisdiction.—9 B 333

Note. It has been held that by virtue of statute 24 and 29 Vic O 15 and Notification 178 J of 23rd September 1874, the High Court of Bombay has power to transfer a case against a European British Subject from the Court of the District Magistrate and Superintendent, Residency Bazar Hyderabad (Deccan) to itself. In 10 B 274 it was held that a case pending in the file of the Resident at Aden who is *ex-officio* Sessions Judge for Penm [See Bombay Government Not No 623 of 1855] can be transferred by the High Court to a Court of competent jurisdiction

(3) *Transfer of a Sessions Case from a Jury to a Non-Jury District.*

162. The words "by Jury in any District, when so ordered by notification duly issued under S 269 Cr. P. C. mean that the trial of the offence shall be by Jury in any District, and not that the trial shall be by Jury of offences committed in any District. There is therefore nothing to prevent the transfer of a Sessions case under S 526 (4) from a Jury to a non Jury District 10 S 51 [8 C J 59 K]

(4) *Power of single Judge to transfer.*

163. A Single Judge of the High Court sitting on the original side, has the power to transfer a criminal case from the file of a Presidency Magistrate—2 C 278 11 C 103 See 2 C 290

[**Note.**—The High Court has the power to transfer a criminal case from the file of one Presidency

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(5) *Transfer under the Letters Patent.*

164. The High Court's power of transfer of appeals under S. 29, Letters Patent, is not restricted to transfer of appeals to Courts subordinate to itself, but extends also to their transfer for trial before itself. This power has not been taken away by S. 64 of the Cr. P. Code and it is expressly provided by S 526 Cr. P. C 1852—6 M 32. See 1 B L. (O C) 15.

(6) *Finality of order passed by Divisional Bench.*

165. Refusal to transfer.—Where a Bench of the High Court refused to transfer a criminal case from the Sessions Court of one district to that of another District and did not allow the affidavit filed in support of the application to be read, the legality of the order cannot be questioned by the Chief Justice.—8 C 63

(7) *Commitments transferred cannot be quashed.*

166. The High Court transferred a case from one Sessions Division to another. The Sessions Judge of the latter place, purporting to act under subs (2) of S. 532 *infra*, quashed the commitment and directed a further enquiry to be made by the District Magistrate of the former division or by any Magistrate Subordinate to him, held, the Sessions Judge had no power to quash the commitment or direct an enquiry by the District Magistrate of another Sessions Division.—Cr. Rev. Case No 42 of 1904 (31)

(8) *False and scandalous allegations in transfer petition not privileged.*

167. The English Common Law doctrine of absolute privilege has no application to the Indian *mesfusal* statements made in bail faith are not protected. Therefore a defamatory statement made in bail faith in an application for the transfer of a case is not privileged.—40 C 433 [14 W. R. 27 23 C. 867 5 C N 2 G Relyed on] See 36 M 216 (F.B.); 244 P. L. 1912. *But* See 40 C 441 (Note)—17 O N. 449 24 W. J 39 (F.B.) 38 C 880. also 17 W. R. 253 (Civ.) 32 C 750 27 C 262 15 C 294; 37 M 110

527. (1) The Governor General in Council may, by notification in the Gazette of India, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

Proposed amendment to the section.—In sub-section (1) of section 527 of the said Code, the word "criminal," where it occurs before the word "case," shall be omitted.

Notes.

- 1. Scope of the section.**—The only person who has any jurisdiction to pass orders binding on different High Courts, is the Governor General in Council under S 527 Cr P. C. The Code does not intend to vest in any High Court powers which are, on the face of them, instructions or might lead to conflict with another High Court — *Per Noyce J.* in 40 M 385 But See 41 C 197 (F.B.)

[*Note.*—The point arose in connection with S 185 Cr P C and it was decided that the High Court could not under that section exercise the powers

vested in the Governor General in Council under S 185.

- 2. Ss. 185 and 527 compared.**—The order under S 527 is an executive order which may be made without opportunity afforded to the accused to be heard. In the second place, S. 527 contemplates an order for transfer and recourse may possibly be had thereto, if an order made by one High Court under S. 185 is disregarded by another High Court. The two sections have therefore entirely different scopes — *Per Noyce J.* in 44 C 497 (F.B.)

528 (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) The Local Government may authorize the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(3) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(4) The head of a village under Madras Regulation IV. of 1821 is a Magistrate for the purposes of this section.

Proposed amendment to the section.—In section 528 of the said Code—

(i) After sub-section (2), the following sub-section shall be inserted, namely, —

"(2a)—Any Chief Presidency Magistrate or District Magistrate may, by general or special order, empower any Magistrate subordinate to him—

(a) to transfer for enquiry or trial any case of which he, or any Magistrate subordinate to such Chief Presidency Magistrate or District Magistrate, as the case may be, has taken cognizance, or in which any proceedings are pending before him, to any other such Magistrate competent to inquire into or try the same, and

(b) to withdraw any case from, or recall any case made over to any Magistrate subordinate to such Chief Presidency Magistrate or District Magistrate, and to inquire into or try such case himself;

Provided that no Magistrate other than a Magistrate of the first class shall be empowered by the District Magistrate to transfer, withdraw or recall cases under this sub-section."

(ii) For sub-section (4) the following sub-section shall be substituted, namely —

“(4) The head of a village under Madras Regulation XI of 1916 or Madras Regulation IV of 1821 is a Magistrate for the purposes of this section.”

ARRANGEMENT OF NOTES.

S. 528=S. 41 last para, S. 47 para 1 and S. 48 (1872)—S. 30 (1861)

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| <p>I. Application of the section.</p> <p>II. Stage at which the transfer can be made.</p> <p>III. Procedure.</p> | <p>IV. Powers of the District and sub-divisional Magistrate.</p> <p>V. Chongo in the Low.</p> <p>VI. Miscellaneous.</p> |
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I. APPLICATION OF THE SECTION.

1. **Scope.**—The powers conferred by S. 528 Cr P C are very wide and undehined, the section merely requiring the District Magistrate making an order of transfer to record his reasons, but it is not intended that they should be exercised without due discretion and really good reasons, which in the interests of the administration of justice demand a transfer.—1 P. L. 1901
 2. **Action applies only to cases actually pending.**—It is doubtful, whether the District Magistrate can by general proceeding, direct the transfer of cases, which have no existence, and which are not pending before any of his subordinates.—1 A G 24
 3. **Cantonment Magistrates** are subordinate to the District Magistrate within the meaning of S. 528 Cr P C (See Sec 7 Act XIII of 1889)—Rat 849.
 4. **Magistrate authorised under S. 528** to transfer a case is competent to withdraw it to his own file.—9 Cr 310
 5. **S. 528 with reference to proceedings submitted under S. 107 Cr. P. C.**—S. 528 does not empower the District Magistrate in a case under S. 107 to make over the initiation of proceedings to a Magistrate who has no local jurisdiction over the matter.—41 M. 246 (18) M. N. 751 See 13 C. N. 580 31 C. 350 24 A. 151
 6. **Proceedings under Chapter XII.—A** proceeding under S. 145 of the Code is a criminal case and a Magistrate has power to transfer it under Ss. 192 and 528 of the Code.—26 M. 188 3 C. J. 614 22 C. 898 10 C. N. 1095 11 O. O. 61.—See 28 C. 709 31 C. 350 5 C. N. 686 Con. 25 B. 179
 7. **Proceedings under Chapter VII.—A** District Magistrate has jurisdiction to transfer a case under S. 110 Cr. P. C. of which he has taken cognizance to subordinate Magistrate [35 C. 243.—See 37 C. 91 (100)] A District Magistrate under S. 47(=S. 528) has power to transfer a case falling under S. 107 Cr. P. C. [See 8 C. 851.—See 31 C. 350; 24 A. 151.—1 S. 2]
 8. **Proceedings under S. 488 Cr. P. C.—A** District Magistrate under the very general terms of subs (1) has jurisdiction to transfer to his own Court proceedings under S. 484 pending before a subordinate Magistrate.—5 P. R. 1905
 9. **Case under the Cattle Trespass Act.**—A District Magistrate has jurisdiction after a complaint, under S. 20 of the Cattle Trespass Act, had been entertained by a duly authorised Magistrate, to transfer the same to any subordinate Magistrate.—34 C. 926
 10. **(1) Nature of proceedings taken under S. 350 after transfer.**—Where the District Magistrate transferred the case to his own file under S. 528 and proceeded to deal with it under S. 350 Cr P C, the proceeding before him was a judicial proceeding within the meaning of S. 476.—21 C. N. 755
 11. **(2) S. 350 Cr. P. C. is not limited to cases** in which Magistrates succeed each other in their offices but applies also to cases transferred from the file of one Magistrate to that of another Magistrate under S. 528 Cr. P. C.—36 A. 315. 32 M. 218 35 C. 457 12 A. J. 467; See 13 W. R. 40 4 W. R. 3 Con. (80) A. N. 130; 6 O. Q. 192 33 C. 619 12 C. N. 140
 12. **S. 528 does not apply to proceedings submitted under S. 349.**—S. 528 Cr P C. has no application to proceedings submitted to a Sub-divisional Magistrate by a second class Magistrate under S. 349 Cr. P. C.—38 B. 719 But See 2 Weir. 690
- Note per contra. Power to retransfer.**—Where the Taluk Magistrate convicted the accused and submitted the record to the Head Assistant Magistrate, in order that heavier sentence might be imposed, held that the District Magistrate was competent to retransfer the case from the Head Assistant Magistrate to another Magistrate.—2 Weir 690 (Chandra).
13. **Duty of the Magistrate.**—Although a District Magistrate has very wide powers of transfer conferred upon him by S. 528 Cr. P. C. he must, in the exercise of those powers act in a judicial manner and not capriciously or arbitrarily.—20 Cr. 403 (Pat).
 14. **Personal allegations against a trying Magistrate.**—When personal allegations are

15. **Transfer of a caso remanded by the Sessions Judge for further enquiry.**—The District Magistrate has no jurisdiction to transfer a case from the file of a subordinate Magistrate to whom it has been remanded by the Sessions Judge for further enquiry and less so, if he gives no notice to the other side.—8 C. J. 241 11 C. N. 316

16. **Complaints.**—The term "case" has not been defined in the Criminal Procedure Code but reading together ss 192(1), 190(1) (a) and proviso (c) to S 200 it is clear that it includes a proceeding upon a complaint as soon as the complaint has been received by the Magistrate who takes cognizance of the offences complained of.—7 N. 97

17. **Order for transfer must be founded on substantial reasons.**

(1) An order for a transfer of a criminal case "for the ends of justice" in which no reasons are recorded, is on the face of it in conflict with S. 528(3) Cr P C.—16 Cr 626(M) Rat 500 13 P. R 1699.

18 (2) The mere omission to record reasons as required by S 528(3) does not necessarily invalidate the subsequent proceedings.—7 N 97 34 C 918. 25 A 421 14 C P 190 3 P R. 1910: 9 Cr. 310(M)

[Note.—In such a case the superior Court will call for reasons.—3 P R 1910]

Grounds on which a case may or may not be transferred.

19. (1) A case may rightly be transferred on the ground that the dispute involves the right to a building (between Mahomedans and Hindus) and should be tried by a European Magistrate.—127 P L 1915

20. (2) Delay in disposing of the case is not a ground for taking action under S. 523 of the Cr. P. C

and that if the District Magistrate thought there was delay, he should have asked the Subordinate Magistrate to expedite the trial.—(1915) Pat 78

21. (3) The opinion expressed by the Magistrate in a previous case in which the accused was tried and convicted on a separate and distinct charge, in itself, no ground for the transfer of the case.—4 Pat W. 21

22. (4) The fact that a Magistrate before whom a case is pending is the Treasury Officer and has very little time at his disposal, owing to his duties as a Treasury Officer, is not a sufficient reason for directing a transfer of a case from his Court.—20 Cr. 402 (Pat).

23. (5) Where the District Magistrate, transferred a

ground was no ground at all and the second had no force as there was no regular affidavit but simply a statement not duly verified and there was no statement as to the time when the request was made.—2 Weir 686

24. (6) Where a Magistrate in the course of a local investigation, collects evidence and acquires a large amount of information, which, considering the nature of the proceedings, he had to consider in arriving at a judicial determination but which he could not legally use for that purpose, the case ought to be transferred to some other Magistrate even if the Magistrate tenders himself as a witness in the trial and allows the parties to cross-examine him.—21 C. 620 - 20 W. R. 76

II. STAGE AT WHICH THE TRANSFER CAN BE MADE.

25. **Supplementary trial.**—Where one of several persons sent up for trial on a charge of rioting had been convicted but the Magistrate had refused to issue process against the others—held—that the District Magistrate had jurisdiction under S 528 Cr P. C to withdraw the case to his own file and issue warrants.—5 C N 455

26. **During trial.**—A District Magistrate should not withdraw to his file a case which was being tried by a Deputy Magistrate who was about to frame charges and dismiss it. He should leave the case to be disposed of by the latter.—30 C 693 (81) A N 57 2 Weir 691

[Note.—It is not competent to a District Magistrate to transfer a case under S 523 Cr. P. C. on the ground that no offence was made out against the accused and that no charge could be framed as they were protected by the warrant [30 C 693] or that the case was not under S. 500 but under S 501 P. C and ought to be tried summarily [1915) Pat 78]. The case must be left to the discretion of the trying Magistrate and it was the latter who was to determine whether the offence charge was made out.]

27. **After record** Taluk submit to the Head Assistant Magistrate for enhancement of sentence

The District Magistrate transferred the case to the Joint Magistrate—held—that the transfer by the District Magistrate was not irregular.—2 Weir 690 But See 33 B 719

28. **Can a complaint be transferred before decision to issue process?**—A District Magistrate can upon the application of the accused person, withdraw a complaint from one subordinate Magistrate and refer it to such other Magistrate even before a decision to issue process against the accused has been reached.—7 N. 97 But See 4 N 81.

29. **Transfer should not be made after close of the prosecution case.**—Where the transfer was made after all the witnesses for the prosecution had been examined, the order was set aside in 6 M. T. 14.

30. Transfer should not be when the Magistrate is about to commit.—Where a certain number of witnesses had been examined by the Magistrate and the case had reached a stage when all that remained to be done was either to discharge or commit the accused to the Sessions—held that a transfer at that stage could not properly be made.—2 Weir 691 (*Paleria*)
31. Power to call for proceedings at any

stage.—The Magistrate of the District has authority to call up to his own Court any criminal

jurisdiction of his Magistracy, he would not merely be competent but bound to refuse to proceed further with the case.—24 W. R. 4.

III. PROCEDURE.

32. Transfer at the request of trying Magistrate.—When a case, was in effect transferred at the request of the trying Magistrate, and not on the application of a party no notice is necessary.—24 M. 317
33. After transfer.—The District Magistrate after withdrawing a case from the file of a subordinate Magistrate must proceed *de novo*. The omission to do so is an illegality which can be cured by the consent of the prisoner or S 537 Cr P. O.—6 O. C. 192, 12 O. N. 140, 33 C. 619, 24 W. R. 52, 53, 14 A. 346, 12 A. 66; ('89) A. N. 130; 2 Weir 152; 690; Con 32 M. 218, 35 O. 437, 12 A. J. 467.

[Note.—But when the accused do not object to the Magistrate's acting on the evidence recorded before the transfer, the High Court will not interfere.—14 W. R. 3]

Is notice to the opposite side necessary?

34. (1) The section does not make any express provision for notice but the Courts generally agree that "though the section does not expressly require a notice to be given to the other side, on general principles when one party makes an application for transfer, the other party is entitled to a notice before an order of transfer is made"—8 C. 393, 7 C. N. 114, 27 B. 279, 22 B. 549, 1 B. E. 347, 5 B. R. 28, Rat 474, 590, 877, ('81) A. N. 53, 3 A. 749, 14 C. P. 190, 25 F. R. 1902, 3 F. R. 1910, 22 Cr. 199 (M), 8 M. T. 222. See 6 M. T. 14; 2 B. R. 342, Rat 490, 635, 7 N. 97, 3 N. 50, 8 O. J. 241, 2 Weir 691, 2 Weir 692, 1 B. L. 139, ('97) U. B. 392, Rat See 5 S. 190, 23 A. 421, 21 B. R. 276, 6 B. R. 856, ('04) U. B. 1-q, 15 (16)
35. (2) It is highly inexpedient to transfer a case from one Magistrate to another after the prosecution had closed its case and the defence is to be begun without giving notice to the complainant or recording reasons.—Rat 590, 21 B. R. 276, See 5 S. 190, 6 M. T. 14
36. (3) "It may be, as contended by the Public Prosecutor, that the law entitles the complainant to no notice, when a Magistrate proposes to act under S 525 Cr P. C. At the same time, it is obvious that when the complainant has obtained an order of transfer from a competent Magistrate who made that order after hearing both the parties, a Magistrate of superior jurisdiction should not cancel the order and retransfer the case to the original Magistrate without hearing the complainant in support of the order of transfer which he had obtained"—Per Rahim J. in 22 Cr. 199 (M).

37. (1) When the District Magistrate *suo motu* transfers a case, no notice to the accused is necessary.—3 F. R. 1910. See 24 M. 317, 22 B. 549; 23 F. R. 1902.
38. (1) Where a District Magistrate withdrew a case without notice and no further proceedings had been taken by him, the High Court refused to interfere in revision, as it was still open to the District Magistrate to consider any objection made to him.—20 C. 513
39. (6) When a case is transferred to another Magistrate, notice of transfer should be given to the complainant as well as to the accused.—3 C. N. cclxxiv.
40. Effect of omission to state reasons for transfer only an irregularity.—See Note No. 18 above.
41. Complaints against police officers.—By virtue of Government order, the District Magistrates, have been directed to withdraw all cases in which complaints had been made against a police officer. In such cases no notice to the complainant is necessary. 28 A. 421
42. Opportunity to the trying Magistrate.—In the matter of a transfer application, if there be any allegation against the trying Magistrate, opportunity should be given to him to answer them.—5 B. R. 28
43. Transfer of the case—meaning.—A transfer of the case means the transfer of the whole case. After transferring a case, a Magistrate ceased to exercise any jurisdiction and had no power to issue warrants which the Magistrate to whom the case was transferred had refused.—32 C. 782; 12 W. R. 53, 3 B. L. (app) cl. See 27 C. 979; 3 C. N. 490, 30 C. 499, 4 C. N. 212, 3 C. J. 57.

Note.—When a case has been transferred to a Magistrate after the issue of process to the accused, the Magistrate to whom it is transferred, cannot dismiss the case under S 203.—19 W. R. 28.

44. Note *per contra*.—In 39 C. 119, a Police Sub Inspector filed a complaint to a Subdivisional Magistrate under S 399 I. P. C. The facts also disclosed an offence under S 4 (b) of the Explosives Act (VI of 1908). As the cognizance of the latter offence could only be taken after obtaining Government sanction and no sanction had been obtained, the Magistrate allowed time for the production of the sanction. After obtaining

had no jurisdiction to entertain the complaint in as much as he had not withdrawn the original case to his own file, held that the Additional Magistrate had jurisdiction to take cognizance of the offence, and that the initiation and continua-

tion of the proceedings by him were legal—39 C 119.

[Note.—This ruling is opposed to the view taken in the rulings cited under note No. above. See also 4 C. N. 367 560]

IV. POWERS OF THE DISTRICT AND SUBDIVISIONAL MAGISTRATE.

45. When the District Magistrate can pass a sub-divisional order so only file under.

Co-ordinate powers.

46. (1) In the matter of a transfer under S 525 Cr P C, a District Magistrate and a Subdivisional Magistrate have co-ordinate authority over Magistrates subordinate to the latter and therefore an order passed by the Subdivisional Magistrate cannot be appealed.

to do so for the record and report the matter under S 435 Cr P C for orders of the (High Court—26 M, 130 13 C 782 (A))

47. (2) Where a Magistrate acts on his own initiative in transferring a case, his order is not vitiated by the fact that another Magistrate of co-ordinate authority has refused it. But if he examines the reasons given by a co-ordinate authority and finds that authority is wrong, that is interfering by way of appeal which he has no jurisdiction to do—14 M 399 5 L W 372

- 47A. (3) *Note per contra*—There is nothing in S 525 Cr P C to support the view that the Subdivisional Magistrate having previously refused to transfer the case at the request of the same party, the District Magistrate was precluded from exercising his power of transfer. The distinction in this respect between orders passed by the District Magistrate *ex parte* and orders passed on petitions by parties appears to be without foundation—40 M. 791

V. CHANGE IN THE LAW.

55. Proposed changes—

- (1) By adding subs (2) the powers of the Chief Presidency Magistrate or District Magistrate is sought to be enlarged. It will be seen that the power of transfer is enlarged.

meaning of S. 525 Cr P C

48. In case of village Magistrates—the power to transfer under S. 525 is limited to cases of petty thefts which a village Magistrate is empowered by Reg. IV, of 1921 to try and punish—26 M 394 see 15 M. 94.

49. Village Patel acting under S. 6 of village Police Act (Bombay Act VIII of 1867)—does not act judicially and the District Magistrate therefore is not competent to transfer a case under S. 6 from his file under S. 525 Cr P C. 10 B R. 630.

50. Cantonment Magistrate.—Sec. 7 of Act XIII of 1889 makes the Cantonment Magistrate subordinate to the District Magistrate and the latter can therefore decide under S 525 Cr P C whether a case pending before the former should be transferred or not—Rat 549 [9 B 100 R]

51. Transfer to an Additional District Magistrate.—The Code does not define the relations between a District Magistrate and an Additional District Magistrate. S 12 Cr. P C does not make an Additional District Magistrate appointed under subs (2) of S 10 of the Code, subordinate to a District Magistrate, who therefore has no power under under S 525 Cr P C to transfer cases to the former—34 C. 918.

52. Subordination of all Magistrates in the District to the District Magistrate.—A Magistrate who is subordinate to a Subdivisional Magistrate is also subordinate to the District Magistrate within the meaning of S. 525 Cr P C—14 M 399

53. Power to transfer to his own file.—A Magistrate authorised under S 525 to transfer a case is competent to withdraw it to his own file—9 Cr 310 (M)

54. Magistrate gazetted as Chairman of a Municipal Board.—See Note No 38 post

56. Reasons for transfer.—Under the old Code of 1861 [See S 36], A Magistrate was not required to state reasons for transferring a case [14 W R. 12] Under the present section [See subs (1)] a Magistrate is bound to record reasons, although a failure to do so does not necessarily invalidate proceedings subsequent to transfer

VI. MISCELLANEOUS.

57. Prosecution for defamatory statements in a petition for transfer.—The allegations are privileged. The English Common law right

of absolute privilege in respect of judicial proceedings is applicable to India. 23 M J 39 40 C. 441. But See 40 C. 433.

58. Magistrate gazetted to the office of the

and the latter has no power to transfer criminal cases to the former for trial.—36 A 513

59. What is not a legal transfer.—Where no order of transfer, as required by S. 523, had been made, but the only intimation of transfer was a letter from the District Magistrate to the Superintendent of Police, held, that the transfer was not a legal transfer.—2 Weir 691 (*Lakshminarayana*).

CHAPTER XLV

OF IRREGULAR PROCEEDINGS.

GENERAL NOTES ON CHAPTER XLV.

1. **Scope of the Chapter.**—The word "irregularity" may be defined as a deviation from an established rule of law or practice. Irregularity is serious or grave when it is not merely technical or formal. When the irregularity is so serious that it has led to a deprivation of the subject of a fundamental right, the legitimate inference will be, unless the contrary is established, that a failure of justice has occurred. Such an irregularity is known to law as "material." Irregu-

complicated with where the liberty of the subject is

3. The rule where the matter is one of discretion and not of law.—"When a tribunal is invested by Act of Parliament or by rules, with a discretion without any indication in

for if the Act or rule did not fetter the discretion of the Judge, why should the Court do so?" (*Gardner v Jay* 29 Ch D 50(58) *Saunders v Saunders* 66 L J P 57 41 C 446 (S. B.)

4. **Analogous Law.**—"No indictment is insufficient nor can the trial, judgment or other proceedings thereon be affected by reason of an imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant on the merits" [N Y Cr. P. Code, § 235. See also, *People v Williams* 18 State Rep 405.] In England, also, a Court of Appeal will not interfere unless it is satisfied on considering the case as a whole, that an error of law or fact has led to a substantial miscarriage of justice.—[See Statute 7 Edward VII, c 23 S. 4 R v Sykes 4 Cr App R 42]

5. **Privy Council view as to remedying of irregularities.**—"The remedying of irregularities is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial as that which has taken place here shall not be permitted, that this contravention of the Code comes within the description of error, omission or irregularity"—25 M. 61 (P. C.)—L R 28 1 A 217

6. **Policy of the Chapter.**—"I think the policy of the Criminal Procedure Code, as shown by sections 531 to 538, is to uphold, in most cases, the orders passed by the Criminal Court, which was lacking in local jurisdiction or which had committed irregularities or illegalities, unless failure of justice has been occasioned or is

generally be ignored or, in legal parlance, "cured." In the latter case the Superior Court will as a rule interfere, as condonation of material errors or defects in the proceedings may lead to a subversion of the procedure deliberately laid down by the Legislature. The law has laid down certain safeguards, to protect, as far as possible, the liberty of the subject. The rules are framed so as to ensure not only the regularity in the conduct of legal proceedings but also to provide substantial and effective checks on the exercise of those judicial powers which the law has vested in the Judge. The rules are, as it were, well marked channels along which the very large measure of discretion left to the Judge is designed to flow. When a Judge therefore by following an irregular course, has cast to the winds the safeguards and checks provided by law, the Superior Court will presume that a failure of justice has occurred, and the proceedings of the Judge will be set aside as vitiated by serious informality or illegality. The errors which can be cured by the various provisions of Chapter XLV, and in particular by S. 537, are therefore formal defects of procedure and not substantial defects. The Chapter has not the effect of curing material irregularities or absolute illegalities.

2. **Duty to observe forms laid down by law.**—"In all criminal matters, the utmost strictness must be observed and forms must be closely

to be occasioned through such want of jurisdiction or such irregularities or irregularities."—*Per Sadayam Ayyar J.* in 42 M. 791.

7. Will consent or waiver cure a material irregularity?—"Criminal proceedings are had unless they are conducted in the manner prescribed by law, and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the prisoner. When the irregularities are all unfavourable to the prisoner, it is impossible for any Court to consider a waiver or consent as binding on him. It is the duty of Magistrates and all Criminal Court to follow the procedure prescribed by the law, and there is no law which sanctions their intentional departure from that procedure, and then attempting to protect themselves against the consequences of such departure by getting the accused to say he consents to it. In the mofassil, most prisoners are not properly defended, and would probably assent to any irregularity which the Judge or Magistrate, trying him chooses to suggest. There would be an end of all procedure, if such an assent were held to warrant material and important irregularities."—2 G. 23 6 G. 91. 12 G. N. 146 10 C. J. 452. 25 P. R. 1905. Com 28 M. J. 329.

8. The rule as to waiver.

- (1) If an irregularity takes place and is allowed to pass unheeded and unnoticed, and a fresh proceeding follows founded upon the irregularity and conviction follows, then after conviction, the accused party cannot raise the intermediate irregularity, in an antecedent proceeding, as a ground for challenging the validity of the subsequent proceeding.—*Per Antulison J.* in 2 Pat J. 333 But see 21 Cr. 29 (Pat)
- (2) Where objection to the want of jurisdiction was not taken seriously during the trial and the petition of appeal to the High Court did not show that the petitioner was in any way prejudiced, the High Court declined to interfere [21 W. R. 85]
- (3) A conviction would not be set aside owing to a defect in the initiation of the proceedings, especially when the point was not raised in the first Court.—40 C. 360,
- (4) An objection to the trial of a case with the aid of assessors, when it is triable by a Judge and jury should be taken at the trial before the Court of session and an omission so as to take it is fatal to such a contention when raised in appeal,

though the accused had been materially prejudiced thereby, e.g. where the assessors found him not guilty, while the Judge dissenting from the opinion convicted him.—33 M. 632.

9. Objection taken in the proper time.

Where a Magistrate, being empowered to commit to Sessions but having no territorial jurisdiction over the place in which the offence is alleged to have been committed, commits a case to Sessions Court, which has jurisdiction over the place, the commitment is valid, and cannot be quashed under S. 532 Cr. P. C. although the objection to such commitment is taken before the commitment.—17 M. 402; 15 A. 330; See B. 312; 16 B. 200.

10. S. 57 is not intended to cover deliberate disregard of law.—(1) "To my mind nothing is clear and that is that S. 337 was clearly never intended to allow a Magistrate to override the clear provisions of the Code. The section was intended to prevent a mere technicality from interfering with the course of justice, the error omission etc., being one which had escaped the parties at the beginning of the proceedings. Where, however, as in the present case, the want of sanction was at once brought to the attention of the Court, it was clearly the duty of the Magistrate to refuse to take cognizance of the complaint, (and in such case the irregularity cannot be cured by an application of S. 537)—*Per Tadboll J.* in 37 A. 253: [Fd. in 42 A. 12].

[Note.—This ruling is dissented from in 35 M. J. 259, by *Sadayam Ayyar J.* but with due respect to the remarks of that learned Judge, the editor submits that the dictum of Tadboll J. is based on a sounder interpretation of the scope of S. 337.]

- (2) A disregard of the express provisions of the law is not a mere irregularity which can be condoned or remedied but an illegality and the Court cannot maintain or overlook an illegal order upon any ground of administrative convenience.—20 Cr. 103 (N)

11. Prejudice may be inferred from deprivation from rights.—If it appears that the constitution and procedure of the Court in which the trial ought to have taken place, are different from the constitution and procedure of the Court in which the trial has in fact taken place, the accused would necessarily be prejudiced.—13 B. L. (appx) 4.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely:—

- (a) to issue a search-warrant under section 95;
- (b) to order under section 155, the police to investigate an offence;
- (c) to hold an inquest under section 176;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;
- (e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b);
- (f) to transfer a case under section 192,

- (g) to tender a pardon under section 337 or section 338,
- (h) to sell property under section 524 or section 525; or
- (i) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Notes.

1. **Meaning good of faith.**—(1) 'A thing shall be deemed to be done in good faith, where it is in fact done honestly whether it is done negligently or not' [S. 3 (20) of the General Clauses Act 1897]
- (2) Nothing is said to be done or believed in good faith which is done or believed without due care and attention.—S 52 I P C

Clause (a)—Search warrant.

2. **The District Magistrate on receiving information of the commission of an offence**—cannot issue a search warrant under S. 86 para (1) Cr P C before he has acted judicially upon the information so received and without making any investigation, inquiry or trial under S 84 Cr. P. C. [22 B 540 F] S 537 cannot give legal effect to a defective warrant.—[35 C 1070. See 11 C N 830]

Clause (b)—order to police to investigate

3. **When a police officer receives information of the commission of non-cognizable offence**—he can instead of referring the informant to a Magistrate under S 155 Cl (1) report the case to a Magistrate for orders under Cl. (2) and the Magistrate can in such circumstances order an investigation without first taking cognizance of the offence under S 180 S 155 (2) read with S 529 (b) and Schedule III II (2) leave no doubt on the point.—6 M T 254

Clause (c).

4. **Erroneous cognizance of complaint requiring sanction under S. 195 Cr. P. C.**—Where one J presented a written complaint to the District Magistrate alleging that from certain proceedings in the Munsiff's Court in execution of a decree it appeared that A J had given

criminal case or the execution proceedings and apparently had no personal concern in either case. *Held* that the District Magistrate had not, in the circumstances, jurisdiction to entertain the complaint under S 190 (1) (a), but in view of S. 529 Cr P C the error would be curable.—13 P. W 1913

Clause (f)—Transfer.

5. **Transfer of a case under S. 110.**—Where a District Magistrate transferred a case under S 110—*held*—that he had power to do so and even if he had not, it was a mere irregularity covered by S. 529 Cr. P. C. [35 C 243]

6. **Cases under S. 145 Cr. P. C.**—(1) A subordinate Magistrate cannot be empowered under S. 192 (2) Cr. P C to transfer proceedings under S. 145 Cr P Code But such a transfer under S. 192 (2) is a defect curable by S. 529 Cr. P. C. [36 C. 370; See 4 C N. 821] See Note No. 7 under S. 192 Cr P C (p. 331 *Supra*)

7. (2) A case under S. 145 is a criminal case, and a Magistrate has power to transfer it under S. 192 and 528 of the Code Even if there were any irregularity it is cured by S. 529 (f) of the Code.—2 C J. 614

Transfer by a Magistrate not authorised—

8. (1) A Magistrate having no power to transfer a case under S 192 Cr. P. C. transferred it to another Magistrate *Held* that the irregularity is one covered by S. 529 cl (f) 36 C. 869. But See 617 P L 1904.

[**Note.**—A Deputy Magistrate in charge of the District Magistrate's office at head-quarter, has no power as such, after taking cognizance of a complaint and examining the complainant on oath, to send the case under S 202 Cr. P. C. for local investigation by the Subdivisional Officer to whom he is by law subordinate. The Officer of S 529 (f) could be only to give the Subdivisional Magistrate jurisdiction over the case, but not to empower the Deputy Magistrate to dismiss the complaint and direct the prosecution of the complainant.—10 C. N 885]

9. (2) A Taluq 2nd class Magistrate has no power to transfer a case to a Sheristadar 2nd class Magistrate. But such a transfer does not vitiate the subsequent proceedings.—1 Weir 152. See (10) U B 4—q p 70

10. (3) **Retransfer.**—The transfer by a Subdivisional Magistrate of a case under S 192 Cr. P. C. when the case has already been transferred to him by the District Magistrate is a mere irregularity covered by S 529 Cr. P. C.—21 Cr. 86 (Pat): See Note No 1 under S 192 (p 330 *Supra*).

11. **Transfer to Bench Magistrates.**—A second class Bench tried regularly a case under S. 456 I P C which was transferred to them by the District Magistrate and acquitted the accused, *held* that the proceedings of the Bench were not void under rule 4 of the Local Government rules made under Ss. 15 and 16 Cr. P. C.—(10) U. B 4—q-70

Clause (g).

12. **Effect of tender of pardon by a Magistrate not having local jurisdiction.**—S. 529 deals with acts done by a Magistrate in no way empowered by law to do those acts

has no reference to a Magistrate empowered otherwise under the Act to tender pardon, but not possessing jurisdiction over the particular offence. So the Magistrate of Etah was held to be incompetent to tender pardon to one of the accused concerned in a case which was being

enquired into by the Magistrate of Mattra—20 A. 40.

Note.—When a pardon has been tendered and accepted in good faith, the fact that the Magistrate has no power to tender such pardon is a defect expressly cured by S. 529 (g) Cr. P. C.—1 P. R. 1898

530. If any Magistrate, not being empowered by law in this behalf, does any of the following irregularities which vitiate proceedings in things, namely —

- (a) attaches and sells property under section 88 ;
 - (b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department ,
 - (c) demands security to keep the peace ,
 - (d) demands security for good behaviour ;
 - (e) discharges a person lawfully bound to be of good behaviour ,
 - (f) cancels a bond to keep the peace ,
 - (g) makes an order under section 133 as to a local nuisance ,
 - (h) prohibits, under section 143, the repetition or continuance of a public nuisance ;
 - (i) issues an order under section 144 ,
 - (j) makes an order under Chapter XII ,
 - (k) takes cognizance, under section 190, sub-section (1), clause (c) of an offence ;
 - (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;
 - (m) calls, under section 435, for proceedings ;
 - (n) makes an order for maintenance ;
 - (o) revises, under section 515, an order passed under section 514 ;
 - (p) tries an offender ,
 - (q) tries an offender summarily ; or
 - (r) decides an appeal ;
- his proceedings shall be void.

Notes.

1. **Scope of S. 530.**—The section is not exhaustive. it declares that certain proceedings of Magistrates shall be void but makes no reference to orders of Sessions Judges. Still no judicial officer can try either an original case or an appeal unless he is empowered by law to do so. His authority is derived solely from the Legislature, and his appointment under the law enacted by it. Where therefore a Sessions Judge dealt with a petition for revision as if it were an appeal in a case in which no appeal lay to him, *held*, that the order of the Sessions Judge was void within the meaning of that term as used in this section.—4 L. B. 49
2. **Can an order which is void be treated as a mere nullity without being set aside?**—In 4 L. B. 49 (50), it is laid down that an order which is void cannot be treated as a mere nullity so long as it has not been set aside.—But see 8 B. 307, 11 C.L. 55, 21 O. N. 518, 29 C. 412, 2 N. 149; also 12 C. N. 216.

[**Note.**—To the same effect as 4 L. B. 19 is 4 Bur. T. 271; See also 21 W. R. 37.]

Clause (c).

3. See Note No 19 under S. 106 (p. 106 *supra*) and as to the procedure to be adopted by Magistrates not empowered in that behalf when they think that it is necessary to bind down the accused.—See Note No 15 (*ibid*)

Clause (d).

4. **Issue of notice by Magistrate not empowered.**—The issue of notice by a Magistrate without jurisdiction cannot be justified on the ground that it was drawn up under orders from the District Magistrate. A defect in the issue of the notice is not a mere irregularity, but the question is one of jurisdiction and falls under S. 530 Cr. P. C.—(18) M. N. 751. [41 M. 246, 13 C. N. 580; 31 C. 350. 24 A. 151; Relied on]. But see 19 Cr. 226 (C)
5. **Security cannot be demanded from person residing outside jurisdiction.**—See Note No 13 under S. 109 (p. 123 *supra*); Note No 38 under S. 110 (p. 140 *supra*)

Clause (j).

6. When proceedings of a Magistrate under Ch. XII not having local jurisdiction is not void.—Note No 514 under S. 145 (p 251 *supra*).

(Clause k).

7. Second complaint on same facts.—Where a complaint under Ss 409 and 477-A I P C was by mistake made over to an Honorary Magistrate of the second class and the latter dealt with the case as one under S. 409 and acquitted the accused, held that regard being had to S 530(k) and S. 403 Cr. P. C. the District Magistrate cannot be said to have erred in entertaining a second complaint under Ss 409 and 477-A I. P C after the acquittal.—23 C N 518 See 29 C 412. 8 B 307.

filed a second complaint before the Additional District Magistrate who took cognizance thereof, held that the proceedings could not be set aside, unless they had occasioned a failure of justice having regard to the provisions of S. 529(c), 530(k) and 531 Cr P C.—39 C 119 See 21 W R 88

9. Meaning of "cognizance of an offence *suo motu*."—See Note No 17 under S 190 (p 328 *supra*) also Notes No 38 to 57 (*ibid*) at pp 327 to 329 (*supra*) See also Note No 3 (*ibid*) at p 325 *supra*)

Clause (l).

10. See Notes No. 15 and 23 under S 343 *supra* (p 629 and 630 *Supra*)

Clause (o).

11. Order for forfeiture passed by a Court other than the one which took the

reference to S 500 (j) —10 D N 24

Clause (p).

12. Trial of offence under S. 48 of the Bengal Excise Act on the report of a

Bengal Excise Act and convicted the offender; were void in as much the Excise Act from taking cognizance of the case on such a report or complaint.—19 Cr. 961 (c)

13. Case under Bombay Act IV of 1883 (Public Conveyances Act).—A third class Magistrate trying an offender under S. 2 of the Act, when not specially empowered by the Local Government, acts without jurisdiction and his proceedings are void under cl (p)—Rat 921 (*Ram bin*)

14. Irregular proceedings by Bench Magistrates.—A conviction by a Bench of five Magistrates one of whom did not hear all the evidence is illegal [38 M 304 23 C. 194 20 C 570: 18 M. 394] For a conviction by a Bench of Magistrates to be legal, it must be by a *quorum* of the Magistrates as required by the rules, each member of which has heard the whole evidence in the case [13 S 166] It is illegal for a Bench of Honorary Magistrates to convict in a case in which the evidence is recorded and the judgment delivered in the absence of one of the members of the Bench [26 M T. 362] See Notes No 3 and 4 under S 15 *Supra* (p. 23); also (10) U. B. 4-q 70

15. Acquittal by a Magistrate having jurisdiction.—An acquittal by a Magistrate having no jurisdiction is simply void under S 530 *supra*. The accused may therefore be retried under S 403 by a competent Court without having the acquittal set aside.—8 B 307. 7 F R 1910 Bat See 4 L B 49 (50)

16. Commitment without jurisdiction.—Where a commitment was made without jurisdiction the High Court treated the commitment as void and considered it unnecessary that a reference should have been made to have it set aside.—11 C L 55 See however 21 W R 37.

17. Trial of a major offence as a minor offence.—A Magistrate of the second class

the Magistrate was not wholly without jurisdiction [13 B 502 See 4 B R 267 See Cr. R 44 of 8603] But it is an evasion of the law to treat a major offence i.e. an aggravated offence as an ordinary offence and thus to introduce a different jurisdiction or a lower scale of punishment.—[19 B 340 4 N 18 See 24 M. 675 25 B. 90 (98)]

[Note.—Where an accused was convicted under S. 406 I P C by a second class Magistrate but the District Magistrate found that the offence was under S 409 I P C, he should not have accepted the trial was legal. The proceedings of the subdivisional Magistrate were void under S 530 Cr P C and there was no provision of the Code which cured such a defect.—1 B R. 27 [But See 1 B R. 683]

Clause (q).

18. District Magistrate of Bangalore.—Not having been authorised under Not. No 680-2B dated 19th March 1912, to try a European British subject summarily under S. 260 Cr. P. C. of an offence under S. 8 of the Municipal Bye-law, 3, and his proceedings are void under cl (q)—29 M J 758.

The High Court of Madras, upheld a commitment to itself of a case, by the Chief Presidency Magistrate, which was properly within the cognizance of the Clunglup Sessions Court [42 M. 791]

7. Commitment to a wrong Sessions Court.

—An order of commitment is an order within the meaning of S 531 [16 B. 200 17 M. 402 36 M. 357; See 7 Bur T 26] Under S. 531 a commitment to a Court of Session which has no territorial jurisdiction, ought not to be quashed unless a failure of justice would be caused by proceeding with the trial [8 B. 312 : 16 B. 200 : 17 M. 402 : 18 A. 350 2 B. R. 394; See 10 B 274] In S B. 312 and 18 A. 350 the case was transferred to the proper forum

8. [Note *per contra*.—*Sundya Iyer and Spencer JJ.* in 36 M 357 following 9 A 191=13 I A 134 (*Leigard v Bull*) draw a distinction between commitment by a wrong Court and commitment to a wrong Court. In the former case, the defect is cured by S 531 but not in the latter case]

9. C

Sessions Court, such commitment is void and no reference to the High Court is necessary to have it set aside, is opposed to S 532 of the present Code and also to such rulings under the older Codes as 2 A 395 9 B 100 See Note No 18 under S 215 at p 407 *supra*

10. The Distinction between defect of jurisdiction and only of venue.—Trying a case in a District which has not local jurisdiction is not a defect of jurisdiction but only of venue and can be cured by S 531 Cr P C [2 P R 1902 44 P R. 1893] The words "other local

area" meet the difficulty which arises when an offence is committed during a continuous journey through a number of local areas [See *c g*—1 M. 11. 193 (drunkenness of a guard in charge of a train) : 21 W. R. 66=13 B L (ap) 4 (offence committed during a journey by railway from Bombay to Calcutta) : See also 25 W. R. 45 Rat 181] As to cases falling within the scope of S 179 Cr P C and 182 [See 18 P. W. 1908 (F. B.) 24 P. R 1901 (F. B.) 32 A. 397] where it was contended that the accused was found within the Municipal limits and not within the cantonment limits and that his trial by the cantonment Magistrate was consequently illegal, held that there should be no ground to interfere unless it could be shown that failure of justice had in fact been occasioned by the error of venue—[12 Cr 230 (L B)]

11. Magistrate retaining case on his file after transfer.—Cases on the file of one

Magistrate in a district does not pass automatically to his successor in the local area merely because the former has been transferred to another local area in the same district and there is nothing in S 12 Cr P C which supports such a procedure Even if there is any irregularity, the same is cured by S 531 Cr P C [34 A 203]

12. Trial of appeal outside the jurisdiction of the Sessions Court.—Where a criminal

appeal was presented by a Sessions Judge at a place within his jurisdiction but was heard and disposed of at a place outside the local limits of his criminal jurisdiction but within the limits of his civil jurisdiction, held that the procedure adopted was an irregularity but was covered by the provisions of S 531, and that the finding would not be set aside, unless a failure of justice has been occasioned by it—[17 A. 36 (F. B.)]

532 (1) If any Magistrate or other authority purporting to exercise powers duly conferred,

When irregular commitments may be validated, which were not so conferred, commits an accused person for

trial before a Court of Session or High Court, the Court to which

the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate

Notes.

Scope of S. 532.

- (1) Section 532 of the Code applies only to a case where a Magistrate or other authority purporting to exercise powers duly conferred which are not so conferred, commits an accused person to a Court of Sessions. It has no application to a case where the Court of Sessions considers that a commitment made by a competent Court is illegal—43 B. 147.

- (2) S 532 applies only to cases when the Magistrate or other authority who has assumed to commit has not been duly invested with the powers under which he assumes to make the commitment, *i. e.* when the defect is one personal to the committing officer and not to a defect in his proceeding and that section is not applicable to a Magistrate duly empowered to commit.—[16 P. R 1890] S. 532 seems to refer to cases in which

the Magistrate is competent to deal with the offence as having taken place within the local limits of his jurisdiction but has no power to commit to the High Court or Court of Sessions, either because he is only a second class Magistrate or for some reason other than that of local jurisdiction—[16 B. 200: See 26 M. 640: 17 M. 402]

3. (3) Where a Magistrate inquires into and commits the case regarding an offence which has taken place and has been completed in another District, to the Court of Sessions to which commitments from his district are made, the Sessions Judge of that district should not accept the commitment on the ground that the accused has not been produced thereby. The proceedings in such a case are illegal *ab initio*—3 A. 258. See 10 B. 274
- 3A. (4) See 532 Cr. P. C. does not deal with cases in which the defect in the commitment order arises from want of territorial jurisdiction—20 Cr. 416 (M)
4. S. 532 does not apply to commitments under S. 346 Cr. P. C.—A commitment made to the Sessions by a Magistrate acting under the powers conferred by S. 346 is not illegal, merely because he has not examined *de novo* the witnesses who were examined by the Magistrate who submitted the case under the provisions of that section. To the case of an accused thus committed to the Court of Sessions, S. 532 has no application—12 C. N. 136.
5. Commitment under S. 436 Cr. P. C.—Where a commitment was made to the Court of the Resident at Aden in respect of an offence committed at Perim by the officer in command of the troops stationed at Perim, held that the commitment was illegal and the sentence of death was annulled—[10 B. 263] Where however a trial under a commitment made by an erroneous order of Sessions Judge has been held and no actual failure of justice has been caused by such error, S. 283 Cr. P. C. would be a bar to the reversal of the judgment—[7 C. 662]
6. Commitment under S. 477 Cr. P. C.—A Sessions Judge has no power to commit to itself a person charged with giving false evidence before it under S. 193 I. P. C. Such a commitment is not curable under this section.—21 W. R. 374 C. 570. But see 3 B. L. (A. C.) 35
7. When a commitment should not be quashed.—Where the accused having been wrongly committed has pleaded to the charge, the commitment would not be quashed.—[12 C. L. 120]

But see G. C. 584.] A commitment which is transferred cannot be quashed by the Court to which it is transferred [Cr. R. case 42 of 1904 (M)]

8. Want of the Political Agent's certificate not curable by S. 532 Cr. P. C.—The certificate of a Political Agent is a preliminary requisite to the initiation of criminal proceedings in British India against a Native Indian subject for offence committed in foreign territory. The want of such a certificate is not a defect curable by S. 532 Cr. P. C.—13 M. 423. 2 Weir 148. 24 B. 267. 8 B. R. 513; 19 A. 100; 24 A. 256. See 5 M. 23; 16 C. 667. [But where the objection was taken too late and no prejudice was proved, the defect was held not to be fatal in 4 P. R. 1002 (F. B.).]

Commitment in the absence of previous sanction.

9. (1) A European British subject, who was a public servant within the meaning of S. 197, was

his discretion, the power, under S. 532 Cr. P. C., to accept the commitment and to proceed with the trial—9 B. 288 (F. B.). See 22 B. 112. 13 C. P. 120. Con 16 P. R. 1980. 31 M. 60

10. (2) A conviction by a Court of Sessions cannot be

be prosecuted under S. 211 I. P. C. for information given to him, and gives evidence himself in support of that charge, no serious irregularity can arise in the conviction of the accused in proceedings initiated upon that report, and if there is any irregularity at all, it is certainly cured by S. 532 Cr. P. C.—40 C. 360. [33 C. 30 D.]

11. (3) Where an order of the Local Government did not expressly authorise a complaint under S. 121 I. P. C., held that the Magistrate had no power to commit under that section, and the defect was not cured by an order subsequently obtained while the case was before the Court of Sessions by S. 532—37 C. 467. Con 22 B. 112.
12. (4) A conviction under S. 19 (f), Act XI of 1855 is illegal, where no previous sanction of the District Magistrate under S. 29 was obtained. Where sanction is obtained after commitment, neither S. 532 nor S. 537 Cr. P. C. can cure the omission—3 M. T. 162. But see 4 L. B. 247

533. (1) If any Court, before which a confession or other statement of an accused person

Non-compliance with provisions of section 164 or 364 recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any

of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded;

and notwithstanding anything contained in the Indian Evidence Act, 1872, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of appeal, Reference and Revision.

Notes.

1. **Change of Law.**—It is worthy of note that the word "fully" which stood after the words "have not been" in the Code of 1882 does not appear in the present Code.
2. **Oral evidence of confession not reduced to writing not admissible.**—See Note No. 117 under S. 164 (p 289 *supra*): 2 L. B. 317.
3. **S. 533 applies to confessions as well as other statements.**—The Code of 1899 has placed both the statement of an accused recorded

full operation, when not expressly mentioned. Thus when it is enacted "such statement" (i. e., the recorded statement) the meaning is that the document shall not be excluded merely by reason of the error of the recording Magistrate but shall be admitted, as a matter of a criminal procedure, subject to any just exception under the Evidence Act other than an objection under S. 91 of that Act—73 P. R. 1887.

11. **Failure to warn the accused.**—Where it does not appear from the record that the Magistrate recording a confession gave due warning to the accused, the confession is defective, but

Scope of the section—

4. (1) The scope of S. 533 Cr. P. C. cannot be limited to any particular kind of non-compliance with S. 364. No distinction can be drawn between a neglect to sign the confession or the certificate or to certify the facts requiring to be certified, and a neglect to record the examination in the prisoner's own language. In both cases, the statement would be admissible in evidence, if the accused would not be injured by such irregularities—[21 B. 495 See 3 Pat. J. 291 (F. B.)]
5. (2) No distinction can be drawn between omissions to comply with the law and infractions of it. Section 533 of the Code is intended to apply to all cases in which the directions of the law have not been fully complied with—23 B. 221 (225).
6. (3) As to how far a defective confession may be remedied under this section—See X Rectification of errors under S. 164 *supra* (p. 290) See 11 P. W. 1915.
7. (4) Confession not recorded in the language in which it is made.—See VII, Language in which confession is to be recorded under S. 164 (p. 287 *supra*). (91) A. N. 55 N. C. P. 21 30 N. C.
8. (5) The provisions of S. 164 are imperative, and S. 533 will not render a confession admissible when no attempt at all has been made to conform to its provisions—*Per Parker J.* in 9 M. 221 23 B. 221-15 C. 597 17 O. 862 See 7 O. C. 341.
9. (6) Under S. 533, when a confession or other statement of an accused person is duly made i. e., made in accordance with the provisions of the law, but in recording it, those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made, or in other words when the defect, in recording the confession, or other statement of an accused person, is one not of substance but of form only, S. 533 applies—2 C. N. 702 [*Per Banerjee J.*].
10. (7) This section occurs in a chapter relating to irregular proceedings and their effect and it is presumably not intended to override the law of evidence, but to leave the law of evidence in

12. **Where the recording Magistrate certifies confession 'not' to be voluntary, S. 533 has no application.**—Where the Magistrate in the place of the certificate required by S. 164 (3) Cr. P. C. wrote,—"I believe that this confession is not voluntary etc.", it was not
13. **Confession recorded in a narrative form.**—Where the Magistrate recorded the confession of an accused person in English in narrative form, though the confession was made in the form of question and answer, and afterwards translated it into the vernacular to the accused who admitted it to be correct, held that there was no irregularity in the manner of the record so as to render the confession inadmissible—(12) A. N. 60 9 C. J. 85 14 C. 539.
14. **Want of certificate.**—See Notes No. 136 and 137 under S. 164 (p. 290 *supra*). The failure of a Magistrate to make a memorandum at the foot of a confession renders it inadmissible in evidence in the Sessions Court. The Sessions Judge should proceed under S. 533 to take evidence that the accused duly made the statement recorded and he should then admit the statement "if the error of the Magistrate had not injured the accused as to his defence on the merits"—22 M. 15 8 O. C. 395 2 M. 5.
15. **Omission to examine the accused at the trial.**—It is not obligatory for the Sessions Judge to examine the accused under S. 342 Criminal Procedure Code, more especially where the accused has not challenged the evidence. Section 254 of the Code makes such examination optional with the Judge and not imperative.—9 O. J. 57.
16. **Defects in examination.**—If in an examination of the accused by the Magistrate some of the

questions put are inquisitorial or in the nature of a cross-examination, that does not make the whole statement inadmissible.—9 O. J. 55

17. **Confession recorded by Munshi.**—The mere fact that the statement was actually written not by the Magistrate himself, but by the Munshi, does not in any way injure the accused as to his defence on the merits. Although the terms of Ss. 164 and 364 Criminal Procedure Code are

to be strictly observed, i.e. by the Magistrate actually taking down the confession himself, as a defect can be cured by examining the Magistrate as provided by S. 533 Cr. P. C.—2 P. R. 19

[Note.—To avoid needless repetition the read is referred to S. 164; Ch. VII. Language which confession is to be recorded [p. 287]. Admissibility in evidence: [p. 289]; X Re-hearing of errors [p. 290 *supra*]

534. An omission to ask any person whether he is a European British subject, in a case

Omission to ask question prescribed by section 454 (2) which sub-section (2) of section 454 applies, shall not affect the validity of any proceeding.

Notes.

1. **Duty to inform imperative.**—When the accused is a European British subject, he must be informed of his right under the law to be tried according to the procedure laid down for the trial of European British subjects. An omission to do so vitiates the trial.—18 C. N. 385. But see 16 Cr. 616 (1) 5 P. R. 1885 1 Bur. S. 436 7 N. 93. See Note No. 8 at p. 790 *supra*

2. **Suit for damages for omission to ask.** A suit for damages will lie against a Magistrate who, having reason to believe that the accused is a European British subject, does not ask whether he is such, and proceeds to try him if he were not a European British subject. 2 M. 1 A. 293

535. (1) No finding or sentence pronounced or passed shall be deemed invalid merely

Effect of omission to prepare charge. on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Notes.

1. **Scope of S. 535 Cr. P. C.**—The language used in Ss. 535 and 232 Cr. P. C. shows that the omission to frame a charge is not a ground for revision, unless there has been a consequent miscarriage of justice. An omission to frame an alternative charge, comes under the very comprehensive words "error or irregularity" in any enquiry or other proceedings in S. 537 Cr. P. C.—(16) 2 M. N. 267. 20 R. 533.

2. **Failure to frame a charge under S. 75 I. P. C. for previous conviction.**—See Note No. 20 under S. 221 (p. 418 *supra*) also 7 M. T. 77

Omission to frame separate charges.—

3. (a) **Fatal.**—Two sets of persons cannot under S. 233 Cr. P. C. be jointly tried in the same cases merely because they have on the same date and in order to defraud the same person, executed knabulyats, as the two knabulyats so executed are separate transactions. [31 C. 1053] The miscarriage of charges is not curable by S. 535 Cr. P. C. [21 C. N. 750]

4. (b) **Not Fatal.**—Where three separate complaints were laid against the accused by the same complainant for cheating three different tenants, while engaged in the collection of rents on behalf of the complainant; Held that the defect of drawing up a single charge for three offences amounted to one of duplicity and not of mis-

joinder. [Archbold Ed 1910 p. 76] The accused not having objected at the time of trial and not having been prejudiced in any way, the irregularity was cured by S. 535 Cr. P. C.—41 C. 66

5. **Discharge without framing a charge.** Where a Magistrate proceeding under Ch. XX called on the accused to produce witnesses without framing a charge, and after examining the defence witnesses, recorded an order which in form was one of discharge. Held that if the order had been one of acquittal, it could have been regular save for the omission to frame a formal charge and under S. 535 (1) the omission by itself would not have affected the validity of the order.—14 Cr. 1006 (L. B.) 29 P. R. 188. See 3 A. 129. 10 W. R. 7.

6. **Omission to draw a fresh charge, when the first one is illegal.**—An accused person was prosecuted under S. 19 (c) of the Arms Act without obtaining the previous sanction of the District Magistrate under S. 29 of the Act. Held that the Magistrate cannot be said to be without jurisdiction to try the case merely because he framed the charge before receiving sanction and did not frame a fresh charge after receiving it. The defect was cured by S. 535 Cr. P. C.—4 L. R. 247; but see 5 M. T. 162 (*contra*).

7. **The meaning of "merely on the ground"**

that no charge was framed."—(1) The words "merely on the ground that no charge was framed" in S. 535 of the Cr. P. Code mean a case where the offence being a petty one, and the evidence being fairly taken, the Court framed no

charge at all. But where the Court frames a charge however erroneous, then it cannot be said that the conviction is invalid merely on the ground that no charge was framed." (To such a case, S. 535 cannot apply).—40 C 169

536. (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not

on that ground only be invalid.
Trial by jury of offence triable with assessors

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.
Trial with assessors of offence triable by jury.

Note See—Ss 297—308 Chap. XV, Trial by Jury of case triable with the aid of assessors. (p 508 *supra*).

537. Subject to the provision hereinbefore contained, no finding, sentence or order passed by

a Court of competent jurisdiction shall be reversed or altered by reason of error or omission in charge or other proceedings. ~ under Chapter XXVII of an appeal or revision on account—

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) of the want of or any irregularity in any sanction required by section 195, or any irregularity in proceedings taken under section 476, or

(c) of the omission to revise any list of jurors or assessors in accordance with section 324, or

(d) of any misdirection in any charge to a jury unless such error, omission, irregularity, want or misdirection has in fact occasioned a failure of justice.

Explanation.—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings

Illustration.

A Magistrate, being required by law to sign a document, signs it by a initials only This is purely an irregularity, and does not affect the validity of the proceeding

Proposed amendment to the section.—In section 537 of the said Code,

(i) For clause (b) the following shall be substituted, namely —

"(b) of any irregularity in any order under section 196 or section 196 A or in any proceedings taken under sections 476, 476 A or 476 B, or"

(ii) In clause (d), the word "want," where it occurs after the words "such error, omission, irregularity," shall be omitted

(iii) The Illustration to the same section is hereby repealed.

ARRANGEMENT OF NOTES.

S 537 = Ss 283, 300 (1872) = Ss 439, 426 (1861).

Note.—The effect of infraction of the rules of law relating to the following heads has already been dealt with elaborately under the appropriate section or sections. In accordance with the general plan, several rulings have not been cited below in order to avoid needless repetition.

I.—Object, Scope and Application of the Section.—

(1) Object of the Section.

(2) Scope of the Section.

(3) The principle of the Section explained.

(4) Sec 537 does not avail to cure the disobedience to an express provision as to a mode of trial.

(5) Distinction between an irregularity and an illegality.

- (6) Scope of the term "subject to the provisions hereinbefore contained"
- (7) Does S. 537 bar interference at an interlocutory stage
- (8) Consent of accused to irregular procedure
- (9) Appellate Court cannot ignore the provisions of S 537 (b) Cr P. C

II.—Complaint.—

- (1) Failure to examine the complainant under S. 200 Cr P C
- (2) Trial without complaint is illegal.
- (3) Omission to record reasons for distrusting truth or dismissal of complaints
- (4) Miscellaneous.

III.—Summons and warrants.—

- (1) Search warrants
- (2) Omission to send a copy of order under S. 112 Cr P C
- (3) Failure to record reasons for warrant.
- (4) Omission to notify substance of warrants
- (5) Irregular warrants
- (6) Summons

IV.—Proclamation and Orders.—

V.—Charge —

- (1) Joinder of charges when illegal
- (2) Joinder of charges when not fatal.
- (3) Omissions which are curable
- (4) Omissions which are not curable
- (5) Disregard of S 233 Cr. P. C
- (6) Disregard of S 234 Cr P. C
- (7) Disregard of S. 235 Cr P. C
- (8) Contravention of Ss 236 and 237 Cr P. C.
- (9) Disregard of S 239 Cr. P C
- (10) General Rules
- (11) Serious inaccuracies in the charge are fatal

VI.—Trials.—

- (1) Joint trial of two distinct offences.
- (2) Misjoinder of charges and persons
- (3) Omissions of procedure.
- (4) Irregularities in trying the accused.
- (5) Irregularities in recording evidence.
- (6) Joint trial of two parties to a riot

VII. Judgments.

VIII. Proceedings other than trials.

- (1) Proceedings under S. 107 Cr. P. C.
- (2) Proceedings under S 145 Cr P. C
- (3) Proceedings under S 250 Cr P. C
- (4) Proceedings under S. 481 Cr P. C
- (5) Appeals.
- (6) Order of commitment without notice to the accused
- (7) Other proceedings.

IX. Sanctions under S. 195 Cr. P. C.

- (1) Proposed change in the Law
- (2) Want of sanction to prosecute.
- (3) Entire absence of sanction
- (4) Defective sanctions.
- (5) Failure to give notice.
- (6) Miscellaneous

X. Other sanctions.

- (1) Sanction under S 196
- (2) Sanction under S 197.
- (3) Sanction under S 339
- (4) Miscellaneous

XI. Orders under S. 476 Cr. P. C.

XII. Jurors and assessors.

XIII. Misdirection to the jury.

XIV.

XV.

XVI.

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I. OBJECT AND APPLICATION OF THE SECTION.

(1) The object of the Section.

1. (1) The object of the section is to cure mere irregularities and not to excuse a total disregard of law S 537 being expressly made subject to the provisions before contained in Code, cannot override them.—9 C N. 909
2. (2) S. 537 Cr P C is not intended to apply to a case which has not been finally disposed of.—21 C 943
3. (3) S 537 Cr P C was clearly never intended to allow a Magistrate to override the clear provisions of the Code The section was intended to prevent a mere technicality from interfering with the course of justice, the error, omission etc, being one which had escaped all parties at the beginning of the proceeding.—37 A. 253 29 M 237. 33 M. J. 79 13 M J A 77 11 B. II. (c. c.) 237.
4. (4) S 537 can only be used to repair irregularities which have not occasioned a failure of justice. It cannot make legal that which is illegal.—[11 N. 36; 24 M J 341; 29 M. J. 101 (F. B.)]
5. (5) S. 537 cl (3) which speaks of errors in proceedings before or during trial does not cover cases, where the trial itself is defective.—29 M. J. 101 (F. B.).

(2) Scope of the section.

6. (1) S 537 of the Cr P. C. does not empower the High Court in cases in which a verdict vitiated by reason of misdirection, to do the question whether the conviction is right by going into the evidence of the case. If it does so would be substituting its own decision for the verdict of the jury who have the opportunity marking the demeanour of witnesses.—21 C 955
7. (2) S 537 Cr P C. provides that no conviction shall be set aside merely for want of sanction under S 195 Cr P. C. But it would be going much further than this to pass orders in reversing convictions under S 199 I. P. C. respect of which no sanction is required to conviction under a section (e.g S 182 I. P. C.) respect of which sanction would be necessary (especially as the attention of the Magistrate who tried the case was drawn to the necessity of sanction.—15 Cr. 603 (L. B.)

(3) The principle of the section explained

8. (1) There is a distinction between a case in which the trial itself is contrary to law in which event it is not trial at all under the Code as a case in which the trial is within the jurisdiction

of the Magistrate and irregularities occur in the method of conducting it. In the latter case, the provisions of S. 537 are applicable and the finding can only be reversed if the irregularity has in fact occasioned a failure of justice—26 B 533

9. (2) Notwithstanding the omission of the particulars which a charge ought to contain, should the accused in fact be not misled by the omission and the omission did not occasion a failure of justice, the High Court as a Court of appeal will not reverse a conviction on the bare ground of irregularity—32 M 3: See 25 B. 90.
10. (3) Section 537 applies only when the irregularity complained of has been committed by a Court of competent jurisdiction. When the order is not made by a Court of competent jurisdiction, S. 537 has no application—10 B R. 84. 4 O J. 492. 16 W. R. 23 C 328 23 C. 422 19 Cr. 661 (C): See 10B 319
11. (4) An omission to frame an alternative charge comes under the very comprehensive words "error or irregularity in any enquiry or other proceeding" in S. 537. Cr. P. C. (10) 2 M. N. 267 26 B 533.
12. (5) Section 537 Cr. P. C. cannot be applied at an intermediate stage of the case so as to allow the error (want of sanction) to remain uncorrected—G S. 260.

(4) *S. 537 does not avail to cure the disobedience to an express provision as to a mode of trial.*

13. In *Subrahmanya Ayyar's* case, a person was tried for 41 separate offences in direct contravention of S. 234 Cr P C and the question arose whether the irregularity in the trial is curable under S. 537 Cr P. C. Their Lordships of the Privy Council observed as follows "the effect of the multitude of charges before the jury has not been averted by dissecting the verdict afterwards, and appropriating the finding of guilty only to such parts of the written accusation as ought to have been submitted to the jury. It would in the first place leave to the Court, the functions of the jury and the accused would never have really been tried at all upon the charge arranged afterwards by the Court. Their Lordships are unable to regard the disobedience to an express provision as to the mode of trial, as a mere irregularity. Such a phrase as an irregularity is not appropriate to the illegality of trying an accused person for many different offences at the same time, and those offences being spread over a longer period than by law could have been joined together in one indictment. The illustration of the section itself, shows what was meant. The remedying of irregularities is familiar but it would be such a branch of law to say that such a here shall nvention of the code comes within the description of error, omission or irregularity. Some pertinent observation are made on the subject by Lord

Herschell and Lord Russell of Killowen in *Smurthwaite v. Hannay* L. R. (1894) A. C. 491. Where in a civil case several causes of action were joined, Lord Herschell says that if unwarranted by any enactment or rule, it is much more than an irregularity, and Lord Russell of Killowen in the same case says 'such a joinder of plaintiffs is more than an irregularity, it is the constitution of a suit in a way not authorised by law and the rules applicable to procedure.—L R 23 I. A. 237=25 M 61=5 O. N 866=3 B R 640.

This ruling is followed in 29 M. J. 101 (F. B.): 23 M J 381. 33 M 1088, 30 M. 44, 30 M. 328; 29 M 569. 28 M. 437. 26 M. 125. 46 C. 741; 40 C 846. 33 C. 1236. 29 C 385. 17 C. N 479; 11 C N 472. 10 O N 520. 8 C. N. 180. 6 C. J. 177. 1 O J 475. 17 B R. 1085. 17 B R 1074; 17 D. R. 892. 6 B R. 725. 4 B R 440; 4 B R 433. 4 B R 63. 29 B 449. 26 B. 533. 19 Cr. 161 (A). 26 193 (O). A. N. 223; 18 O C 92; 5 O C 345. 4 O J 492. 1 O J. 141; 21 Cr 626 (P) 17 P R 1917. 4 P R. 1917. 3 P R. 1907. 14 P. R. 1905. 2 P R. 1905; 4 P L. 1905. 101 P L 1904. 17 P R. 1903. 3 P R. 1903. 16 P. R. 1902. 21 Cr. 29 (Pat). 19 Cr. 235 (Pat). 20 Cr. 105 (N). N N 36. 4 N. 71; 17 C P 159. 15 C. P. 53. 3 L B. 75 (F. B.); 1 L B 361. (1917) 3 U. B. 18 (O) U. B. 1-q-2.

Note.—This ruling simply deals with the effect of disobedience to an express provision of the law as to the mode of trial and in no way touches on the effect of an error of procedure antecedent to the trial or the jurisdiction of the Court.—36 M 275 (G M I A 134 Dist.).

(5) *Distinction between an Irregularity and an illegality.*

14. "When a thing is directed to be done and the thing is in effect done, but in the wrong way, the error amounts to an irregularity and not an illegality."—*Per Beachcroft J* in 19 O N. 972.

(6) *Scope of the term "Subject to the provisions hereinbefore contained."*

15. "It is clear from the wording of cl (b) of S. 537 Cr. P. C. and the explanation attached to it, that the qualifying words "subject to the provisions hereinbefore contained," do not refer to the entire Code that precedes the section but only the provisions of Chapter XLV, where the section occurs, i.e., Ss 529 to 536."—*Per Sharfuddin and Beachcroft J J* in 19 O N 972 [Fletcher J. contra]. See 31 M. 80. 29 M 149; 17 M J 533. 27 C 839. See 6 C. N. xlvii. Con 22 C. 176; 9 C N 909. 23 C 953 (900).

(7) *Does S. 537 bar interference at an interlocutory stage?*

16. When an objection is taken on the ground of omission or irregularity to remain uncorrected.—23 C. 953 (900): See 6 S. 200.

(8) *Consent of accused to irregular procedures.*

17. Although the consent of the accused or his counsel, is presumptive evidence of the absence of prejudice, it does not prevent the Judge bearing the case, from deciding whether notwithstanding the consent of the accused, his case has been prejudiced by the irregularity.—28 M. J. 329; But see 12 C. N. 140 10 C. J. 462-25 P. R. 1905 2 C. 23 G. C. 96 4 B. R. 53-7 B. R. 527 (531); 15 C. P. 66
18. Objection as to jurisdiction may be taken at any stage :—A plea of want of jurisdiction may be taken in the High Court, though not taken below [16 W. R. 79]. The Code of Criminal Procedure does not empower a Sessions

Judge to try a case partly on evidence not recorded by himself and the consent on the part of the accused cannot rest in him the jurisdiction to do so [26 B. 50. See 23 W. R. 59]

(9) *Appellate Court cannot ignore the provision of Ss. 537 (b) Cr. P. C.*

19. An appellate Court, cannot ignore the provision of Ss. 537 (b) Cr. P. C. (where the conviction is illegal, [4 B. H. (C. C.) 4] S. 53 does not refer to a total absence of complaint [4 P. R. 1917 25 P. R. 1583 See (14) A. N. 266] was wanting), there being on the record a sanction for prosecution under S. 182 1 P. C. only—37 A. 110.

II. COMPLAINTS.

(1) *Failure to examine the complainant under S. 200 Cr. P. C.*

20. Failure to examine the complainant under S. 200 Cr. P. C. is not fatal and amounts to an irregularity covered by S. 537. 63 P. L. 1900 1 Pat. J. 592 11 P. R. 1911 9 A. 666 11 M. 443; Cr. Rev. case 398 of 1908 10 M. T. 573 20 B. R. 1018 17 W. R. 37 But see 3 C. N. 17 30 C. 923 18 A. 221 2 Pat. J. 657 1 Pat. J. 346 20 Cr. 742 (Pat) Where the complainant is examined but his signature is not taken in accordance with the provisions of S. 200 Cr. P. C. The irregularity is not curable under S. 537 Cr. P. C. 6 C. N. 849
21. Note (1) The examination of a complainant under S. 200 Cr. P. C. is a very valuable safeguard which the Legislature has provided and must be scrupulously observed and insisted upon, but under very exceptional circumstances the omission to examine the complainant may not vitiate a trial.—20 Cr. 247 (Pat) 21 Cr. 779 (Pat) See 35 M. 606. 8 S. 41; 37 A. 618 11 A. J. 921. 15 C. N. 14 23 C. N. 484 46 C. 607.
22. (2) "The omission to examine the complainant under S. 203 of the Code of 1882 (=S. 200 of the present Code) amounted to only an irregularity of such a character as would be covered by the somewhat extensive provision of S. 537"—Per Mahmood J. in 9 A. 606
23. (3) Yaddast.—Where a Yaddast was sent by a tesildar to a third class Magistrate requesting him to take action against a person who had failed to obey summons, held, it was a complaint of facts constituting a complaint under S. 174 P. C. and the omission to examine the tesildar under S. 200 was only an error of procedure which was cured by S. 537 Cr. P. C. 11 M. 443.
24. (4) Omission to examine the complainant.—Even assuming that the law required the Magistrate to examine the complainant, the omission to do so, when it has not prejudiced the complainant amounts only to an irregularity covered by S. 537 Cr. P. C.—(11) 2 M. N. 350

(2) *Trial without complaint is illegal.*

25. Where a Magistrate convicted a person of an offence under the Railway Act without any

sworn complaint before him but acting only on a private note from a Railway officer, held that the conviction is illegal. [4 B. H. (C. C.) 4] S. 53 does not refer to a total absence of complaint [4 P. R. 1917 25 P. R. 1583 See (14) A. N. 266]

(3) *Omission to record reasons for distrusting truth or dismissal of complaints.*

26. (1) An omission on the part of the Magistrate to record reasons for distrusting a complaint or postponing issue of process after having examined the complainant is an irregularity not sufficient for setting aside the subsequent order of dismissal after investigation, in the absence of any prejudice [25 M. 546].
27. (2) It is an imperative provision of law that the Magistrate shall briefly record his reasons for dismissing a complaint. There can be no question of irregularity when the provisions of the statute are imperative and are directly disobeyed—4 C. 41; See 13 C. N. 227

(4) *Miscellaneous.*

28. When objection to defective complaint is not taken in the initial stage—(Where a complaint within the terms of S. 196 Cr. P. C. is merely a colourable compliance with the provisions of S. 196 Cr. P. C., held that no objection having been taken to set aside the Magistrate's order issuing process on the ground that on the face of it, the materials on which it was made was insufficient, the case was covered by cl (a) of S. 537 Cr. P. C.—16 C. N. 1103 See 32 M. 3 (11) See 37 C. 467-34 C. 659)
29. The irregularity due to neglect to comply with the provisions of S. 191 Cr. P. C. is not covered by S. 537.—28 A. 212—See Note No. infra.
30. Police report is not a complaint.—Where a police report is not intended to be a complaint and is not treated as such, it cannot be said that the report is a complaint. 6 O. C. 1 27 C. 452-32 C. 180
- 30A. For further notes—See Note No. 21 and 22 under S. 200 (p. 377 supra); Notes No. 7, 8, 19, 20 under S. 203 (pp. 395 and 396 supra)

III. SUMMONS AND WARRANTS.

(1) Search Warrants.

31. Defective search warrant—S 537 cannot give legal effect to a defective warrant—35 C 1076

[*Note*—A Magistrate is guilty of gross carelessness in not signing his name in full on the warrant, but that in itself is not an illegality which would vitiate the arrest. It is a mere irregularity covered by S 537 Cr. P. C 3 Pat. J. 493

32. The entrustment of a search warrant under Public Gambling Act III of 1867 to a police officer of a rank not competent to execute such warrants under S 5 Cr. P. C. is an irregularity but it is cured by S. 537 (84) A N 59. (84) A. N 286 291 See 4 O. 659. 6 N. 168

33. Defect in the form of a search warrant under Act III of 1867.

(1) A defect in that it did not direct the search of a house but only the arrest of a person is an irregularity but the irregularity is not fatal if it has not caused any failure of justice—(84) A N 291.

(2) Even granting that the law required that a search warrant issued under the Gambling Act should be sealed with the seal of the Court, the omission to affix the seal is a mere irregularity cured by S 537 Cr. P. C.—23 P. R 1910

34. Search without warrant.—For excisable

sion of which he had no license—35 A 358 see 11 A. J. 933

(2) Omission to send a copy of order under S. 112 Cr. P. C.

35. The omission of a Magistrate to send a copy of the order under S 112 Cr. P. C. with the summons issued under S 114 of the Code, does not invalidate the trial. It is an irregularity cured by S 537 Cr. P. C. 11 B R 740 21 Cr 321 (Pat) See S C 724 but see 20 W R 36 15 W R 43 A. 243 9 Cr 179 (A)

(3) Failure to record reasons for warrant.

36. (1) It is a necessary preliminary for the exercise of the power under S 90 Cr. P. C. that

reasons should be given in writing and failure to do so vitiates the warrant. The omission is not curable by S. 537 Cr. P. C.—38 M. 1088 But see 38 C 789

37. (2) The omission by a Magistrate to record, in the first instance his reasons for issuing a warrant of arrest against the alleged abducted woman in a case under S. 408 f. P. C. is a mere irregularity within Sec 537 (a) Cr. P. C.—22 Cr 111 (A).

(4) Omission to notify substance of warrant.

38. The omission to notify the substance of the order of arrest to the arrested men is an irregularity covered by S 537 Cr. P. C.—18 Cr. 666 (A); But see 23 O 496 26 C 748

(5) Irregular warrants.

39. Where the warrant was (1) executed on a date subsequent to the date specified as the returnable date and the fact of extension of the period was not endorsed on the warrant and (2) when the warrant was executed by an officer other than the officer to whom it was directed by name and designation, held that the warrant was illegal [37 C. 122 see 10 C 18 31 C. 424, but see 22 C. 596 22 C 750 as to the latter part].

(6) Summons.

40. Issue of warrant instead of summons.—The error of a Magistrate in proceeding by warrant instead of by summons furnishes no ground for quashing the proceedings—1 W. R. 10
41. Fresh summons without fresh information.—Where on an information a summons is issued to the accused, and owing to its disclosing no offence, a fresh summons is issued without

"a failure of justice" that is unless it has unfairly affected the accused's defence on the merits—31 B 61

42. For further notes—See Ch III Essentials of a valid warrant under S 75 (p. 75 *supra*) also 11 P. R 1495

IV. PROCLAMATION AND ORDERS.

43. Omission to serve a copy of the initial order in the manner provided by subs. (3) of S. 146 Cr. P. C. on the property in dispute—is not a fatal defect unless there is material prejudice—33 C 68 (F.B.) 33 C 1083 33 C 33 Contra 9 C N 909

44. Defect in publication of proclamation under S. 67 Cr. P. C.—"It was held in 11 M 3 that defects in publication cannot be cured by S 537 Cr. P. C., although with due deference to the learned Judges who decided that case, I am

"not convinced that the decision is sound"—Per *Broadway J* in 6 P. R 1916

[*Note*.—Where the proclamation was made and was read and published in the places where the absconders were most likely to hear of it, but a copy was not fixed to the Court house, held that the flaw was cured by S 53 Cr. P. C.—39 P. R 1917

45. [*Note*.—See Notes No. 12, 15, 16, 17 (a) under S 67 *supra* [pp 84 & 85] Notes No. 6 and 29 under S. 29 *supra* [pp 57 and 59 *supra*].

V. CHARGE.

(1) Joinder of charges when illegal.

46. Joinder of two distinct charges of offence committed on different dates and not forming part of the same transaction is illegal. 33 C. 292; 13 C. N. 1089; 26 M. 125; 10 C. N. 520; *But see* 14 A. 502; 27 B. 135.
47. Joinder in one charge of two distinct offences though arising out of the same transaction is an illegality fatal to the trial 10 C. N. 53; 6 C. J. 757.
48. Note.—But when such irregularity amounts to an error in form rather than in substance, and the accused has not been prejudiced, it will be cured by S. 537. 11 C. N. 54; 35 C. 161; 4 A. 147 (07) A. N. 208; 12 P. R. 1918; 11 C. J. 182; *See* (04) K. 21; 25 M. T. 379; 22 Cr. 344 (0).

(2) Joinder of charges when not fatal.

49. The accused forged 11 rent-receipts and filed them simultaneously in 3 suits, having divided them into 3 separate sets and attached each set to a separate written statement. Three charges were framed against him one in respect of each set of receipts. It was contended on appeal that it amounted to a joint trial of eleven offences of using forged receipts,—*held*—that under the circumstances, there was no valid ground for questioning the correctness of the conviction 20 C. 413; *But see* (04) A. N. 223.

So where the set of defamation under S. 500 and attempt to commit extortion under S. 385 though committed at different times, are so connected together as to form the same transaction, *held*—it was legal to convict at the same trial on both the charges. 18 P. R. 1904; *See* 2 N. 147.

(3) Omissions which are curable.

50. (1) The omission to mention the wife in the charge in a case of defamation of both the husband and the wife is not fatal—15 M. J. 224.
51. (2) When the charge is defective in this that it does not give substantial notice to the accused as to the facts on which they are tried, they must be said to have been prejudiced and S. 537 does not apply.—33 C. 295. [*Per Woodroffe and Mukerjee JJ.*]
52. (3) The omission to set out the precise object which the accused was alleged to have intended

61 P. R. 1915 [39 C. 781 *dist.*]; 21 Cr. 760 (N)
See 11 C. 106; 22 C. 276; 33 C. 295

(4) Omissions which are not curable.

53. (1) A charge framed under S. 26 F. 8 of the Madras Forest (Act V of 1882) must clearly state that the place from which the accused sent a tree was a "reserved forest." Omission to state this is a material defect and vitiates the trial—(12) M. N. 1124.

54. (2) If the charge for dacoity does not set out or indicate which particular dacoity an accused is tried for, the conviction must be set aside

(12) M. N. 49

(5) Disregard of S. 233 Cr. P. C.

55. (1) A joinder of charges, not permitted by S. 233 Cr. P. C. and in contravention thereof, is fatal and cannot be cured by S. 537—6 B. R. 735; 29 B. 449; 26 A. 195; 10 C. N. 520; 30 M. 328 (04) U. B. 1-q; 2. (07) U. B. 5; 2 P. R. 1905; 3 L. B. 52 (F. B.); 11 C. N. 1128; 41 C. 722; 613 P. L. 1904; *But see* (07) A. N. 208.
56. (2) The joint trial of two calendar cases is illegal. Sec. 233 Cr. P. C. says that each charge should be tried separately and the failure to conform to it at any stage of the trial renders the proceeding illegal.—29 M. J. 101 (F. B.); 25 M. 61 (P. C.) 29 C. 385; 41 C. 722; 41 C. 662
57. (3) Failure to draw up a distinct charge for each act, when a person is tried for several acts forming the same transaction, is not a mere irregularity but illegality incurable by S. 537—26 A. 195
58. (4) Omission of the word "dishonestly" in a charge of theft is not fatal and is covered by S. 537—9 C. N. 974

(6) Disregard of S. 234 Cr. P. C.

59. The joinder at one trial, of more charges than three, for offences of the same kind and extending over a period longer than one year contravenes S. 234 Cr. P. C. and is an illegality which cannot be cured by S. 537.—28 I. A. 257 = 25 M. 61 (P. C.) 15 C. P. 53; 26 C. 560; 26 A. 195; 4 B. R. 433; 14 P. R. 1905.

(Note—The ruling in 25 M. 61 (P. C.) *overruled*—27 C. 639 (F. B.); 29 C. 7 (9); 28 C. 1011]

(7) Disregard of S. 235 Cr. P. C.

60. The joinder of two or more charges for two distinct offences not falling within the scope of S. 235 Cr. P. C. is illegal and cannot be cured by S. 537—1 L. B. 361; 16 P. R. 1902; 4 B. R. 440; 29 C. 385

(8) Contravention of Ss. 236 and 237 Cr. P. C.

61. Where the Court convicted an accused, tried on charges of murder, of an offence of which he was not guilty, the conviction is void. 1915 P. R. 1915; 21 Cr. 760 (N); 33 C. 295

(9) Disregard of S. 239 Cr. P. C.

62. (1) Trial of several persons for distinct offences of cheating is opposed to S. 239 and is an illegality not curable by S. 537.—613 P. L. 1904

17 P. R. 1903; 16 P. R. 1902. See 18 O. O. 92; 29 B. 449; 33 C. 1250; 29 C. 385; 28 O. 104. G. C. J. 757; 1 O. J. 475; 4 B. R. 53; 4 N. 71; ('07) U. B. 1-q. 5; But See 11 M. 441.

63. ()

(10) General Rules.

64. **Case of embezzlement.**—A general charge of embezzlement mentioning a gross sum misappropriated as laid down in anbs (2) of S. 222 Cr. P. O. is sufficient; but it is defective and must fall through where the accused appears to have been prejudiced by not having any definite charge to answer—10 P. W. 1907. Charge of abetment as well as commission of an offence cannot be tried together—24 M. 523.
64. **Note.**—See Notes No. 3 to 19A under S. 221 *supra* [pp. 415 to 417]. Notes No 1 and 2 and II. Effect of misjoinder on the validity of the trial under S. 233 Cr. P. O. [pp. 430 and 431 *supra*] also V. Misjoinder of charges (p. 435 *supra*). (3) Misjoinder of charges instances under S. 234 Cr. P. O. [p. 438 *supra*]. V. Joinder of charges under S. 235 [p. 446 *supra*]. V. Effect of non-compliance under S. 239 [p. 464 *supra*].
65. **Misjoinder of charges.**—renders the trial illegal and the error cannot be cured by S. 537 Cr. P. O.—2 L. B. 10 28 I. A. 257 = 25 M. 61 (P. O.) 20 M. 125 4 B. R. 440 32 A. 57 6 Bur. T. 101.
66. **Addition of charge at a late stage.**—Where out of four accused committed to the Sessions under S. 302 I. P. O. the Sessions Judge acquitted three, but convicted the fourth accused on a charge under S. 326 I. P. O. added by him during the course of the trial *held*, that the addition of the second charge was not a mere irregularity but an illegality not covered by S. 537 Cr. P. O.—20 P. W. 1909.
67. **Omission to frame the supplementary charge.**—In a charge and finding under S. 398 P. O. the substantive S. 393 should be mentioned as well as the supplementary S. 398. The omission to specify the section would, however, be covered by S. 537 Cr. P. O.—12 Cr. 468 (L. B.)
68. **Omission to mention S. 34 I. P. O. in the charge.**—Where there is ample evidence of common object of an assembly, the mere omission to mention S. 34 in the charge is cured by S. 537 Cr. P. O. when no failure of justice has occurred by reason of the omission.—19 Cr. 382 (Pat) See 21 C. 627 2 B. R. 1129 (1131)

69. **Omission to set out guilty intention.**—An objection to set out the guilty intention of an accused in the charge is subject to the provisions of S. 537 Cr. P. O., and before effect can be given to any such objection, it must be shown that the omission complained of occasioned a failure of justice—22 C. 391.
70. **Difference between English and Indian Law.**—"What are the facts to be proved to secure a conviction is very different question from whether the accused has sufficient notice of those facts necessary to be proved against him. In the latter case an omission to state the particulars which ought to be stated in the charge will not be treated as material, unless it has occasioned a failure of justice. The English rule as to what ought to be set forth in the indictment is modified in India by Ss. 223 and 537 Cr. P. O."—*Per Sankaran Nair J* in 32 M. 384. 9 O. N. 974 (979)

(11) Serious inaccuracies in the charge are fatal.

- 70A. (1) Where the common object specified is hurt to one person but the conviction is for causing hurt to a different person, the inaccuracy is fatal, as it amounts to a total absence of charge which cannot be cured—40 C. 108. See 14 O. N. ccccix.
- 70B. (2) Where a charge related to the offence of house-breaking with intent to commit theft, a conviction on the finding that the intention was to commit adultery is bad—41 C. 743.
- 70C. (3) Where the charges against the accused were under Ss. 148, 304, 149 and 320, 149 I. P. O., *held* that conviction under S. 320 was illegal, there being no charge under that section, and the jury having acquitted the accused under S. 148 I. P. O.—41 O. 662 16 C. N. 1077 34 C. 698. See 23 W. R. 59.
- 70D. (4) Where in the charge the offence was at first stated to have been committed on the 3rd January 1909 and evidence to the same effect was recorded but the Magistrate on being satisfied that no offence could have been committed on that date amended the charge and altered the date of occurrence to the 27th December 1904, and re-examined the witnesses with reference to the new circumstances, the High Court set aside the conviction as the mistake was not a mere clerical error and the conviction was based on the evidence of accommodating witnesses 13 C. N. cclxxxiii.
- 70E. (5) Where two distinct offences were alleged against the accused but he was charged with only one, and it was impossible to understand from the charge with which of the two actions alleged, the accused was charged, the conviction was set aside—13 C. N. cclxxxiii.

VI. TRIALS.

(1) Joint trial of two distinct offences.

71. (1) Where the accused was at one and the same trial charged with robbery and murder committed in the course of one transaction and also another

robbery committed some hours previously at a place 3 miles off, *held*—that it was only an error or an irregularity curable by S. 537.—14 A. 502.

72. (2) Joint trial of two persons severally charged with giving false evidence in a trial in the Sessions Court, is in contravention of S 233 and cannot be cured by S 537.—4 B R 53
73. (3) Joint trial of three persons—one accused of offence under S 457 and one of an offence under S 411 P. C. when the two offences are not parts of the same transaction is illegal.—4 P. L. 1905
74. (4) Joint trial of a person charged with receiving stolen property with another found to be in possession of property alleged to have been stolen at a different time is illegal.—101 P. L. 1904
75. (5) Trials in contravention of Ss 233, 234, 235, 236 237 and 239 Cr. P. C.—See V. Charge (*above*)

(2) Misjoinder of charges and persons.

76. (1) Where at the same trial an accused person is charged with two offences under S. 178 I P. C. and two offences under S. 179 of the Code, held the case was not governed by S. 234 of the Crim. Pro. Code and there was no misjoinder. Moreover, the facts having all been admitted, and the sentence passed being practically for only one of the offences, if accused was not prejudiced, the irregularity, if any, was cured by S. 537 Cr. P. C.—35 C 161 41 C 66
77. (2) The joint trial of thieves and receivers of stolen properties is illegal unless the offences charged were committed in the course of the same transaction within the meaning of S. 239 Cr. P. C.—40 C 741, 33 C 1256 3 P. R. 1905
- (14) M. N. 332 See 97 P. L. 1914

(3) Omissions of procedure.

78. Omission to read over and explain charge.—The omission to read over and explain the charge to the accused under S. 271 Cr. P. C. at the trial at the Sessions is a serious error of procedure. The mere fact that S. 537 covers an error, omission or irregularity of this kind is not a sufficient answer.—21 Cr. 410 (1) But see 5 C 826
79. Failure to examine the accused.—The provisions of S. 342 are imperative and failure to comply with them is not a mere irregularity curable by S. 537 Cr. P. C.—(1917) 3 U. B. 18, 21 Cr. 705 (Pat.), 41 C 743 Cr. Ref. No. of 17 of 1919 (Pat.) 17 B. R. 592 2 L. B. 115
80. Failure to call upon the accused to enter on his defence.—The omission to call upon an accused person to enter on his defence is an irregularity, covered by S. 537 Cr. P. C. provided the accused has not in any way been prejudiced thereby.—16 A. J. 41 Con. 21 C 232 2 L. B. 115
81. Failure to comply with the directions in S. 356 Cr. P. C.—“The direction in S. 356 appears to me to be mandatory as also the direction in S. 360 Cr. P. C. The non-compliance with the requirements of the section (record of evidence in a language which is not the language of the Court) would therefore, not only be an irregularity but an illegality which would vitiate the trial. 19 Cr. 225 (Pat.) See 42 C 391, 86 C. 925, 20 W. R. 14 (1) A. N. 145.

82. Omission to enquire if accused wants *de novo* trial.—Whether there was no demand or refusal but only an omission to enquire from the accused whether he wished to exercise the right reserved by proviso (a) to S. 350, and the accused had not been materially prejudiced nor was a failure of justice occasioned by the omission, the error in procedure is cured by S. 537 Cr. P. C.—(12) U. B. 151, 40 A. 307, 3 P. R. 1903, Con. 5 Pat. W. 40
83. Cognizance under S. 351 Cr. P. C.—Where Laws challanged by the police and after examining the investigating officer, the Magistrate issued process against S. and tried him along with L. but did not examine the investigating officer again, held that the mistake did not prejudice S. as the police officer's evidence contained practically nothing but a history of the investigation. The irregularity might therefore be taken as cured by S. 537 Cr. P. C.—4 N. 65
84. Omission to follow the procedure in S. 191. Cr. P. C.—Where a Magistrate initiated proceedings *motu* but did not inform the accused that he had the option of having his case tried by another Magistrate. Held that it was not a mere irregularity curable by S. 537. It was an absolute illegality and vitiated the whole trial.—22 Cr. 96 (P.) 143 P. L. 1905, 13 P. R. 1898, 28 A. 212, 13 A. 345 5 N. 113 3 C. N. cxxxix.
85. Refusal to issue process.—Where a Magistrate, in refusing to issue process for the witnesses named by the accused, did not base his refusal in regard to any particular witness on any of the grounds, which under the provisions of S. 257 of the Code are sufficient to justify it, held that the order was illegal and was not such as could be cured by S. 537 Cr. P. C.—31 M. 131 See 25 B. 418 2 S. 5

(4) Irregularities in trying the accused.

86. Trials before Honorary Magistrates.—Act V of 1893 nowhere lays down that it is necessary to validate a judgement of a Bench of Honorary Magistrates that each Honorary Magistrate who decides the case, must be present at every hearing when evidence is heard.—[20 C 870; 23 C. 194, 18 M. 394, 21 M. 246 Dissented from] Even if such procedure should amount to irregularity, it is condoned by the provisions of S. 537 Cr. P. C.—17 C. 142
87. Trial by a Magistrate who is personally interested in it within the meaning of S. 656 is not a mere irregularity but an illegality. See—Notes under S. 556 Cr. P. C.
88. Trial by the sanctioning officer.—The trial of an offence by a Court which should only have either granted sanction or taken action under S. 478 Cr. P. C. is irregular and the irregularity cannot be cured by an application of S. 537 Cr. P. C.—4 O. J. 192.
89. Cancellation of trial after recording assessor's opinion.—Where to the charge under S. 392 I P. C. on which the accused was committed, charges under Ss. 211 and 411 were added in the Sessions Court and after the

assessor's opinion had been recorded, the Judge "cancelled the trial and decided to hold a fresh trial against the accused, being of opinion that the charge under S 214 had been improperly joined, *Held* that the Sessions Judge had no authority to cancel or set aside the trial and S 537 (1) could not 'avail to cure the disobedience to an express provision as to a mode of trial.—17 B R 1074

89A. The ruling in 25 M 61 (F.B.) followed in 29 C 385, cannot be extended to a preliminary enquiry with a view to commit to the Sessions 26 M 592

(5) Irregularities in recording evidence.

90. Examination of prosecution witnesses after defence had closed.—In a criminal trial after the evidence for the defence had closed, the Magistrate examined certain witnesses for the prosecution giving at the same time full liberty to the accused to cross examine them. *Held* that having regard to Ss 537 and 540, no interference was necessary—21 C 95 22 Cr. 58 (B) 13 W R 36. 13 W R 15

91. Irregularity in recording evidence.—A Presidency Magistrate recorded the evidence of some witnesses in the form of indirect narration. *Held* that such irregularity in the form of recording evidence where no failure of justice has been occasioned is cured by S 537 Cr P C—18 Cr 336 (M) [19 M 269 F] See 6 M 11 (4p) 45 But see 20 W R 14

92. Record of evidence in the absence of the accused.—Where the evidence for the prosecution was recorded in the presence of the accused but he disappeared when his own witnesses were called, and his personal attendance was not dispensed with either under S 205 or S 366 (2) Cr P C and the Magistrate recorded the evidence of the defence witnesses in the accused's absence and convicted him. *Held* that S 353 applied and the words of the section were clear and peremptory. The procedure adopted by the Magistrate was illegal and the irregularity could not be cured under S 537, even though it had led to no miscarriage of justice (12) U B 4 q 152

93. Improper use of statements before the police.—Where the Magistrate used the statements made before the chief constable during the police enquiry without (1) complying with the provisions of S 162 Cr P C and (2) giving the accused an opportunity to cross-examine the chief constable, and it was apparent that his decision was influenced by such statements, *held*—that the irregularity materially prejudiced the accused and could not be cured by S 537 Cr P C—9 B R 364

94. Admission of evidence recorded in a previous trial.—Where evidence recorded against the prisoner in a previous trial relating to the same transaction, is admitted in evidence at a subsequent trial under a different section with the consent of both the accused and Government Pleader, the procedure adopted though improper, is cured by S 537 Cr P C—8 B R 538 13 W R 40 see 35 C 457 Con 12 C N 140

95. Note.—Where instead of examining the witnesses for the prosecution the Magistrate caused copies of their examination in-chief recorded at a previous trial without any objection on behalf of the accused to be read out to the witnesses and the witnesses were then cross-examined by the prisoners, *held*—although the proceedings were irregular, the irregularity was cured by the provisions of S 537 Cr P C as it had not been shown that there had been any failure of justice—9 A 609

(6) Joint trial of two parties to a riot.

96. Where there is a riot and fight between two factions the members of each party should be committed for trial separately. A joint trial in such a case is wrong and the conviction will be set aside—[8 W R 47 9 W R 33]. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly and to try them together in as much as they do not have "one common object" within the meaning of S 141 1 P C [12 W R 75. 20 C 537 O S 75 1 Bur 275. 331 23 P R 1881 15 P R 1882 5 P R 1900 (81) A. N 23]

97. Trial on "parallel lines."—Where a Magistrate in two cases of counter charges of robbing and assault, tried, first of all, one party and having taken evidence for that party, he, without giving his decision in that enquiry, proceeded to take evidence for the other party and in this second enquiry he called as witnesses some of those very persons whose guilt or innocence was the subject of enquiry in the first trial, and as to which he was suspending his judgment, Sir Conner Petheram C J remarked "I think this is a course which is to be deprecated to the last degree. I think it a very great pity that Magistrates should ever adopt it. There is no doubt in my mind that it constitutes a very great irregularity." [14 C 374 See 114 331] The conviction and trial under similar circumstances was set aside as bad, although the pleaders for the defence were consenting parties to the procedure [6 C 90 See also the following cases—13 O L 275 8 C N 160] 1a 8 C N 344, a trial "on parallel lines" was declared not to be vitiated as the procedure was an advantage to the accused rather than a disadvantage.]

VII. JUDGMENTS.

98. Where substantial justice has been done.—Where the judgment shows that the appellate Court appreciated the points the prosecution had to establish, and had clearly in view the points for determination, the High Court

would not interfere merely because it does not exactly comply with all the requirements of S. 567 Cr P C—29 C 353.

99. Absence of written judgment when sentence is passed.—A sentence is illegal when

there is no written judgment when it is passed and cannot be cured by S. 537.—14 A 242. 27 M. 237. 21 C 121 [Per Trevelyan J.].

Note—When the Magistrate apparently after full consideration of the arguments addressed to him pronounced the sentence though he had not the judgment ready at the time—held—the omission to record a judgment under this circumstance is only an omission or irregularity which falls within S 537.—23 C 502. see 21. C 121 [Per Prince and O'Kineally J.J.]

[See Note No 2 under Ss 367—370 (p. 652 *supra*)].

100. Omission to pronounce.—If a judgment has been written, the omission to pronounce it before convicting and sentencing is cured by S. 537 (a) Cr. P. C.—25 M J. 445 see 2 Weir 711 (712)

100A. Omission to pronounce portion of the judgment.—The omission to pronounce a portion of the judgment imposing fine which the Magistrate has written, and his omission to date and sign the judgment at the time of pronouncing it are omissions covered by S 537 Cr P C.—2 Weir 711 (Venkataramanyy).

101. Omission to write judgment in the proper language.—Omission to follow the ex-

press direction of S. 367 which lays down that the judgment should be written either in English or in the language of the Court is cured by S 537—4 C J. 232.

102. Judgment written in defiance of law.—Judgment at variance with the directions given by law and which has materially prejudiced the appellant at the trial of the appeal cannot be cured by S. 537.—10 A. J. 435

103. Judgment ...
ing order
Cr P.
be invoked in a case in which there is no question of any omission or irregularity in a judgment but an absence of judgment.—17 B R. 1085.

[Note—See notes no 73 to 82 A, under S. 367—370 (p. 657 *supra*)]

104. Omission to find common object.—Where the judgment does not contain any finding as to the common object and the charge does not specify the common object in clear terms and is otherwise also defective the accused are thereby prejudiced and S. 537 cannot cure.—33 C 295.

105. Note.—See IX. Effect of non-compliance with the provisions of Ss. 367 and 424 (p. 659 *supra*)

VIII. PROCEEDINGS OTHER THAN TRIALS.

(1) *Proceedings under S. 107 Cr. P. C.*

106 (1) Two rival parties to proceedings under S. 107 cannot be tried together. A joint enquiry against both is illegal.—8 C N 180; 11 C N. 472

107. (2) Joint enquiry against person not associated together, within the meaning of S. 107 Cr. P. C. is illegal.—9 C N 898.

108. (3) Failure to set forth substance of information in the order and to serve the order in accordance with S 112, is not fatal.—50 C 313.

109. (4) Summons under S. 107 in proceedings under S. 110.—Where summonses were issued under S. 107 Cr. P. C. in proceedings under S. 110, the irregularity is cured by S. 537

Cr P. C.—14 Cr. 65 (M.)

110. (5) Joint enquiry under S. 117 (4).—Where the members of two rival factions were proceeded

xxiii

Note.—See Chap. XVI Irregularities under S. 107 (p. 124 *supra*)

(2) *Proceedings under S. 145 Cr. P. C.*

111 (1) The omission to state the ground upon which a Magistrate is satisfied as to likelihood of a breach of the peace in the initial order under S. 145 cl (1) is an irregularity curable by S. 537.—33 C 68 (F. B.); (84) A. N. 317; 23 M J. 499; 33 C 352 (F. B.); But See (81) A. N. 46; (85) A. N. 302

112. (2) One proceeding involving claims with regard to several plots of lands, claimed to be in the possession of different persons, is not invalid in the absence of prejudice.—5 C N. 544. 50 N 710.

113. (3) Failure to follow the strict provisions of S. 145, when the parties had their cases fully heard, is an irregularity which is not fatal.—30 A. 41.

[Note.—See XIX. Irregularities which vitiate. XX. Irregularities which do not vitiate under S 145 (pp 247-248 *supra*)].

(3) *Proceedings under S. 250 Cr. P. C.*

114. It is clearly not the intention of the Legislature that a complainant should be entitled to adjournment in order to enable him to show cause against an order under S. 250 Cr. P. C. much less to an opportunity of producing further evidence. The adjournment of proceedings is an irregularity but the irregularity is cured by S. 537 Cr. P. C.—30 A 132. [8 B R 817. (05) A. N. 214 FJ; 35 A 315 R.] See Notes No. 39-41 (p. 479) to 50 (p. 480) under S. 250 *supra*]

114A. The omission to make the record required by the proviso of S. 250, is passing an order of compensation, cannot be held to amount to more than "an omission in the judgment or other proceedings during trial" within the meaning of S. 537 Cr. P. C.—2 Weir 711 (Katta)

(4) *Proceedings under 481 (2) Cr. P. C.*

115. Although the failure to comply with the provisions of S. 481 (2) Cr. P. C. is only an irregularity which may be cured by S. 537 Cr. P. C., it will

not be condoned, when it cannot be gathered from the record, what was the judicial proceeding or stage of judicial proceeding at which the offence was committed and when it is doubtful, if the evidence established the fact that the interruption was intentional.—15 Cr. 621 (M.)

(5) Appeals.

- B. The failure of a Deputy Magistrate to state his reasons for ordering fresh evidence, under S. 423 Cr. P. C., is an irregularity that is cured by S. 537.—9 M. T. 406

(6) Order of commitment without notice to the accused.

- 7 Where a District Magistrate directs a subordinate Magistrate who has in his opinion improperly

discharged the accused to commit the latter to the Sessions without giving any notice, the irregularity is cured by S. 537, if the subordinate Magistrate gives the accused an opportunity to show cause before committing him.—Rat 890.

- 117A. A trial under a commitment made by an erroneous order of Sessions Judge has been held and no actual failure of justice has been caused by such error, S. 283 (= S. 537) Cr. P. C. would be a bar to the reversal of the judgment.—7 C. 662.

(7) Other proceedings.

118. Irregularities under S. 141 (p. 214 *supra*) which irregularities under S. 141 (p. 214 *supra*) which

IX. SANCTION UNDER S. 195.

(1) Proposed Change in the Law.

- B. The words "of the want of or any irregularity in any sanction required by S. 195" in S. 537 are to be expunged. The words will be redundant in view of the sweeping changes to be effected in S. 195. The Code as amended will not permit the granting of a sanction to any private party. The Court will have to make a complaint in writing. All defects of procedure in relation to proceedings under S. 195, will fall within the terms of Ss. 476, 476A, and 476B and will be covered by S. 537.

(2) Want of sanction to prosecute.

10. The want is an irregularity and unless the want of such sanction has in fact occasioned a failure of justice a conviction is not bad only on that account.—24 C. 217 29 M. 149 31 M. 80 21 M. J. 763. 27 C. 452 32 C. 180
11. Note—Where the affected party at once took no objection to the case being proceeded with for want of sanction as required by S. 195 Cr. P. C., it would be unfair to allow the case to proceed.—37 A. 283; 22 C. 176; (O) A. N. 151
- 11A. When conviction is bad for want of sanction—

- (i) Conviction of a person of an offence under S. 195 Cr. P. C. the prosecution being started on a letter sent by a Civil Court to a police officer without the sanction of the Civil Court.—(O) A. N. 266

(3) Entire absence of sanction.

22. There is ample authority for the proposition that the entire absence of the sanction required by S. 195, does not entail the reversal of a conviction, unless it is shown to have occasioned a failure of justice, and see 537 (b) Cr. P. C. applied as much to a case in which a sanction has been granted and has become ineffective under Cl (b) of S. 195 as to a case in which no sanction has been granted at all.—4 P. R. 1913; (O) A. N. 151; 21 M. J. 753; 31 M. 80. 28 C. 217.

123. [Note—Though want of sanction under S. 195 Cr. P. C. may not vitiate a trial, yet when there has been no complaint under S. 195 as regards the offence of which the applicant has been found guilty the absence of a complaint is not a mere irregularity but is fatal to the trial.—20 Cr. 770 (N)]

(4) Defective Sanctions.

124. (i) A defective sanction is cured, when the accused has sufficient notice—"A conviction for perjury cannot be set aside on the ground that the sanction was defective, unless there has been in fact a 'failure of justice.'" Where, therefore, the statements alleged to be false were set out in full detail, in the application for sanction, and they were also specified in the charge subsequently framed. *Held*, the accused had full notice of the case against him and there had been no failure of justice." *Per Jenkins C. J. and Mookerjee J.* in 36 C. 809. See 18 A. 203 also 19 B. 362 30 C. N. 35

125. [Note—Where a sanction is recorded, but it is defective, it would not vitiate the sanction accorded. S. 537 would clearly cover such a mistake.—23 P. R. 1916

(5) Failure to give notice.

126. "Proceedings under S. 195 Cr. P. C. are of a judicial character, and no order should be passed in such proceedings without giving notice to the party in those proceedings to whose prejudice the Court decides to pass an order, and an omission to give such notice is a defect of procedure resulting in a failure of justice, and consequently the defect is not curable by S. 537 Cr. P. C.—21 Cr. 643 (O)
127. [Note—"Proceedings under S. 195 Cr. P. C. are of judicial character and no order should be passed in such proceedings without giving notice to

the party to whose prejudice the Court decides to pass an order unless the legislature clearly dispenses with notice. * * If we were to hold this return to be sufficient, we should decide contrary to one of the first principles of justice *audi alteram partem*. It is to be found at the head of our Criminal Law that every man ought to have an opportunity of being heard before he is condemned and I should tremble at the consequences of giving way to this principle" [*Per Lord Keynon Ch J in King v. Gaskin D. D. (1799) 4 R. R. 633.*] S. *Wazir Hasan I J C in 21 Cr. 642 (9)*

(6) Miscellaneous.

128. Order not amounting to sanction.—Where the District Magistrate expunges a case in accord

ance with the request of the D. S. P. who forwards the papers and the Magistrate merely writes—“Expunge, subdivisional Magistrate to take cognizance under S. 182 P. C.” *Held*, this does not amount to a sanction and a trial based on such order is bad—5 O. C. 164

129. The words “subject to the provisions hereinbefore contained”—cannot be construed in such a way as to nullify the express provision of the latter part of the section which in Cl. (b) enacts that no sentence passed by a Court of competent jurisdiction shall be reversed on appeal “for want of any sanction required by S. 195”—31, M. 80.
130. See Notes under S. 195 Nos. 163 to 202 (pp 350 351 *supra*)

X. OTHER SANCTIONS.

(1) Sanction under S. 196.

131. A complaint under S. 196 even if defective in that it did not set out the dates of the speeches and the nature of the alleged seditious matter, is at most an irregularity within S. 537 (a)—32 M. 3

Note.—[See Notes Nos. 22 to 24 under S. 196 (p 361 *supra*)]

(2) Sanction under S. 197 Cr. P. C.

132. See Note No. 64 under S. 197 (p 371) *Supra* 2 Weir 710

(3) Sanction under S. 339 Cr. P. C.

133. Want of a sanction under S. 339 is a defect of substance and not merely of form and is therefore not covered by S. 537 Cr. P. C.—12 P. R. 1884

[See Note No. 94 under Ss. 337 339 (p 596 *supra*)]

134. Defective Sanction or complaint.—An accused person, charged under S. 505 (f) I. P. C., was prosecuted upon a letter of the Commissioner, purporting to convey the sanction of the Local Government, required by S. 196 Cr. P. C. authorising the prosecution. *Held*, that where the most essential part of the sanction has been complied with and the formal sanction to enter into the complaint had been incorrectly treated as a complaint itself, and the intermediate formalities omitted, and no detriment had resulted to any one, the irregularity regarding the complaint or the absence of a formal complaint is cured by S. 537 (a) Cr. P. C.—8 P. R. 1905

(4) Miscellaneous.

- 134A. Sanction under S. 29 of the Arms Act.—S. 537 (b) does not cure the want of sanction in any case, except when the sanction is required under S. 195 Cr. P. C.—4 L. R. 247, See 2 L. R. 302 1 U. R. 2 8 L. B. 452 9 Bar T. 217 (F. B.).

XI. ORDERS UNDER S. 476 Cr. P. C.

135. Failure to send to the nearest Magistrate.—Where the Court under S. 476 sent up the accused for trial not to the nearest Magistrate first class but to a Magistrate First class, having local jurisdiction, *held* the irregularity was curable under S. 537 (b)—1 S. 81 : 37 M. 317 *Can* 26 A. 219

130. *See Note No. 100 under S. 476 (p 350 *supra*)*

not followed, but the complaint against the petitioners was heard and a preliminary enquiry held, which showed that there was a *prima facie* case against the petitioners. *Held*, (1) that the defect in the procedure in granting sanction was cured by S. 537, (2) where the inquiry in a case has proceeded far enough to enable the test required by S. 476 to be applied, S. 537 will cure

any defect not prejudicing the accused.—12 Cr. 320 (8).

137. Order without notice merely an irregularity.—The High Court always looks with disfavour upon an order made under S. 476 without notice being given to the persons immediately concerned. At the same time, any irregularity in the proceedings taken under S. 476 Cr. P. C. is not a sufficient ground for reversing or altering an order passed by a Court of competent jurisdiction.—10 A. J. 217.

138. Omission to hold preliminary enquiry.—Where a Court after very careful consideration arrives at the conclusion that an order under S. 476 Cr. P. C. is called for, and that no preliminary inquiry is necessary, the omission to make such inquiry is a mere irregularity within S. 537 Cr. P. C.—21 Cr. 276 (1)

subject under S. 454 (2) Cr. P. C. is an irregularity covered by S. 537 Cr. P. C.—16 Cr. 616 (M); Con 18 C N. 385

158. Restoration of complaint after discharge of accused under S. 259 Cr. P. C.—Where a Magistrate after discharging the accused under S. 259 the complainant being absent, subsequently restored the case on the very same day on the ground that the complainant had arrived by a very late train, *Held*, that

there was no sufficient ground to set aside conviction on the ground of irregularity—37 G28

- 158A. Went of certificate under S. 168 P. C.—Where the certificate was not produced during the enquiry but was produced before order of commitment was made; *held* that commitment was not bad, as it had not been shown that the accused had, in any way, been injured or prejudiced.—8 B. R. 507.

XV. FAILURE OF JUSTICE—MEANING.

Failure of justice.—

159. (1) will be inferred from these circumstances—*viz*—that the charge did not specify the common object in clear terms and the property in respect of which the offence of rioting is alleged to have been committed—33 C. 203
160. (2) where the accused has not been called on to enter on his defence—a formality which forms an essential part of the trial, it is difficult to say that the omission has not occasioned a failure of justice—23 C. 232
161. When the question of prejudice can not arise.—A direct disobedience of an express provision of the statute as to a mode of trial cannot be regarded as a mere irregularity. The question of prejudice does not arise in a case of this nature.—21 Cr. 29 (Pat)
162. Consent of the accused.—Although the consent of the accused or his counsel is presumptive evidence of the absence of prejudice, it does

not prevent the Judge, hearing the case, deciding whether notwithstanding the consent of the accused, his case has been prejudiced by irregularity.—28 M. J. 329.

163. —

to take such action in every case however serious or scanty may be the necessity or reason for adopting such a course, so as to interfere with the conviction in every such case. [5 P. R. 16] Where the accused was charged under the Penal Code with an offence committed before that Code came into operation [15 W. R. 48] or who was convicted of the offence under repealed sections of a law, the High Court refused to set aside the conviction as no substantial prejudice had been done to the accused and the sentence might have been passed under the repealed sections of the Penal Code. [15 W. R. 49]

XVI. OBJECTION AND OMISSION TO RAISE THEM AT EARLIER STAGES.

164. —

occurred, though it is a point to be considered as laid down in the explanation to S. 537 Cr. P. C.—4 P. R. 1913.

165. —

166. Where an objection to misjoinder of parties could and should have been raised at an earlier stage of the proceedings, the fact that it has not been so raised, shows that in fact it had not occasioned a failure of justice and the irregularity is covered by S. 537—29 C. 7; 24 C. 10

[But it is doubtful if these rulings have now any force in view of the ruling in 25 M. 61 (P. C.).]

167. Accused cannot waive the benefit of the legal provisions.—An accused person cannot in a criminal trial waive the benefit of the legal provisions regulating the trial—18 M. J. 330, 2 C. 23; 6 C. 103
168. Objection to be taken at the early stage of proceedings.—Omission to take objection

169. The scope of the explanation.—The explanation is applicable only when the objection raised is an averment of an irregularity, when there is a question of jurisdiction, or

170. —

171. The words "in fact prejudiced"—

but raised no objection in the Court of the instance and took up the plea for the first time in appeal, *held* that the case was a case of omission and fell within the scope of the explanation of S. 537; and also in view of the fact that the accused had not in the slightest degree been prejudiced in his trial, the case did not call for any interference—11 A. J. 809.

172. The words "in fact prejudiced"—The words "in fact" were introduced apparently in order to emphasize the duties of the Court to take into the merits before interfering in consequence of a misdirection or other error, though the defect existed just the same, before those words were added—*Per Denson J.* 26 M. 1 (15).

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ or distress or other proceedings relating thereto.

Proposed amendment to the section.—In section 538 of the said Code, for the word "distress" wherever it occurs, the word "attachment" shall be substituted.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Court, or the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Proposed amendment to the section.—After section 539 of the said Code, the following sections shall be inserted, namely:—

"539A. (1) When any application is made to any Court in the course of any inquiry, trial, appeal or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given: Provided that no accused person shall be compelled to make any affidavit himself under this sub section.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to and shall state separately such facts as the deponent is able to prove from his own knowledge, and such facts as he has reasonable grounds to believe to be true, and in the latter case the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

(3) The Court may order the attendance of any person making an affidavit under this section for cross-examination before the Court.

"539B. (1) Any Judge or Magistrate may, at any stage of any inquiry, trial, appeal or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view, for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall record forthwith a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him:

Provided that, in the case of a trial by jury or with the aid of assessors the Judge shall not act under this section unless such jury or assessors have been allowed a view under section 290."

Notes.

1. A convicted person cannot swear an affidavit.—A person seeking by application in revision to get rid of a conviction, standing

against him is incapable of tendering his own affidavit in support of such application, and consequently if he does tender such an affidavit,

he can not be prosecuted for false statements which might be contained therein—19 A. 200 See 12 N. 451 . 28 A. 331.

[Note.—Litigants are not absolutely privileged as it is not to public advantage that they should be free to insert any matter they please with their pleadings, applications and affidavits.—3 L B 263]

2. Affidavit to controvert the return to the writ of Habeas Corpus.—The return to the writ of habeas corpus must be taken to be true and cannot be controverted by affidavit In England 56 Geo 3 C 10 S 4 allows affidavits to be used to controvert the return in criminal matters, but that does not apply to this country—5 B. L. 418 But see 5 B L 657.
3. Affidavit of matters not on record.—An accused person cannot contest the propriety of a conviction by an affidavit containing matters not upon the record [(100) A N 8] A Magistrate recorded that the accused pleaded guilty In an application for revision to the High Court the accused tendered in evidence his own affidavit setting forth that he did not plead guilty, held that the affidavit was not admissible If there was any mistake about the matter, it should be the Vakil and not the client who ought to make the affidavit.—10 M 209.

Use of affidavits.

4. (1) Though affidavits may be used to show a want of jurisdiction in a Magistrate, even though such affidavits contradict for this purpose the finding of the Magistrate, they cannot be used as affording materials for reviewing the Magistrate's decision on the merits—10 B 1102

5. (2) Important statements made in a verified petition to the High Court, if untrue, should be contradicted on affidavit.—8 B. H 125
6. What an affidavit should contain.—An affidavit must contain nothing but bare facts known to the person who makes the affidavit either personally or upon information from a source which he believes to be a correct source and one on which reliance can be placed As human beings are liable to make mistakes in reciting facts, the law requires that the contents of affidavits should be carefully read over to the deponents in a language which they understand and should be vouched by them to be correct—35 A. 13.

Procedure.

7. (1) Deputy Magistrate cannot administer oath for affidavits.—A Deputy Magistrate has no power to administer an oath to a person making a declaration in the form of an affidavit (and such person cannot therefore be prosecuted for an offence of perjury under S. 193 or 199—[14 C. 633])
- [Note.—An affidavit affirmed before a Deputy Magistrate may be used, in a sanction proceeding before a Civil Court under S. 195 Cr. P. C.—S C N. vi]
8. (2) Rules in Bombay.—Any Court or Magistrate or the clerk of a District Court, shall on application, take such affidavit or statement of solemn affirmation and authenticate the same by signature—Bomb Gaz 1879 pp. 471-475; also Bomb Jk Cir p 48
9. (3) Rules in Calcutta.—See Cal. H. C. Rules p 125.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code.

Power to summon material witness summon any person as a witness, or examine any person in or examine person present.

attendance, though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case

Proposed amendments to the section—After section 540 of the said Code, the following section shall be inserted, namely—

"540A (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may at any subsequent stage of the proceedings direct the personal attendance of such accused

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately"

Notes.

Scope of the Section.

1. (1) "S. 540 is a section which confers very wide powers upon a Court. But the wider the powers the greater the exercise of discretion required

of a Magistrate, and if the Magistrate will, as he ought to do, read S. 252 along with S. 540 of the Code, he will find that by S. 540, it was not intended, that he should exercise his discretion

at the bidding of any person, but that the powers are given to prevent any miscarriage of justice just because some particular witness has not been called."—*Per Knor J.* in 12 A. J. 15; *See* 20 N. 702 24 C. 167.

2. (2) This section does not enable the Court to examine the accused, as a witness, even in an appeal, as an appeal is but the continuation of the original case.—12 M. 467.

Uses of the Section.

3. (1) Magistrates should always be chary of taking upon themselves the *status* of deciding on behalf of the parties which witnesses should be examined.—25 M. J. 134
4. (2) Calling witnesses after the close of the case at the instance of the Superior Officer.—Where in a case of misappropriation of Government money instituted at the instance of the Assistant Collector, the trying Magistrate, after the close of the case for the prosecution, called at the instance of the Assistant Collector two witnesses, whom the Assistant Collector "had ordered to give evidence" and recorded their evidence *heli*, that when he did so he virtually abdicated his magisterial functions and became a mere delegate of the Assistant Collector who had initiated the prosecution. The trial has been without jurisdiction for a Magistrate cannot be both Judge and a delegate of the prosecution.—7 S. 82
5. (3) After recording opinion of the assessors.—S. 540 Cr. P. C. does not authorise a Sessions Judge to summon a witness when no more witnesses remain to be examined for either side and the assessors have given their opinion.—4 P. R. 1892
6. (4) Reversing order of examination of witnesses.—It is not intended by S. 540 that a Judge shall reverse the order of a Sessions trial, and call the witnesses summoned for the defence before the case for the prosecution is closed.—14 A. 242
7. (5) S. 540 Cr. P. C. is a supplementary provision enabling, and in certain circumstances, imposing on the Court the duty of summoning a witness, material or essential, who would not otherwise be brought before the Court. A Magistrate misuses this section in using it to anticipate the defence of the accused person to his prejudice, and in using it, after satisfying himself that he has a good defence, to discharge instead of acquitting him.—11 P. R. 1886
8. (6) A Magistrate cannot properly resort to S. 540 in order to avoid the responsibility of making up his mind as to the value of the evidence for the prosecution. The power conferred by that section upon a Court to summon a witness, does not extend to witnesses named for the prosecution or for the defence.—11 P. R. 1886
9. (7) Where one of the witnesses whom the pri-

upon an application being filed before him by the prisoners, directed that the objector should be summoned as a witness whereupon the objector moved the High Court. *Held*, (per *straight J.*), S. 540 is not the only provision of the Criminal Procedure Code which confers on a Sessions Judge powers of the kind exercised by him in this case. Under S. 291, though the summoning of witnesses by an accused person through the medium of the Sessions Judge is not a matter of right, yet the Judge has an inherent power, if he thinks proper

10. the witnesses, unless the pleaders on either side have omitted to put any material question; and the Court should generally leave the witnesses to the pleaders to be dealt with as laid down in S. 135 of the Evidence Act.—6 C. 279
11. (9) This section does not empower a Sessions Judge to *fish* for witnesses or warrant an order for further enquiry to be made by a Committing Magistrate after the trial has been concluded so far that no witnesses remain to be examined on either side, and the assessors have given their opinions. 4 P. R. 1892
12. (10) The Sessions Judge may, in his discretion, cause any witness to be summoned for the accused, on an application made during the trial, and he is bound to procure the attendance of such witnesses, if he considers that their evidence may be material.—19 A. 502. *See* 11 A. J. 980.
13. (11) Where a witness is not examined by the Crown before the Committing Magistrate, nor under the supplementary powers of S. 210, the Crown cannot demand as of right that such witness should be examined at the sessions trial. 14 A. 212
14. Magistrate not seized of the case cannot act under the section.—A magistrate who is not seized of the case, in the absence of the trying Magistrate, has absolutely no power of any kind to pass an order that certain witnesses required by the accused be summoned.—36 A. 13
15. Plea of lunacy.—Where the defence is based on S. 41 P. C. the Sessions Judge may, under S. 540 Cr. P. C. and S. 165 Evidence Act, ascertain the behaviour exhibited by the prisoner during the years of his life previous to the homicide and if the accused has been kept in a lunatic asylum, record medical evidence of facts observed there and of the opinion formed as to the particular form of lunacy.—Rat 279. *See* Rat 229.
16. Medical evidence.—Where there was no evidence regarding the nature of the injuries which formed the subject of the offence under trial, the Sessions Judge was bound under this section to summon the medical officer as a witness.—6 C. N. 95
17. Discretion of the Court.—It is entirely within the discretion of a Magistrate conducting a trial in a warrant case to admit evidence on behalf of either side at any stage of the trial, S. 192 C. P. 1872 (=540) applying to such a case, but the Magistrate in exercising the discretion

conferred on him by the section ought to have good reason for allowing witnesses on the part of the prosecution to be *interposed* in the midst of the case of the accused.—21 W. R. 61.

18. **Remedy of the accused.**—When the accused has exhausted the power of summoning witnesses for the defence and want additional witnesses to be examined, all that he can do is to move the Magistrate to summon any other witnesses whom he might deem necessary under the powers vested in the Magistrate under S. 540 Cr. P. C.—36 A 13

19. **The General rule.**—According to Ss. 251 to 256 an accused cannot be called upon to enter on his defence until the prosecution closes its case. No further evidence can be admitted against the accused except under S. 540 for which there must be valid reasons which must be recorded.—10 A. J. 383

20. **Examination of prosecution witnesses after close of defence evidence.**—In a criminal trial after the evidence for the defence had closed, the Magistrate examined certain witnesses for the prosecution giving at the same time full liberty to the accused to cross-examine them. *Held*—that in revision it was not proper for the High Court having regard to Ss 537 and 540 Cr. P. C. to interfere with the Magistrate's order.—[21 O. C. 95 See 13 W. R. 36 But See 13 W. R. 15]. The practice of examining witnesses for the prosecution after the defence is closed, to bolster up the prosecution, was deprecated in 15 C. N. 414

21. **Power to take evidence after adjournment for judgment.**—A Magistrate is strictly within his rights under S. 540 Cr. P. C. in receiving fresh evidence after evidence on both sides had been taken, and the case adjourned for judgment in as much as the case can be said to be a pending case at that stage taken.—24 C. 167

22. **Duty of the Court to summon necessary witness.**—Under S. 540, the Court is bound to summon and examine any witnesses whose evidence seems to be material to the just decision of the case.—[8 C. N. 98]. It is the duty of the Judge not merely to receive and adjudicate on the evidence submitted by the parties but also to enquire to the utmost into the truth of a case [Ilat 531]

23. **Court should always form its own independent opinion.**—The Court, to which

24. **Examination of witnesses before defence is entered on.**—When a Magistrate, after the examination of prosecution witnesses, examined certain persons as court witnesses, and relying on their evidence, discredited the complainant's witnesses and discharged the accused *held* that the procedure was not illegal.—2 Weir 714.

Persons who may be summoned.

25. (a) **Witnesses beyond the limits of their own Districts.**—Magistrates are at liberty to issue summonses for service upon witnesses beyond the limits of their own districts.—3 M. H. (app) V.
26. (b) **Accused discharged for want of evidence.**—There is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence, being afterwards admitted as a witness for the prosecution.—7 W. R. 44; see 25 B. 422
27. (c) **Person brought with accused and not discharged.**—A person apprehended by the police, and brought before the Magistrate with the accused, accused
28. (d) **Accomplice.**—An accomplice, if he is not an accused under trial in the same case, is a competent witness and may, as any witness, be examined on oath. If he is not sent up for trial, or if he is tried separately, or if he is convicted, he may give evidence admissible on oath.—33 C. 1363. 10 C. L. 553 C. W. R. 22: 6 W. R. 91, 2 A. 385
- [Note.—Where two prisoners are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other.—[5 C. L. 574]
29. **Power of Sessions Judge to compel Magistrate to give evidence.**—A Sessions Judge, while trying a case, cannot compel a Magistrate to answer questions as to his own conduct in Court as such Magistrate.—3 A. 573. see M. H. (app) 42.
- [Note.—If the Appellate Court wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate on oath or solemn affirmation, in the same manner, as an ordinary witness.—8 B. R. (C. C.) 120 see 18 W. R. 119]
30. **Right of both parties to cross-examine Court witnesses.**—Where a Judge thinks it necessary to call a witness and examines him *motu*, he ought to allow the accused an opportunity to cross-examine the witness [5 C. 614]. There is nothing in S. 165 of the Evidence Act that prevents a party from cross-examining a witness called by the (158) late Ct. to cross-examine them and the Court has no power to put any restrictions on such cross-examination. [35 C. 213]
31. **Right of accused to cross-examine witness at first cited but afterwards rejected by him.**—An accused person had obtained a process for the attendance of a witness, but before his appearance, asked the Court to countermand the order for his attendance. On

the Court refusing to do so, the accused declined him and the witness was thereupon examined by the Court, held, that, under the circumstances, the witness could not be regarded as a witness for the defence, and the accused was entitled to cross-examine him—29 C. 357.

32. Will the High Court interfere when the lower Court has erroneously failed to

act under S. 540?—A committing Magistrate failed to record the examination of the prisoners or to attest it as required by S. 205 Cr. P. C. The Sessions Judge refused to admit it in evidence and also refused to postpone the trial for the purpose of summoning the Magistrate and taking his evidence in the matter. *Held*, that the High Court as a Court of Revision would not interfere or order a new trial.—12 W. R. 41.

541. (1) Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure, or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure

Notes.

1. Imprisonment in a police lock-up.—A Magistrate has no power to sentence the accused person to suffer imprisonment in police lock up. Section 383 Cr. P. C. directs that an accused sentenced to imprisonment shall be forwarded to a Jail with a warrant. Under S. 541, the Local Government can however direct that persons liable to imprisonment may be confined in such a place—7 L. B. 62

2. Who may direct imprisonment to be in different jails.—Under S. 541 of the Cr. P. C., S. 60 cl (t) of Act IX of 1894, and the Prisoner's Act (V of 1871), it is clear that the power of directing imprisonment to be in different jails belongs to the Local Government and the Inspector General of Prisons and not to the Criminal Court, passing the sentence.—Rat 827

Jails for European British Subject.

3. (1) In Bengal.—The Presidency Jail, the jails at Midnapur, Rajshahi, Dacca, Darjeeling, Chittagong and the lock-up at Dinajpur—See Cal. Gaz. 1873

4. (3) In Bihar and Orissa.—The jails at Bhagalpore, Cuttack and Patna and the Hazaribagh Penitentiary (*ibid*)

5. (1) In Assam.—The jails at Cachar and Tejapore. (*ibid*)

6. (4) In Bombay.—The jails at Poona, Yerowda, Karachi, Aden [*Bomb. Gaz* 1873] at Ahmedabad, Sorat and Satara (imprisonment not exceeding one month) and Karwar (not exceeding three months)

7. (5) The Punjab.—The jails at Lahore, Peshwar, Rawalpindi, Multan, Umballa and Delhi—*Punjab Gaz* 1873

8. (6) Madras.—The Madras Penitentiary and jails at Bangalore, Juddalore, Madurai, hingleput.

542. (1) Notwithstanding anything contained in the Prisoner's Testimony Act, 1869, any Presi-

deny Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement truthfully.

Notes.

1. **Note.—Necessity of Oath.**—There is no necessity under S. 148 (C. P. 1861) for making use of a regularly sworn interpreter to interpret his evidence to a party making a statement.—16 W R 61

2. **Record of interpreted evidence.**—When the statement of the accused is in a foreign language, the Magistrate need not make the record in that language the record must be in

the language in which it is interpreted.—5 C 85 See 21 C. 642

3. **Failure to administer Oath.**—The effect of the omission to administer an oath to the interpreter under S. 5 (b) of the Oaths Act (X of 1874) is to render it necessary for the prosecution to prove that the interpretation was made accurately. It does not make the deposition inadmissible in evidence.—36 C. 808.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may, if it thinks fit order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Proposed amendment to the section.—In section 544 of the said Code, the words "with the previous sanction of the Governor General in Council" shall be omitted

1. BENGAL.

1. The Criminal Courts are authorized to pay at the rates specified below the expenses (a) of complainants or witnesses whether for the prosecution or for the defence (i) in cases in which the prosecution is instituted, or carried on by, or under the orders or with the sanction of the Government, or any Judge, Magistrate or other public officer, or in which it shall appear to the presiding officer, to be directly in furtherance of the interests of the public service; and (ii) in all cases entered in column 5 of the Schedule II appended to the Criminal Procedure Code as not bailable, and (b) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of S. 540 of the Code.

2. If a witness is summoned at the instance of the complainant or accused under S. 244, his expenses shall not be withheld from him except on the ground of failure to do his duty as a witness when summoned.

3. As a general rule, the allowances to be paid to complainants and witnesses shall be a diet allowance calculated at the following rates—

(a) For the ordinary labouring class of natives, 2 annas per diem.

(i) For natives of higher rank in life, 4 annas per diem

(b) For Europeans and natives of superior rank a diet allowance according to circumstances up to a limit of Rs. 3 per diem.

4. In addition to the above, charge for toll at ferries will be allowed at the authorized rates to the extent to which they may have been actually incurred.

5. Other travelling expenses will be given when the journey could not have been performed on foot, or in the case of persons whose position and habits of life render it impossible for them to walk. In such cases, in addition to diet allowance and ferry tolls, travel allowance shall be given at the following rates—

(i) When the journey is by rapid dak by road, actual expenses incurred up to a maximum limit of 4 annas a mile.

(2) When the journey is wholly or partly by rail

(a) For the ordinary class of natives, the first class railway fare

(b) For natives of higher rank in life intermediate class railway fare, except in the case of Darjeeling-Himalayan Railway where second class railway fare may be allowed.

(c) For Europeans and natives of superior rank, second-class railway fare.

(2) In the Eastern Districts of Bengal, where the only mode of travelling is by water the actual expenses incurred for boat-hire up to a limit of Rs. 2 per diem.

6. Notwithstanding the above rules—(i) Government servants when summoned to give evidence in their public capacity shall receive

nothing from the Court. In this case they are entitled to travelling allowance under the Civil Service Regulations. Government servants when summoned to give evidence in their private capacity may be paid by the Court and may retain any travelling allowance due to persons of corresponding rank under these rules but not diet allowance, and they shall not be entitled to any travelling allowance under the Civil Service Regulations—(2) To witnesses following any profession, such as medicine or law, a special allowance shall be given according to circumstances.

7. Officers will be held responsible that parties or witnesses are brought to Court together as far as possible, so as to save expense. The hire of more than one boat shall not be allowed in one case unless the presiding officer is satisfied that

the witnesses could not have arranged to come together

8. The number of days for which diet allowance should be granted will be determined by the officer ordering payment in each case.
9. For this purpose and for regulating the reimbursement of tolls paid, a table shall be prepared and kept in each Court, showing the distance of each thana from the sudder station and subordinate stations, the number of intermediate ferries to be crossed, and the authorized rates of charges for tolls at each of these ferries, the existence or absence of roads or waterways being also noted in the table.

The above rules are issued in supersession of all existing rules.—*Cal. Gaz.*, Part I, July 3rd, 1895 page 648

II MADRAS.

(a) In the City of Madras.

1. Subject to the provisions hereafter contained, the expenses of witnesses will be paid on behalf of Government in the following classes, of case viz—

(a) Cases shown in the second Schedule of the Code of Criminal Procedure as not bailable.

(b) Cases in which the prosecution is instituted or carried on under the orders or with the sanction of the Governor-in-Council or of any public servant acting as such

(c) Where the witness in question has been compelled to attend by a process issued under section 540 of the Code.

(d) Cases in which the Court certifies that the

attendance of such witness was directly in furtherance of the interest of public justice

2. For the purposes of these rules, Europeans, Eurasians and Natives shall be divided into three classes, and the Magistrate before whom they are required to appear, or the Commissioner of Police, or, in the case of witnesses from the Mofussil, the Magistrate of the district from which they come, shall fix the class with due regard to the station in life of each individual

Note—For the purposes of this rule, the Magistrate of the district may delegate his powers to any Subordinate Magistrate

3. The following are the maximum rates which may be awarded to the several classes of witnesses and no expenses in excess of, or other than, those here provided for, shall be allowed—

Witness	Class	Subsistence allowance	Carriage hire allowable for days of actual attendance	Travelling expenses, if any, incurred.		
				By rail	By road	By sea or canal.
Europeans and Eurasians	1st class	5 Rs. per day	3 Rs. per day	1st class fare	8 As. per mile	Actual expense of passage.
	2nd "	3 " "	2 " "	2nd " "	6 " "	
	3rd "	1½ " "	1 Re. "	3rd " "	4 " "	
Natives	1st "	2 " "	2 Rs. "	1st " "	6 " "	
	2nd "	1 Re. "	1 Re. "	2nd " "	2 " "	
	3rd "	5 As. "	Nd "	3rd " "	2 per 10 miles.	

4. All disbursement under these rules shall be made by the Commissioner of Police, to whom witnesses coming from the Mofussil should report themselves on arrival at Madras

5. Witnesses resident in the Presidency town will be entitled only to such actual expenses as they may show to the satisfaction to the Commissioner of Police that they have been obliged to incur in obedience to the process or order of the Courts.

6. Witnesses sent from the Mofussil will be furnished with a certificate by the despatching Magistrate

showing the class to which they belong, the date of their departure, and the correct distance (if any) to be travelled by road and unless such certificate is produced before the Commissioner of Police, that officer may disallow all or any of the expenses claimed

7. Mofussil Magistrates may make reasonable advances to witnesses summoned by the High Court or Presidency Magistrates and requiring such advances to enable them to reach Madras, but shall in every such case note the same on the

certificate referred to in Rule 73. The Commissioner of Police should also be advised of such advances and he will refund the amount to the officer making the advance.

8. Whenever it is practicable for witnesses to travel by rail or steamer they shall be allowed no more than the rates prescribed for those modes of conveyance.
9. *Subsistence allowance may be paid for the days occupied in travelling to Madras as well as in the return journey.* The subsistence allowance at Madras will cease as soon after the conclusion of the inquiry or trial as the means of quitting the town become available.
10. The expenses of witnesses will be paid on production of a certificate signed by the presiding Magistrate, or, in the case of the High Court, by the Clerk of the Crown, setting forth the inquiry or trial in which their attendance was required and the days on which they attended.
11. It shall be competent to the Court before which a witness appears to disallow payment of any expenses on behalf of Government, if for any cause such Court thinks fit to do so.
12. The Commissioner of Police will disallow the whole or part of the expenses of any witness for the defence whose evidence may not seem to him to have been material, unless he is satisfied that such witness has been brought down to Madras against his will and that no compensation for his expenses has been paid or deposited by the defendant. This power does not extend to the case of a witness who has been examined and certified by the Court or Magistrate to have been material.
13. In applying the foregoing rules to public servants to whom the Civil Service Regulations are applicable, the following additional rules shall be observed:—

- (1) If the witness is a public servant, the Court will give him a certificate setting forth that he appeared to give evidence of what had come to his knowledge or of matters with which he had to deal, in his official capacity, the dates on which he appeared and the period for which he was detained, so as to enable him to draw travelling allowance and batta under article 1133 of the Civil Service Regulations.
- (2) When a public servant appears in his official capacity as a witness in a case which does not come under Rule 64 (c, g), in a case in which section 214 (3) or 217 of the Code of Criminal Procedure, as applied, or when a public servant appears to give evidence in any case as a private person, travelling allowance and batta may be paid to him in the ordinary manner, but the Court shall send an advice of all such payments made to him to the head of the office in which he is employed. In this advice the amount paid as batta and the period during which the attendance of the witnesses in Court was necessary shall be stated.
- (3) When an official of the Court of Wards appears in his official capacity as a witness in

a case connected with an estate under the intendment of the Court of Wards, the Judge Magistrate before whom the trial takes place will furnish such official with a certificate showing the days on which he attended to give evidence and the amount of batta and travelling allowance paid to him on that account.

- (4) When a public servant whose emolument is governed by the Army Regulations, and as in any case under Rule 1 to give evidence in his official capacity, he shall be paid the travelling allowance and batta admissible under these rules and shall be furnished with a certificate showing in detail the amount paid. If the amount is less than the amount admissible to him under the military rules to which he is subject, the difference will be paid to him by the military authorities on production of the certificate.
14. Medical subordinates in Local Fund Municipal employ (including Government servants lent to, and paid by, local bodies) attending Court to give evidence in their official capacity, shall be paid the same rates of travelling allowance and batta as would be admissible to Government servants of similar grades under Civil Service Regulations.
15. Subjects of the French Government are in the official employ of that Government the French dependencies in India, appear as witnesses before Criminal Courts in the City may, if such claim be made, be paid expenses at the rates to which they are entitled under the Regulations of their own Government in like cases. Magistrates are required to satisfy any doubtful claim for scrutiny to the Colonel of South Arcot, who is the Special Political Agent for the French Dependencies in India.
16. Officials of the Government of Ceylon appearing as witnesses before Courts in Madras City, if such claim be made, be paid their expenses at the rates to which they are entitled under the Regulations of their own Government in like cases. The claim should be submitted through the official of the department to which the official belongs.

(b) In Mofussil Courts.

1. The Criminal Courts are authorised to pay rates specified in Rule 57, the expenses of plaintiffs and witnesses in cases in which prosecution is instituted or carried on under the orders, or with the sanction of Government, or of any Judge, Magistrate or other Public Officer, or when it shall appear to the Judge or Magistrate presiding over the Court to be directly in furtherance of the interest of public justice also in cases entered in column 2 of the Schedule II, appended to the Code of Criminal Procedure as not bailable, and in all cases in which the witnesses are compelled to attend a Magistrate under the provisions of Chapter XLVI of the Code.
2. (1) For the purpose of these rules, witnesses are divided into two classes, namely, official and non-officials. Official witnesses, as to whom the Civil Service Regulations are applicable, summoned to give evidence as officials are entitled to receive

8. Whenever a Magistrate dismisses a case as frivolous or vexatious, under section 230 of the Code of Criminal Procedure, no travelling allowance or bounty shall be granted to the complainant in such case.
9. The Criminal Courts are authorised to pay the necessary and actual expenses of carriage to a witness travelling by road, in the case of persons whose sickness, age, position or habits of life render it impossible for them to walk, provided the expense incurred under this rule shall in no case exceed annas 8 a mile.
10. To Natives and Europeans graded in the first-class of non-Officials, there may also be allowed the actual cost of carriage hire to and from Court on the days of attendance at Court.
11. Subjects of the French Government who are in the official employ of that Government,

in the French dependencies in India, appears witnesses before Criminal Courts in the Presidency may, if such claim be made, their expenses at the rates to which it

Agent for the French Dependencies in India

12. Officials of the Government of Ceylon appear as witnesses before Courts in Madras Presidency may, if such claim be made, be paid their expenses at the rates to which they are entitled under Regulations of their own Government in India. The claim should be submitted through the of the department to which the official belongs. Sec S K Chariar's Criminal Rules of F pages 18-24

III. BOMBAY.

1. Payment of the expenses of complainants and witnesses, on the part of Government, may be ordered—

(1) by Courts of Sessions in any case which comes before such Courts.

(2) by Magistrates—(a) in every case in which the offence, or any of the offences charged against the accused, is a non-bailable offence; and (b) in cases in which the offence or all of the offences charged against the accused is, or are, bailable, only if the prosecution has been instituted or is being carried on by, or under the orders of, or with the sanction of Government, or of any Judge, Magistrate or other public officer, or if the Magistrate thinks that the prosecution is directly in furtherance of the interests of the public service, or that the person to whom payment is to be made is in indigent circumstances.

Provided always that no such payment shall be made to any witness on the part of Government when the expenses of the attendance of such witness have been deposited in Court under Ss 216, 244 or 257 of the Criminal Procedure Code.

2. Payment as aforesaid may be made at the rates specified below, viz—

(a) In the Mofussil European and East Indian witnesses when summoned to give evidence are to be allowed their actual expenses for carriage, when the same are not in excess of 6 annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence, if they demand the same.

(b) European and East Indian witnesses coming from the Mofussil to attend trials at the High Court are to be remunerated as follows—

(1) *Class A*—Each person coming under this class to be allowed 4 annas a mile as travelling expenses for himself and a servant if a railway be available, and 8 annas per mile if the only means of communication is an ordinary road. 5 Rs. a day for hotel charges while in Bombay, and two rupees for carriage hire for each day he may have to attend the High Court.

(2) *Class B*—Persons under this class to have their actual travelling expenses, 3 rupees a day as board expenses in Bombay, and 1 rupee conveyance hire for each day of attendance at the High Court.

3rd class.—Persons of this class to have their travelling expenses and 1 rupee 8 annas board allowance.

Note—The Magistrate or other authority who witnesses to the High Court shall determine to of the above classes he belongs.

(c) As a general rule, native witnesses of the class *a patels, pandharpeshwar, merchants, and persons of corresponding rank, as all witnesses who are in no way concerned in the case in which their evidence is given, but evidence is required for furthering the justice (such as attesting witnesses to depositions and inquest reports, provided they can write), are to be allowed 6 annas a day as attendance money, and they are also to receive for and other travelling expenses that have actually incurred by them, provided that reasonable*

(d) Native witnesses of the class of *vators and monials, who would not ordinary circumstances voluntarily incur expense on account of special lodging where from home, are to be allowed subsistence at the rate of 4 annas a day, and are also to be allowed for railway and other travelling expenses actually incurred by them provided the same be reasonable*

3. Peculiar cases, i.e., cases not coming under operation of clauses (a), (b), (c) and (d) of 1 are to be dealt with according to their own rank and at the discretion of the Court from subsistence or travelling allowance is demanded.

4. When a witness lives in the same town or village in which the Court, before which he is to give evidence, is situated, the Court may, if it is not satisfied that the witness has incurred by attendance upon the Court, a reasonable allowance should be paid to witnesses by day as it may become due, payment is not to be deferred until the conclusion of the trial. *Bombay Gazette, 1881, Pt. I, p. 204, Nov. 1, 1881.*

Note—S. 541 of the Cr. P. O. and Rules framed by the Government of Bombay under section, gives a discretion to a Magistrate in matter of expenses of complainants and witnesses but such discretion should be exercised not fairly but on sound judicial principles.—O. B. J.

	1st class.	2nd class.	3rd class.
<i>Travelling Expenses—</i>			
By <i>dock</i>	As. 8	} <i>Bona fide</i>	} <i>Bona fide</i>
By rail	per mile. 1st class fare		
		expenses.	expenses.

	per diem.	per diem.	per diem
Conveyance hire ..	Rs. 3	Rs. 2	Re. 1
<i>Boarding Expenses—</i>			
In Allahabad	Rs. 5	Rs. 3	Re. 1-8
On the journey	Rs. 4	Rs. 2	Re. 1

Conveyance hire shall be paid only for the days of actual attendance at the Court.

(ii) The committing Magistrate shall inform the Registrar of the station in life of each native prosecutor and witness for the Crown, and every such person shall be paid his *bona fide* travelling charges and boarding expenses by the way and during his stay in Allahabad, according to such information

(iv) Boarding allowance at Allahabad shall cease as soon as the means of quitting the station become available.

(v) The committing Magistrate may make a reasonable advance to any person desiring to enable him to reach Allahabad. Such advance shall not be refunded by the Registrar, but shall be adjusted under the direction of the Accountant General; but the committing Magistrate shall inform the Registrar of such advance, so that he may be able to pay the rest of the due allowance.

(vi) The committing Magistrate shall report to the Registrar the date of departure of every such prosecutor and witness, and shall instruct each to report himself as directed in clause (i).

VI. OUDH.

Rules (1) The Criminal Courts may pay, at the rates specified below, the expenses

(a) of complainants and witnesses summoned to attend the Courts in all Sessions cases and inquiries into cases triable by the Court of Session or High Court (subject to the provisions of S 216 of the Code of Criminal Procedure in respect of necessary witnesses for the defence)

(b) of complaints and witnesses for the prosecution in all warrant-cases

(c) of witnesses for the defence in those warrant-cases only in which the Magistrate does not consider it necessary to act on the discretionary power granted him by S 237 of requiring deposit of the expenses of a witness before summoning him.

Scales of rates at which expenses may be paid. Class I.—Rs. 3 per diem. All Europeans and Eurasians of the higher and middle classes, and Natives of the higher classes

Class II.—Rupee 1 per diem. Other Europeans and Natives of respectability generally, such as zemindars and tradesmen of the better sort

Class III.—Annas 4 per diem. Natives below the preceding class, but with some status, such as inferior zemindars, petty tradesmen, &c

Class IV.—Annas 2 per diem. All Natives not included in the above classes, such as day-labourers, &c

Government Servants only entitled to travelling allowances. (2) Nothing beyond actual travelling expenses shall be paid to Government servants

By Government Notification No 1513, dated 24th August, 1883, published in the North-Western Provinces and Oudh Gazette, 1st September, 1883, "patwaris and chakdars in the North-Western Provinces and Oudh summoned as witnesses in Criminal Courts shall receive their expenses, at the same rate as persons of their rank of life who are not Government servants"

(3) The Court shall have absolute discretion to determine, for the purposes of these rules, to what class any person belongs.

(4) All persons residing within six miles of the Court may be considered as able to come in and return on the same day, and should therefore be held entitled to one day's subsistence. Those residing from 6 to 12 miles may come in one day and return the next, they should therefore draw two days' subsistence, and so on, an extra day for every six miles, or in other words every witness may be allowed a day's allowance for every 12 miles or part of 12 miles, he has to travel

(5) These instructions have reference only to the time occupied by witnesses in going and coming, and they are to receive the expenses due to their class for each additional day that they may be kept in attendance by the Court in some cases it may be found necessary to order witnesses to appear a second time. It will then be for the Court to determine whether they are justified in remaining at the place where the Court sits, or should return to their homes for the time preceding the second date of hearing. In the former case they may be allowed subsistence for every day they are detained, in the latter may be paid a second time for the journey to and from Court.

Note.—As great difficulty is experienced in the disposal of cases of dacoity in which Nepalese subjects have to attend British Courts, the Lieutenant-Governor has, with a view of securing the attendance of witnesses in such cases from Nepal, been pleased to sanction the payment of the enhanced rates of subsistence allowance, as noted below, to Nepalese subjects in all such cases—

		Per diem.	
		Rs	P.
For Class II		1	8 0
"	III	0	8 0
"	IV	0	4 0

(6) Travelling expenses by railway or by rapid dak by road will be given only when the journey could not, with reasonable care and expedition have been performed on foot; or in the case of persons whose age, position and habits of life render it impossible for them to walk in such cases, in addition to expenses for subsistence.

expenses for travelling shall be given at the following rates:—

(a) when the journey is by rapid dak by road, the actual expenses incurred, up to a maximum limit of 4 annas a mile.

(b) where the journey is wholly or partly by rail.

For natives generally, railway fare by the lowest class.

(2) for Europeans, Eurasians and Natives of superior rank, second-class railway fare; but the Court may in its discretion award first-class railway fare when the persons concerned, from their social position, would ordinarily travel by that class.

Provided that, in cases where railway fare is paid, diet-money will be paid in addition to railway fare only for the number of days the complainant or witness is actually absent from his home.

VII. PUNJAB.

1. All disbursements on account of the expenses of complainants and witnesses attending criminal trials before the Chief Court will be made by the committing Magistrate and will be adjusted by him. The committing Magistrate will determine the class to which each complainant and witness belongs.
2. Except for any special reason in any particular case, complainants and witnesses travelling at public expense will only be allowed to travel by road and charge accordingly, unless the journey can be accomplished more cheaply and expeditiously by rail.
3. The committing Magistrate, when despatching complainants and witnesses to the Chief Court, will instruct them to report themselves to the Registrar of the Court on their arrival at Lahore, and will at the same time report to that officer—
 - (a) the name of each complainant and witness.
 - (b) the class to which he belongs.
 - (c) the date of his departure to attend the Chief Court.
 - (d) whether any, and, if so, what advances have been made to such complainant or witness to enable him to reach Lahore.
4. When the trial in which the complainant and witnesses have appeared in the Chief Court is concluded, the Registrar of that Court will intimate to the committing Magistrate the date of the

arrival of the complainants and witnesses at Lahore, and the date on which it was possible for them to quit the station. The subsistence at Lahore will cease as soon after the conclusion of this trial as the means of quitting the station becomes available.

5. The committing Magistrate may make reasonable advances to complainants and witnesses to enable them to reach Lahore, and, when necessary, the Registrar of the Chief Court will make advances to them at Lahore to enable them to return to their homes. Care should be taken in making these advances that a larger sum is not paid to any complainant or witness than he is entitled to receive under these rules, and before making advances to witnesses for the defence, the committing Magistrate should satisfy himself that such witnesses are material.
- 6.
7. When all the expenses to which complainants and witnesses are entitled under these rules have been paid, the committing Magistrate will submit a bill for the same, supported by the necessary vouchers, to the Registrar of the Chief Court for counter-signature. The Registrar's counter-signature will be sufficient authority to support such charges in the public accounts.

VIII. BURMA.

1. The criminal Courts may at their discretion pay, according to the scale set forth in Rule 3, the expenses of complainants and witnesses either for the prosecution or for the defence (1) in all cases which are cognizable by the Police, (2) in all cases entered in Col 5 of Schedule II appended to the Code of Criminal Procedure as not bailable, (3) in all cases in which witnesses are compelled to attend the Court under Ss 94, 103, 208, 217, 257, and 510, Code of Criminal Procedure, and (4) in all cases where the prosecution is instituted or carried on by, or under the orders, or with the sanction of Government, or any Judge, Magistrate or public officer or in which the presiding officer thinks the prosecution to be directly in furtherance of the interests of public justice.
2. Expenses of complainants and witnesses shall be payable according to the scale set forth in rate 3 on account of their journey to and from the Court

and for the days during which they have been absent from their homes for the purposes of the trial proceedings, &c. Provided that (1) Government officers, who are entitled to travelling allowance under the Civil Travelling Allowance Code, shall not receive their expenses under these rules, and that (2) in cases in which the Magistrate acquits the accused under S 245 or S 247 Code of Criminal Procedure, and is of opinion that the complaint was frivolous or vexatious, the expenses of the complainant shall not be paid.

3. The scale of expenses payable shall be as follows.—

(1) *Ordinary labouring class of Natives.*—The actual railway or steam boat fare to and from the Court by the lowest class; where the journey could not have been performed by rail or steam boat, actual travelling expenses up to a limit of Rs. 2 a day by boat and of four annas a

mile by a road; and the allowance for each day's absence from home of six annas to those who are residents of places other than the place where the Court is held, and of four annas to those who are residents of the place where the Court is held.

(2) *Petty village officers*.—Double the above rates of daily allowance, same rates as above for railway or steam boat fare, or actual travelling expenses by boat or road up to the limit of Rs. 2 a day by boat and of four annas a mile by road

(3) *Persons of higher ranks of life, such as clerks, trades-people, ywathugyis and circle thugyis*.—Second-class railway or steam boat fare to and from the Court or where the journey could not have been performed by rail or steam boat, actual travelling expenses up to a limit of Rs 4 a day by boat and of six annas a mile by road, an allowance not to exceed, except in special cases, Rs 3 for each day's absence from home to Europeans or Eurasians and Re 1 to Natives

(4) *Persons of Superior ranks*.—The actual sum spent in travelling to and from the Court with an allowance according to circumstances, not to exceed, except in very special cases, Rs 5 for each day's absence from home to Europeans and Eurasians and Rs 2 to Native gentlemen

(5) *Witness following any profession such as medicine or law*.—A special allowance according to circumstances

[*Note*.—When the journey has to be performed partly by rail or steam boat and partly by road or boat, the fare shall be paid in respect of the former and mileage or boat allowance in respect of the latter part of the journey]

4. Allowances shall be paid under the orders of the Court and in the presence of the presiding officer and ordinarily at the conclusion of the trial, enquiry or other proceeding. The presiding

5. In cases committed to the Court of Sessions or to the High Court, the Magistrate who commits the case shall note in the list of witnesses the class to which, in his opinion, each belongs.—*Burma Gazette*, April 14th, 1894, Part I p 254

Special rule for Lower Burma.—A criminal Court shall not order payment on the part of Government of the expenses of any complainant or witness whose evidence the presiding officer may consider to be wilfully false, *Bur Gu.* 12th May, 1894 Part IV, p. 456.

Special rule for Upper Burma.—it is left to the discretion of the Courts to pay the expenses of such witnesses for the defence as they see fit. In exercising this discretion it is for the Courts to satisfy themselves that the expenses are paid, of all witnesses for the defence who are properly entitled to them, that is, of all witnesses, whatever be the nature of their evidence, who attended court on subpoena in good faith and without collusion with the accused. The Court should not pay the expenses of witnesses who give evidence that appear wilfully false, or who have been brought to Court with their own convenience, not because they know anything about the case, but because their presence there is desired by the accused or themselves.—*Bur Gaz* 12th May, 1894, Part IV, p. 456.

Note.—S 350 gives the accused an absolute right to have the witnesses recalled and re-examined. No condition is imposed and it is not within the competence of the Magistrate to require him to pay fees. The rules for guidance of Magistrates in such cases is laid down in rule 20, para 870 of the *Lower Burma Court's Manual* Vol II and to rule I (3) of the rules as to payment of witnesses' expenses published at p 137 of Vol II of the *Lower Burma Court's Manual*—8 *Bur. T.* 43

IX. ASSAM RULES.

See *Assam Manual of Local Rules and orders* 1893 Ed. p 158

545. (1) Whenever under any law in force for the time being a Criminal Court imposes

Power of Court to pay expenses or a fine or confirms in appeal, revision or otherwise a sentence compensation out of fine of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution,

(b) in compensation for the injury caused by the offence committed where substantial compensation is in the opinion of the Court, recoverable by civil suit.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Proposed amendment to the section.—In section 545 of the said Code—

(a) For clause (b) of sub section (1), the following clause shall be substituted, namely—

"(b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court."

(d) To sub-section (f), the following clause shall be added, namely :—

"(c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating or of having dishonestly received or retained stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property for the loss of the same, if such property is restored to the possession of the person entitled thereto"

ARRANGEMENTS OF NOTES.

S. 545 - S 308 (1872) = S 41.

I. Scope and Application of the Section.

- (1) Scope of the section.
- (2) Principle on which compensation is paid.
- (3) Nature of the loss for which compensation can be awarded under S 545.
- (4) Ex-ovo compensation should not be awarded
- (5) Compensation, if payable, when the full amount of the fine has not been realised.
- (6) Expenses of witnesses cannot be levied in addition to the fine.
- (7) Are Court-fees (S. 31 Court-fees Act VII of 1871) an integral part of the fine?
- (8) Application of the section.

II. When compensation may be paid.

- (1) Cases in which compensation may be paid
- (2) Cases in which compensation may not be paid.

III. Procedure.

IV. To whom compensation can be paid.

V. Miscellaneous.

- (1) Refund of compensation
- (2) Second offence as opposed to similar offence.
- (3) Remittance of compensation
- (4) Award of expenses to complainant's order recoverable in Civil Court cannot be substituted.

I. SCOPE AND APPLICATION OF THE SECTION.

(1) Scope of the Section,

1. (1) S. 545 does not authorise a Court to award compensation for offences other than those which form the subject of enquiry in the case in which the order is made, still less for offences of which the accused is acquitted Rat 407 22 B 717 2 Weir 715.
2. (2) S. 545 Cr P O. does not apply to such expenses as are incurred in bringing the person of the offender before the Magistrate Rat 609
3. (3) Stamp paid on a power of attorney is not recoverable under S. 31 of the Court Fees Act Substantive allowance and cart-hire for prosecution witnesses cannot be ordered to be paid by the accused If the Court intends to make the accused pay for the expenses of the prosecution, a sufficient fine should be imposed, out of which compensation should be awarded under this section—(92 '96) U. B. 7.
4. (4) Where a person accused of non-cognizable offence is convicted of a cognizable offence, the Court cannot legally direct him to pay the expenses incurred by the complainant under S 31 of the Court Fees Act, as that section applies only to cases where the accused has been convicted of a non-cognizable offence The expenses so incurred can however be awarded to the complainant as compensation under S 545 Cr P O.—Rat 307

(2) Principle on which compensation is paid.

5. (1) The compensation awarded under S 44 Cr. P C to the person injured in consideration of the loss which he has suffered, corresponds to damages awarded in civil proceedings.—5 W R 76
6. (2) The injury must be the direct result of the offence—Sec 2 Weir 716; 3 B. R. 449 764. (97-'01) U B 121. Rat 631; (92-'96) U B. 79.

(3) Nature of the loss for which compensation can be awarded under S. 545.

7. (1) Compensation for loss caused by the inability of the complainant to attend to field-work on account of his time being taken up with the prosecution of the accused cannot be awarded under S 545 Cr P C which deals with expenses incurred in the prosecution and with compensation for the injury only—22 B 438
8. (2) The accused was ordered by the superintendent of the Coast Guard Service to remove certain fishing stakes and was convicted under S 293 I P C for failing to comply with that order, and sentenced to a fine of Rs. 20 of which 15 was ordered to be paid as compensation to the complainant (the Coast Guard) to cover the expenses of removing the stakes Held—that the case not having been dealt with under the obstruction to Fairways Act (XVI of 1891) the order of compensation was illegal as not coming within the terms of S 545 Cr P C—Rat 241.

(4) Excessive compensation should not be awarded.

9. Where the accused was convicted of illegally demanding and receiving money under S 21 (c) of the Fisheries Act, and was fined three times the amount of the illegal receipts, and the Magistrate directed the whole of the fine to be paid to the persons from whom the accused had taken money,

Held—that the amount awarded as compensation was considerably in excess of the amounts to be awarded under Cl (b) of S 545 (1).—5 L B. 50. see 335 P L 1913

(5) Compensation if payable when the full amount of the fine has not been realised.

10. It is open to the Court to provide for the proportionate distribution of the amount realised

as fine, should the full amount be not realised; in the absence of such direction however, the order cannot be construed so as to mean that "nothing should be paid till the full amount was realised," but the claim to compensation should be given priority over the claims of revenue.—2 L W. 22.

(6) Expenses of witnesses cannot be levied in addition to the fine.

11. (1) A Court cannot issue a warrant for the levy of the fees paid to a medical officer for giving evidence in the case from the accused in addition to the fine. The fees, if any, must be awarded only out of the fine levied from the accused.—24 M 305. 5 B R. 976.
12. (2) When expenses properly incurred in the prosecution of a criminal charge are ordered to be paid by the accused under S. 545 such expenses should be paid out of the fine imposed and a separate order for such expenses is improper.—Rat 341. 4 B. R. 877.

(7) Are Court-fees (S. 31 Court Fees Act VII of 1871)—an integral part of the fine?

13. The duty of a Magistrate to order payment of Court and process fees under S. 31 of the Court Fees Act is imperative, whereas under S. 545 of the Code, he has a discretion to award expenses of the prosecution or to refuse to do so. It follows that S. 545 Cr. P. C. must be taken to exclude those expenses in regard to which the Court has no discretion.—21 M. 305. 26 M. 421. But see 5 M. 11. (appx) xviii. 22 M. 153.

(8) Application of the Section.

14. S. 545 may be applied to non-cognizable as well as cognizable cases.—If a Court imposes a fine in any case cognizable or non-cognizable, it may apply S. 545 Cr. P. C.—1 Bur R. 409.
15. When the section applies.—Compensation can be awarded only if the injury is the direct result of the offence for which the accused is convicted. Persons remotely affected cannot be compensated. 2 Weir 716. 2 M 286. 3 B R 764. 3 B R. 449: 20 W R. 38: 1 S 2.
16. Compensation can be paid only out of the fine imposed.—Under S. 545 Cr. P. C. payment of compensation can be ordered only out of the fine recovered, and it is not competent to a Magistrate to award compensation in addition to the fine imposed upon the accused.—

5 B. R. 976. Rat 196. Rat 341. Rat 688. (2 Weir 716: 24 M. 305. 23 C N. 387)

17. Petty cases.—It is improper to award compensation to complainants in petty cases, when pecuniary loss is sustained.—1 Bur R. 538.
18. How to assess compensation.—All legitimate costs, and not only process fees may be awarded under S. 545 Cr. P. C. as well as compensation for the injury caused.—1 Bur R. 409.

19. *When the accused is discharged and the Magistrate was not competent to award compensation for the injury caused.*—The former was convicted and the latter discharged, the Magistrate was not competent to award compensation for the injury caused by the thief the money he had with him and to pay it to the second accused as part of purchase money paid by him.—4 M. 11 (At xviii).

20. A Police Patel cannot act under section.—As the Police Patel's Court, is a Criminal Court under S. 6 Cr. P. C., he has power to make an order under S. 545 Cr. P. Rat 317.

21. Costs which are payable under section.—All legitimate costs as the pleader fees and the stamp and the power of attorney and not merely process fees, may be awarded under this section as well as compensation for injury caused.—(72—92) L. B. 409.

22. *When the accused is discharged and the Magistrate was not competent to award compensation for the injury caused.*—The former was convicted and the latter discharged, the Magistrate was not competent to award compensation for the injury caused by the thief the money he had with him and to pay it to the second accused as part of purchase money paid by him.—4 M. 11 (At xviii).

23. Cr. P. C.

Where a Magistrate convicted the accused of Government tank trees—held—that conviction was for an offence under the Forest Code and not under the Forest Act, the order awarding to the person who discovered the trees was illegal.—Rat 873.

24. When the accused is discharged.—Compensation could not be ordered for injury incurred by the accused under S. 545 Cr. P. C. to an offence of which the accused was discharged.—1 S. 76. 22 B. 717.

25. Sums realised by forfeiture of bonds.—The provisions of S. 545 Cr. P. C. for payment of expenses or compensation do not apply to sums realised by forfeiture of bonds under S. 545 Cr. P. C.—1 Bur R. 412.

26. Rents and profits of the property forfeited to Government.—Compensation can be awarded out of the rents and profits of property of the accused ordered to be forfeited to Government.—Rat 146.

II. WHEN COMPENSATION MAY BE PAID.

(1) Cases in which compensation may be paid.

27. (a) Theft.—Where loss is occasioned to the complainant by the accused stealing his property, it is competent to the Magistrate to award compensation to the complainant out of the fine levied on the accused besides ordering the stolen

property to be restored to the complainant.—R. H. 11.

28. (b) Enticing away a married woman.—When a person is convicted of enticing away a married woman, compensation may be awarded to the husband for injury done to his honour.—37 P. 1878: see also 10 P. R. 1878 and 14 P. R. 1578.

(2) Cases in which compensation may not be paid.

29. (a) Case under S. 188 P. C.—The accused took his sister who was suffering from plague into a town, without informing the authorities about it and was sentenced to a fine of Rs. 20. *Held*, that the Magistrate was wrong in awarding Rs. 10, out of the fine to the municipality as damages for expenses incurred.—*Rat 938*
30. (b) Case under S. 283 P. C.—Where a case of obstruction of a tshery was dealt with under S. 283 P. C. and not under Act XVI of 1881 (Fairways Act), *held* that the order of compensation was illegal as not coming within S 545 Cr. P. C.—*Rat 211*
31. (c) Case under S. 144 Cr. P. C.—Where a person was convicted under S 143 I. P. C. for disobeying the order of a Magistrate directing him to repair a well, *held*, that the Magistrate had no jurisdiction to direct that out of the fine paid the well should be repaired.—*Rat 50*.
32. (d) Where a fine is imposed on a person destroying landmarks, a portion of the fine so imposed cannot be ordered to be paid to the Amin to cover the expense of his deputation to restore the land marks.—6 W. R. 93 See 12 P. R. 1800 2 P. R. 1570.
33. (e) A Court cannot order payment of fine arbitrarily to cover a supposed loss—only for one or other of the objects specified in the section. A Municipality cannot be awarded compensation, where the accused is fined under the Dramatic Performances Act for performance without permission of the Municipality.—(97-01) U B 121.

III. PROCEDURE.

39. Procedure to be followed.—The award of compensation referred to in S 41 Cr P C should be a part of the sentence, and order made upon a conviction for an offence of the nature specified therein, and should be founded upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial.—11 W. R. 53
- [The order should be made when passing judgment. The Court after doing so is *functus officio*, having no further power to make orders in the case.—(92-96) U B 80]
40. Absence of evidence of loss.—Where there was no evidence on the record to show that loss was
41. Grounds to be recorded.—The Sessions Judge should record under what section or on what grounds he orders a portion of the fines inflicted on the prisoners convicted of dacoity to be made over to the complainant.—2 W. R. 55 See 10 P. R. 1893.
42. Court should distinctly specify amount of expenses and compensation.—A Court

34. Appeals.—The Law makes no provision authorising an Appellate Court to award to a complainant any portion of a fine paid by a convict, when the trying authority has refused to award it.—*Rat. 39*.
35. Cases under the Workman's Breach of Contract Act.—An order calling on the accused to pay the complainant a sum of money for his costs cannot be made in a case under Act XIII of 1859.—*Rat 625*.
36. Conviction under the Forest Act.—Where a person is convicted of an offence under rules 21 and 26 framed under S 41, Forest Act of 1878, compensation cannot be awarded in addition to the imposition of fine.—5 B. R. 126
37. Prosecution under S. 34 of the Police Act.—Where the accused was convicted under cl (6) of S 34 of the Police Act, for being drunk on a public road, and the Magistrate awarded out of the fine, Rs. 15 to be paid to the constable, who in arresting the accused had to struggle with him, and in doing so lost his whistle and Rs. 9, *held*, that the order for compensation was unwarranted, as the compensation was awarded for an injury other than one caused by the offence committed.—(92-96) U. B. 79
38. Refund of bribe.—When the accused was convicted of the offence of accepting a gratification for inducing a public servant, by corrupt means, to show favour in his official function and sentenced to imprisonment and fine *Held*, that the Magistrate could not make payment of the sum to the complainant which he might have given to the accused for bribing others.—*Rat. 373*

when making an order under this section should distinctly specify the amount of fees to be paid to the complainant under S 31, Court Fees Act, and the amount of compensation to be paid out of the fine.—1 Bur R 616

43. Compensation in cl (b) should be distinguished from expenses in cl (a) in the order.—When compensation is awarded under this section, the distinction between clauses (a) and (b) of the section should be borne in mind, and the order should show whether it is made to defray expenses of the prosecution, or as compensation for the injury caused by the offence committed.—(92-96) U. B. 290.
44. Compensation to complainant.—The prescribed course under S 308 (= S 545) is to impose a fine, and out of the fine realised to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section.—3 C L 401
45. Change of the Law.—Formerly the Appellate Court could not award compensation under S. 545 Cr. P. C. [See *Rat 39* = Cr R 13 9-70] But it can do so now.—See S 545 (1) Cr P. C.

IV. TO WHOM COMPENSATION CAN BE PAID.

46. **Widow cannot be awarded compensation.**—Where a Magistrate convicted the accused under S 304-A and ordered the fine to be paid to the widow of the deceased.—*Held*, that the order was not legal under S. 545 Cr. P. C.—12 M 352. 21 M 74 (F. B.). 7 B. R. 73. *Con* 36 C 302
47. **Widow and heirs.**—An order of compensation to the widow and heirs of the deceased, is not legal under S 545 Cr. P. C.—*Rat* 703 10 W R 319 *See* 16 C P 180 5 C. P. 45 7 P. R. 1877 *Contra* 17 P. R. 1898 (F. B.)
48. **Mother of the deceased.**—Compensation cannot be given to the mother of the person hurt, who died of the hurt.—6 P. R. 1890.
49. **Husband.**—The Magistrate may give to the complainant husband compensation in the case of his wife being enticed away with a criminal intention 14 P. R. 1895 10 P. R. 1898.
50. **Relation.**—Compensation can be allowed to the person who actually suffers from the offence complained of and not to his relation Cr. R. No 89 of '66 87 P. R. 1866 25 P. R. 1868.
51. **Can be given only to a person directly injured by the offence.**—Compensation can not be awarded to any one excepting the person who has directly suffered by the offence.—10 W R 39 2 Weir 71b *See* Note No 6 above
52. **Compensation must be awarded to specified persons.**—An order of compensation to the "nearest heirs" without specifying who those heirs may be, is not a sufficient compliance with the law.—18 P. R. 1913 17 P. R. 1898 (F. B.) 50 P. R. 1905

53. **Innocent purchaser of stolen property.**—Where the accused was convicted of theft of pony and fined Rs 20 *held*, that the Magistrate acted illegally in directing that out of it Rs 9 11 should be paid to the purchaser and that 1 pony should be returned to the complainant 6 M. T. 241: 3 B. R. 449. 2 Weir 715. 6 M. 28 *See* 3 B. R. 764 2 Weir 716 1 S 2; 20 W. R. 3

Note.—S 545 of the Code of 1882 has not altered the law, as it existed under S 308 of the Code 1872. Under S 545, compensation cannot be awarded to an innocent purchaser of stolen property as the injury to the purchaser is not a consequence of the theft.—2 Weir 716

54. **Remedy for innocent purchaser.**—It is not competent to a Court to award compensation to an innocent purchaser out of the fine imposed under S 545, but under S. 519 compensation may be given out of the moneys found in the possession of the accused.—3 B. R. 704 6 M 2
55. **Witness.**—The accused were convicted of theft of some bullocks and fined Under S 44 the Magistrate ordered (under S 545) the fines, if collected, to be paid to the 6th witness as compensation having to return to the complainant the bullock which he had purchased. *Held*—that the order was bad. The sale to the 6th witness was: "the offence complained of."—7 M. H. (appx) 1

56. **Security of the stolen property.** *held*, that Ss 519 and 545 did not apply to the case, as no injury was caused to the mortgagee by the offence.—*Rat* 631.

V. MISCELLANEOUS.

(1) Refund of compensation

57. **If the conviction is set aside on appeal and a refund of the fines levied is ordered, the only remedy, if the person who received a portion of the money so compensation refuses to refund it, lies in a Civil Court.**—2 Weir 717

[**Note.**—There being no provision in the Code for the refund of the money paid as compensation under S 545 Cr. P. C. the directions contained in the last part of the section should be strictly observed.—(72 '92) L. B. 357 *See* 2 P. R. 1889. 2 Weir 717 *Con* 19 A. 112]

[**Note.**—In 19 A 112 it was held that where the High Court in revision set aside a sentence of fine, compensation paid out of it under S 545, may be recovered under S 547 Cr. P. C.—19 A 112 *See* 25 P. R. 1885. 25 P. R. 1903]

58. **Remedy when order of refund of compensation cannot be enforced.**—When the order for compensation was reversed in revision by the High Court, and the order of refund becomes unenforceable by reason of the money having been paid over to the complainant, before

the result of the revision application to the High Court was known, and the complainant refused to refund, the only remedy, open to the person who paid the money and is entitled to its refund, lies in a Civil Suit.—M. H. C Pro 23rd Mo 1879 *See* 2 Weir 717

(2) Second offence as opposed to similar offence.

59. **Compensation under S 3 of Act VI of 1861 can be awarded only for a second conviction for the same offence and not a similar offence.** 5 P. 1866 54 P. R. 1866. 85 P. R. 1866: 35 P. 1869

(3) Remittance of compensation.

60. **When the order awarding compensation becomes final, and the amount has been recovered it may be remitted (less the cost of recovery) to the person who is entitled to receive it, by money order.**—*Punjab, Civ. A.*—416 G. of 1860

(4) *Inward of expenses to complainant when compensation recoverable in Civil Court cannot be substantial.*

61. Where a complainant cannot recover substantial compensation in a Civil Court, compensation

cannot be awarded under clause (b) of S 545 Cr. P. C. but a sum of money may be awarded to him under cl. (1) of the section to defray the expenses of the prosecution.—15 Cr. 555 (L. B.)

546 At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or subsequent suit. recovered as compensation under section 545

Proposed amendment to the section.—After section 546 of the said Code, the following section shall be inserted, namely:—

"546 A. (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, shall, in addition to the penalty imposed upon him, order him to pay to the complainant—

- (a) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and
- (b) any fees paid by the complainant for serving processes on his witnesses or on the accused.

(2) An order under this section may also be made by an Appellate Court, or by the High Court when exercising its powers of revision in any case in which the Court convicting the accused has by error omitted to make such order."

Notes.

1. Meaning of "take into account."—The expression "take into account" means, that a Civil Court may take into consideration, the compensation awarded by the Magistrate under S 545 and not that the compensation awarded should be deducted from the damages to be awarded.—22 W R 336 (Cr)

2. Apportionment when necessary.—A Court in awarding compensation under S. 545 (1) (b) should, when the compensation is paid to several persons, if only for the purposes of S 546, definitely apportion a certain amount to each.—Cr R 27 of 2-4-03

547. Any money (other than a fine) payable by virtue of any order made under this Code, Money ordered to be paid recover- shall be recoverable as if it were a fine.
able as fines

Proposed amendment to the section.—In section 547 of the said Code, after the word "Code," the words "and not otherwise specifically provided for," shall be inserted

Notes.

1. Any money payable.—e.g. maintenance allowance awarded under S. 459 Cr P C Compensation under S. 250 Cr P C or costs awarded under S 344, Cr. P C or costs awarded under S. 148 (3) *supra*—[See 5 P. L 1901]

2. Recovery of compensation on sentence being set aside.—A First class Magistrate fined the accused Rs 25 each and directed half the fine, if recovered, to be given to the complainant. The conviction and sentence was set aside by the High Court who ordered a retrial. The Second Class Magistrate, on retrial, fined each of the accused Rs 10 and said that "as they had already paid a fine of Rs 25 each, the result of the sentence will be that Rs. 15 will have to be returned to each of them." The complainant having already received half the original fine, the District Magistrate called upon him to refund, but the complainant stated that he had already spent the money and was unable to repay. On a reference being made by the District Magistrate as to how the compensation money could be legally recovered, the High Court held that the decision of the second class

Magistrate amounted to an order to the complainant to refund the sum of Rs 15, and was therefore enforceable under S 547 Cr. P. C.—Rat 213

3. High Court's power to direct refund.—The power of the High Court, as a Court of Revision, to set aside orders awarding compensation (under S 432 (1) (d) *supra*) must be taken to include the power to direct repayment of the money paid as compensation.—12 P. R 1855 See 29 P R 1903.

4. No separate suit necessary to recover compensation paid under a sentence subsequently reversed.—When the High Court directs, in revision, that the fines paid by the accused should be refunded to them. The money, in whosever hands it may be, should be payable to them. Where part of the amount has been given to the complainant as compensation, the amount may be recovered by process under S. 547 without having recourse to a Civil Suit.—19 A. 112; 8 & 25 A. 315; 6 A. 96 7 N 503; 14 P R. 1884. 29 P. R. 1903.

548. If any person affected by judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or decision or other part of the record he shall, on applying for it, be furnished therewith:

Provided that he pays for the same, unless the Court, for some special reason, thinks fit furnish it free of cost

Notes.

1. All prosecutors entitled to copies.—All prosecutors whose charges are dismissed by the Presidency Magistrate are affected within the meaning of S 170 of the Presidency Magistrates Act (IV of 1877) by the order of discharge, so as to entitle them to obtain copies of the order made by the Magistrate and the depositions —[S C 166] A Magistrate cannot refuse copy of the order of discharge on the ground that the case was sent up by the Police and the complainant not having obtained permission under S 493 to conduct the prosecution, was a mere witness and was not therefore "affected" by the order. Every one complaining of an offence who has been injured is affected by the disposal of his complaint within the meaning of this section —[Rat 305]
2. Rights of the accused.—A prisoner is entitled to have copies, of all documents for which he asks and which he thinks necessary for his defence, and a Magistrate acts contrary to law, in determining whether such copies are necessary or not —[14 W R. 77]. S. 276 (=S. 548) and S. 404 (=S. 307) are wholly distinct. An accused person is therefore entitled to a copy of the judgment in his own language, unconditionally under S. 404 (=S. 307) and also to one in the language in which it is written, under S. 276 (=S. 548) under the conditions specified therein.—[Rat 73].
3. When the accused is not entitled.—Accused person is not entitled to a copy of record of the evidence and proceedings in case, merely on the ground of an alleged incommunicable hardship.—[1 M. H. 138]. A "charge" not an order of a Criminal Court by which accused person could be said to be affected within the meaning of S. 548 Cr. P. C. so as to entitle him to copies of depositions where the trial not advanced beyond the examination of prosecution witnesses —[(192) A N 140]
4. Copies of Judgments.—Copies of judgments should be made out at once without waiting written application from persons under sentence —[9 W R 19]
5. Copies of records.—If copies are wanted, a person in confinement, of records of other depositions of witnesses and the documents evidence and final sentences or orders passed Criminal Courts, they can be supplied only stamp-paper —4 M. H. (Appx) 57
6. Power of High Court to revise order refusal.—On a refusal by a Presidency Magistrate to grant copies to a Prosecutor, the High Court can, certainly under S. 15 of the High Courts Charter Act and also under S. 45 of Specific Relief Act, compel the Magistrate to grant such copies.—S C. 166

549 (1) The Governor General in Council may make rules, consistent with this Code and the Army Act or any similar law for the time being in force as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies, or by Court-martial, when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Notes.

1. Civil Courts not subject to control by the Commander-in-Chief.—S. 101 of the

Military Act does not deprive the Civil (as distinguished from Military) Courts of jurisdiction or

British Soldiers committing offences within the limits of those Courts, nor does it render the exercise of their jurisdiction dependent upon the Commander-in-Chief's action.—[S. C. 124]

2. **Conflict of jurisdiction.**—Reg. XX. of 1825 has no force in Hazaribagh. Under the Regulation, the Military authorities can require a Magistrate to hand over to them any prisoner who may be apprehended and brought before him for an offence committed at a place more than 120 miles from a Presidency town; but the proceedings before a Magistrate, when taken at the request of and assented to by the Military authorities are not absolutely void, and the commitment so made is not an invalid commitment—20 W. R. 20
3. **Rules respecting surrender of offenders to Military authorities.**

(a) If, within the fifteen days, or at any time there-

should be tried by a Court-martial, the Magistrate shall stay the proceedings before himself, and if the accused is in his power, deliver him, together with the statement mentioned in S. 519 of the Code, to the authority prescribed in that section.

(b) If after a Magistrate has been moved by the Military authorities to proceed against a person

subject to Military law for an offence for which that person is liable under the Army Act 1891, S. 41, to be tried by a Court-martial, an officer to whose command the person is subject notifies to the Magistrate that, in the opinion of the Military authorities, the accused should be tried by Court-martial, the Magistrate if he has not, before receiving the notice done or made an act or order, (acquitted or convicted in a summons case framed a charge in a warrant case, issued an order for the trial of the accused by a jury, or made an order for commitment), shall stay the proceedings before himself, and if the accused is in his power, deliver him, together with the statement mentioned in S. 519 of the Code, to the authority prescribed in that Section.

(c) Where a Criminal Court and Court-martial have concurrent jurisdiction, it is, as a rule, desirable that the accused should be tried by the latter, but in cases of thefts of arms, ammunitions or other property belonging to the Government, if there is reason to suspect that persons other than the accused, who are not subject to the Indian Articles of War, are directly or indirectly implicated, it may often be expedient for the officer commanding the troops to decide in favour of investigation by the Criminal Court as more likely to assure the discovery and punishment of all the accessories to the offence.—Govt. of India, Home Department, 30th April, 1897.

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

Notes.

1. **Object of the Section.**—"We have inserted a new clause giving Police officers express power to seize property which they suspect to have been stolen. This power is assumed in clause 523, which described the procedure to be followed, with respect to such property when seized, but following the precedent of S. 81 of the Calcutta Police Act, 1866 we think it is better to give the power expressly"—*Sel. Com. Rep.*
2. **Powers under this section cannot be delegated.**—"We cannot entrust a Police officer

3. **Property mixed up with stolen property.**—Sec 550 of Act V of 1898 no doubt gives the police very wide powers with regard to the seizure of cattle alleged or suspected to have been stolen, but it does not extend to the taking away other cattle simply because they are mixed up with the stolen ones

14 P. W. 1809.

4. **Claims.**—The police seized property on suspicion of its being stolen property under S. 550 Cr. P. C., and the Magistrate issued a proclamation before satisfying himself as to the claim of the person in possession. *Held* that it was not incumbent on the Magistrate to decide the claim before issuing the proclamation, as the person in whose possession the property was found has an opportunity of making good his claim to the Magistrate even after issue of the proclamation.—2 S. 32.

in question: (2) He cannot direct the Station Master to detain the property, and the latter cannot be convicted under S. 184 I. P. C. for disobeying orders which are *ultra vires*—16 O. C. 371.

8. (2) Where a Magistrate has reason to believe that a woman is being unlawfully detained but cannot find who so detains her, the proper course for the Magistrate is to issue an order to have the woman brought before him and examine her—*2 Weir 724.*

9. (3) Where a Magistrate ordered the restoration of a woman to liberty, without any finding that she was unlawfully detained by any one, and without ordering any one to restore her to liberty, held that such an order was not contemplated by S 552, and that the proper course would be to issue

an order to have her brought before him and to examine her.—*ibid.*

10. Power of High Court to restore, on reversing an order under S. 552 Cr. P. C.—In England, where a superior Court sets aside an order for restoration of a minor girl to the custody of the guardian, it has the power to restore the status quo ante [*See Rodger v. the Comptrol D'Escompte-de-Paris, L. R. 3 P. C. 465*]. In 16 C. 497, it was however held that it did not follow as a matter of course that the status quo ante should be restored

553. (1) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

554. (1) With the previous sanction of the Governor General in Council, the High Court at

Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter,

may, from time to time, make rules for the inspection of the records of subordinate Courts

Power of chartered High Courts to make rules for inspection of records of subordinate Courts

records of subordinate Courts

Power of other High Courts to make rules for other purposes

Government,—

(a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it, and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines;

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being

(3) All rules made under this section shall be published in the local official Gazette.

Notes.

1. Rule framed by the Madras High Court.—An application for a copy of a

Magistrate's judgment is governed by rule 183 of the Criminal Rules of Practice framed by

the High Court under the powers vested in it by S. 554 subs (2), cl (C) of the Cr. P. C. Such an application need not be accompanied by a search fee of eight annas under the Board's standing order No. 173—35 M. J. 401.

2. Rules.—

(1) **In Upper Burma.**—The Upper Burma Criminal Justice Regulation V of 1892 Sch. XVI.

(2) **Sonthal Perganas.**—The Sonthal Pergana Criminal Justice Regulation V of 1893 S. 4 (VIII) amended by Regulation III of 1899

(3) **British Baluchistan.**—The British Baluchistan Criminal Justice Regulation VIII of 1891 Sch. 320.

555. Subject to the power conferred by section 554, and by section 107 of the Government of India Act, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

Notes.

1. An order under S. 147 supra—should be made in accordance with Form No. 24 of Sch. V.—14 Cr. 303 (C)

Importance of words used in the Schedule. The use of the word "probably" in Form 10 of Sch. V of the Cr. P. C., limits forfeiture to cases in which a breach of the peace is the 'probable' and not merely the possible result of the act of the person bound over.—[22 P. R. 1914]

2.

3. **Forms are to be strictly interpreted.**—A bond executed by a surety in the form prescribed by Schedule V. Form No. 11. Cr. P. C. cannot be forfeited on the principal committing an offence in an independent Native State, in as much as the principal does not thereby make default in undertaking to be of good behaviour towards His Majesty or His Majesty's subjects

[26 P. R. 1918 See 20 P. R. 1878 37 P. R. 130 P. R. 1889.]

Note.—See the bond construed in 36 C 562.

4. **Meaning of the term "if used, shall be sufficient."**—An order under S. 144 was made in Form No. XXI, Schedule V without specifying that its operation is confined to two months or some shorter period from the making thereof. Held, that the order is good having regard to provisions of this section [34 C 807 (F. 2) See 10 C 937; 26 M. 55; 7 A. 44 (F. B.) and ruling 5 A. 17 [Schedule V Form No. XXV II (4)]]

5. **Failure to comply with the forms prescribed by this section.**—Where a warrant under S. 100 Cr. P. C. was drawn up in a printed form used under S. 98 with necessary alterations to make it provisions of the section, held it was a valid warrant [39 C 4 But see 11 C N. 836]. Where summonses under 107 were not in accord with the form set out in Schedule V. No. 12, the order requiring bond-keeping the peace was set aside.—[9 Cr. 179 (See 14 C. N. 78)]

556. No Judge or Magistrate shall, except with the permission of the Court to which Cause in which Judge or Magistrate appeal lies from his Court, try or commit for trial any case in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed a party, or personally interested within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Illustration.

1. As Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Public Law. A is disqualified from trying this case as a Magistrate.

ARRANGEMENT OF NOTES.

S. 536 = S. 535 (1842).

I. Object and Scope of the Section.

- (1) The principles underlying the section.
- (2) Object of the strict rule
- (3) Meaning of the word "case."
- (4) When one member of a tribunal is disqualified
- (5) Scope of the section.
- (6) "and cases."
- (7) Meaning of "Personal Interest."
- (8) Municipal Prosecutions.
- (9) Prosecution under the Opium Act or the Excise Act

- (1) "Local inspection as disqualification"
- (2) "Double Capacity"
- (3) "Expression of opinion in the course of departmental enquiry."
- (4) Where a Magistrate is the sole Judge of law and fact
- (5) Magistrate being himself the initiator of the proceedings
- (6) Cases illustrating the rule
- (7) What does not amount to personal interest.

I. OBJECT AND SCOPE OF THE SECTION.

(1) The principles underlying the section.

1. As explained in the leading case of *Serjeant v. Dale*.—"By the Common Law, a Judge, who has an interest in the result of the suit, is disqualified from acting except in case of necessity, where no other Judge has jurisdiction. The law does not measure the amount of interest in the decision of the question one way, he is disqualified, no matter how small the interest may be. The Law in laying down this strict rule has regard not so much perhaps to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant parties. One important object at all events, is to clear away everything which might engender suspicion and distrust of the tribunal and so to promote the feeling of confidence in the administration of justice, which is so essential to social order and security."—*Serjeant v. Dale* L. R. 2 Q. B. D. 538

2. The law is the same as in England.—The principle of the section follows the well-known maxim "*Nemo sibi esse judex vel sui juris licere debet*" (no man can be his own judge or give judgment concerning his own rights). It is one of the plainest rules of justice and of common sense that no man shall sit as judge in a case in which he has substantial interest. This is the law of this country as much as it is the Law of England.—[2 C. 23 25 W. R. 57 1 Bur 153 12 C. N. 140] It is of the last importance that the maxim that no man is to be judge in his own cause, should be held sacred. And that is not to be confined to a cause in which he has interest. [Dunbar v. Grand Junction Canal 3 H. L. case 710] See Note No. 62 under S. 526 at p. 916 (supra)

Note.—"Whenever there is real likelihood that the Judge would from kindred or any other cause have a bias in favour of one of the parties, it would be wrong in him to act"—Q. v. Rand L. R. 1 Q. B. 230

3. The principle underlying the section.—It is highly undesirable that a Magistrate should

C. J. 484

4. The principle explained.—"What the section shows is that if a Magistrate or Judge is merely connected with a case by reason of his discharging some other public function or is connected with it in some public capacity outside his Magisterial or judicial functions, and orders or directs a prosecution or is concerned with it in some public capacity, he is not, on that ground alone, to be deemed personally interested in the case. But if he is connected with the case in such a way as to be deemed personally interested in the case, he cannot try it as a Magistrate or Judge. The distinction is between having some public or official connection with a case, and ordering and directing a prosecution in some extra-judicial or extra magisterial capacity.—*Per Sturges J. C. J.* in (39) A. N. 74

(2) Object of the strict rule

5. The law, in laying down the strict rule that if a Magistrate has any legal interest in the decision of the case, however small that interest may be, he is disqualified from trying it, had regards not so much to the motive which might be supposed to produce bias in the mind of the Judge as to the susceptibilities of the litigant parties. The object is to clear everything which might engender suspicion and distrust, and to promote the feeling of confidence in the administration of justice which is so essential to social order and security.—20 C. 857 2 C. 23 1 Bur 153; 20 B. 502.

Note.—A Magistrate by making himself a witness has a legal interest in the decision of the case which disqualifies him from trying it; no matter

how small that interest may be"—*Sergeant & Dale* (77) 2 Q. B. D. 555

(3) Meaning of the word "case."

8. The words "trying any case" in S. 558 Cr. P. C. include the hearing of an appeal—(99) A. N. 74; 23 C. 44; 9 N. 81; 1 S. 95. *see* 12 C. N. 438; 22 W. R. 75.

The expression "try any case" in S. 556 is wide

635; *see* Q. v. *Mledge* (79) 4 Q. B. D. 332; Q. v. *Lee* (82) 9 Q. B. D. 394.

7. Revision.—A Magistrate who is disqualified from trying a case by reason of S. 556 is also disqualified from interfering in revision to the prejudice of the accused.—(75) U. B. 1—Q. 37; 5 S. 137.

(4) When one member of a tribunal is disqualified.

8. (1) If any one member of a Bench or Tribunal is disqualified by S. 556, the conviction and trial is void—2 C. 23; 4 W. R. 86.

9. (2) A conviction for a municipal offence by a Bench of Magistrates, one of whom is a salaried officer of the Municipality is bad in spite of the provisions of S. 555 (=556) of the Cr. P. Code.—10 C. 194

10. (3) Where a justice has such an interest as to give him a real bias in the matter, he ought not to sit on the Bench. It is immaterial what part he really takes although it may be that he takes
unanimously
J. D. 173
; 410 R. 1.

Grady 7 Cox C. C. 247; *But see* R. v. *Lon*, 1 18 Q. B. 421; *see* also 3 N. 67]

(5) Scope of the section.

11. S. 558 does not authorise 'treating acquittal as void because Magistrate was disqualified.—The Court before whom an order of acquittal is produced, is not entitled to impeach the competency of the Court who passed the order, on the ground that the presiding officer may perhaps have laboured under a disqualification prescribed by S. 556 Cr. P. C. 8 A. J. 1129; *see* R. v. *Simpson* (14) 1 K. B. 100
12. Assessors having personal interest.—a trial with the aid of assessors, it was discovered after the trial was begun, that one of them was interested or otherwise unfit to sit as an assessor, that in such cases the Sessions Judge ought to choose another assessor and proceed with the trial *de novo* [(12) M. N. 378.]
13. The illustration to S. 556 Cr. P. C.—The illustration to S. 556 Cr. P. C. cannot be read merely meaning that an officer may not try Magistrate, a complaint which he instituted Collector, its evident intention is to debar him when he is himself the *fonset origo* of the prosecution—1 S. 98

(6) Determination of the grounds of objection.

14. In every case, where it is urged that there is a disqualification in the Judge, the circumstances creating the disqualification would have to be clearly determined before effect could be given to the objection, and they ought to be clearly specified in the objection.—48 P. R. 1857
15. Question of fact.—Whether a case falls within the provision of S. 550 Cr. P. C. is a question of fact to be determined with reference to the circumstances of each particular case—9 N. 81

II. PERMISSION OF THE APPELLATE COURT.

16. Personal interest of the Appellate Court no bar.—The fact that both the Magistrate and the Sessions Judge are members of the club and the accused was a servant of the club, does not stand in the way of the Sessions Judge's granting permission to try the case or to commit it for trial—20 A. 181.

17. When permission cannot be granted.—The expression "the permission of the Court" refers to the words "try or commit for trial" and cannot be extended so as to include appeals. A Judge who has directed the prosecution, should not hear the appeal of the accused.

(1. B)

18. Prosecution before a Magistrate whom the accused defamed in his petition for transfer.—The accused in his application before the District Magistrate under S. 624 stated *inter alia*

that the Magistrate of the second class before whom his case was pending, was corrupt and had demanded money from him. On enquiry the District Magistrate found the allegations false and rejected the application. Thereupon the Magistrate asked from the District Magistrate permission to prosecute the accused and at the same time proceeded with the trial which had been started.

whether he was to go on with the case—2 L. B. 223

19. Commitment must be with permission.—This section disqualifies a Magistrate from dealing as a Magistrate with any case in the police investigation, of which he has taken more than a formal part and unless he obtains the permission of the Appellate Court, he is disqualified from committing the case for trial.—2 L. B. 220

III. CONSENT OF THE PARTY.

20. **The General Rule.**—The consent of the accused cannot confer jurisdiction upon a Magistrate who is personally interested within the meaning of S. 556.—7 A. J. 719; 32 A. 635.
21. **Implied assent is of no value.**—The implied assent of an accused, to the hearing of an appeal by the District Magistrate who is disqualified by reason of S. 556 Cr. P. C. is of no value. Consent or want of objection cannot cure a defect in jurisdiction.—9 N. 81, 1 S. 99.
22. **Waiver or consent cannot cure illegal proceedings.**—Criminal proceedings which are substantially bad cannot be cured by any amount of waiver or consent on the part of the accused.—2 C. 23.
23. **Effect of waiver.**—Where it appeared that a District Magistrate was not only actively concerned in the institution of proceedings against a person under Chapter VIII of the Code, but that those proceedings originated in and with

him, in the discharge of his duties as executive head of the District, and responsible in the maintenance of order, held that S. 556 Cr. P. C. debarred him from entertaining an appeal under S. 406 Cr. P. C. without the permission of the Sessions Court, and that the inherent disability of the Magistrate could not be cured by any act of waiver on the part of the accused.—1 S. 99.

24. **Where the Magistrate has exceeded his duties, consent is of no avail.**—Where the trying Magistrate, with the consent of both parties made a local enquiry in their presence to test the evidence adduced but it appeared that he had done much more than viewing the place for the purpose of following or understanding the evidence and had not placed the facts observed on record. Held (Per Chatterjee and Woodroffe JJ) that he was personally disqualified from trying the case within the meaning of this section.—37 C. 340 See 19 M. 263.

IV. PERSONAL INTEREST—MEANING AND CASES.

(1) Meaning of "personal interest."

25. (1) The word "interest" in S. 556 Cr. P. O. does not merely imply intellectual interest, but something of the nature of an expectation of an advantage to be gained or of loss or of some disadvantage to be avoided, by the person who is said to be interested. The fact that the Magistrate, previous to the trial of the case, had officially reported the matter to the Collector after an inquiry, with an expression of his own opinion, does not make the provisions of S. 556 applicable, though it might be a proper ground for an application for transfer.—8 B. R. 947.
26. (2) The words "personally interested" cannot mean that a public officer whose duty it is to see that the law is obeyed is merely, by reason of that duty, a person personally interested in the prosecution and the trial of an offender against the statute law. They cannot refer to any very remote interest in the matter and must refer to some particular and immediate personal interest in the case and its results. The words cannot
- the
fence
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27. (3) The term "personally interested" does not mean merely "privately interested" or interested as a private individual but excludes such interest as a Magistrate, as an executive officer, may take in securing evidence and materials leading to the conviction of the accused.—20 C. 857; 23 C. 857; 23 C. 325; 24 M. 238; see 27 A. 33 (1); 3 P. R. 1895.
28. (4) The words "personally interested" do not exclude pecuniary interest as distinguished from personal interest.—20 B. 502; 9 N. 81.

29. (5) The words "personally interested" are to be contrasted with the following phrase "concerned therein in a public capacity" in the explanation of the section.—8 S. 41.
30. (6) It is hard to define exactly what is meant by "personal interest" and it is difficult to reconcile the various decisions. The question whether a given case falls within the provisions of S. 556 must be a question of fact to be determined by the circumstances of the particular case.—24 M. 238; 9 N. 81.
31. (7) The disqualifying interest must be one attaching to a Magistrate or Judge as an individual, and not one which he derives solely from his official position.—(93) A. N. 79. But see the illustration and note No. 33 below.
32. (8) A Magistrate should not entertain a criminal case in which persons indebted to him are concerned either as complainants or accused * *
- immediately concerned in the credit of the district administration.—C. P. Cr. Cr. Pt. II, No. 59
33. (9) A disqualifying interest may result from a purely official connection with the institution of criminal proceedings.—23 C. 325; 20 C. 857; 24 M. 238; 3 W. R. 29; 22 W. R. 75. 1 Bor. 337.

Note.—The mere facts that the Magistrate had authorised the prosecution, is no bar to his jurisdiction.—24 M. 218.

(2) *Municipal prosecutions.*

34. District Magistrate who is also a member of a Municipal Board.—Is a party interested in the trial of persons whose prosecution he has ordered, for cruelly ill-treating a pair of horses in contravention of the bye-laws of the Municipality.—(86) A. N. 291 (83) A. N. 181; (99) A. N. 74 9 C. L. 193; 10 C. J. 494; 5 S. 137. *Con* 27 A. 25; 24 W. R. 25; 21 W. R. 31; *Queen v. Hanisley* L. R. 8 Q. B. D. 333
35. Trial by Municipal Commissioner.—A Municipal Commissioner acting as a Magistrate, may enquire into a charge of the breach of a bye-law, and may punish the accused party by inflicting a fine.—24 W. R. 25 *See* 18 B. 447. 3 P. R. 1835; 5 S. 137.
36. Justice of the Peace also a servant of the Corporation.—A servant of the Calcutta Corporation was held to have such an interest in the result of a prosecution by the Corporation under S. 77 of Act IV of (1876) as to disqualify him from trying it as Justice of the Peace. 7 C. 322; *See* 4 D. f. (Ap) Gr. 15; 8 D. L. 422 (F. B.). *Dunne v. Grand Junction Canal Co.*, 3 H. L. Cas 793; Q. v. *Gibben* L. R. 7 Q. B. D. 168; Q. v. *Lee* 9 Q. B. D. 304; Q. v. *Meyer*, L. R. 1 Q. B. D. 173; Q. v. *Mileidge*, L. R. 4 Q. B. D. 332; Q. v. *Rand*, 1 Q. B. D. 230. Q. v. *Hanisley*, 9 Q. D. D. 383.
37. The explanation.—follows the remarks of Field J. in 10 C. 194. "A gentleman, who, without remuneration, is merely discharging a public and honorary office, and who has no personal interest in the proceedings of the Municipality, may well be supposed to be free from that bias which the jealousy of the law presumes in other persons immediately interested. Such immediate and disqualifying interest, does, we think, exist in the case of a gentleman whose time and services, are in consideration of a salary given to carry on the work of a Municipal Corporation. The jealousy of law must presume that such a person however
38. Rules governing trial of Municipal cases by Magistrate who is also member or President of the Municipal Board.—It cannot be laid down that the mere fact that a Magistrate is President or Vice-President of a Municipal Committee, would disqualify him from trying an offence under the Municipal Act. But as laid down in 15 B. 412, if a President or Vice-President has taken part in promoting the prosecution, for instance, by concurring in sanctioning it at a meeting of the committee or otherwise, he will be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by every Municipal Commissioner in the affairs of the Municipality.—14 N. 11; *Sergeant v. Dale* [(1877) 2 Q. B. D. 554] [11] Where the accused was tried at the instance of a Municipal Committee for an offence under the C. P. Municipal Act and the case was tried by the Treasurer who was also the President of the Municipality, held that despite the provision S. 556, this was a case which the Tre-

ashtidar should not have tried [20 Cr. 244 (N) & 9 N. 81; 23 C. 328; 23 C. 44.] An accused person was tried and convicted under S. 188 of the Penal Code, of having disobeyed an order of the Municipal Commissioners under S. 236 of Bengal Act V of 1876. The District Magistrate who tried and convicted the accused, was present as Chairman of the Municipal Commissioners at the meeting in which the order was passed. Held that the conviction was illegal and should be set aside.—10 C. 1030 *See* 10 C. 194; 18 B. 412; 15 M. 83 (05) U. B. 1-q 37; 5 P. R. 1590

(3) *Prosecution under the Opium Act or Excise Act.*

39. A Magistrate is not debarred from trying a case under the Opium Act by reason merely of his being in charge of the Excise and Opium administration of the District.—(97-101) U. B. 127 (30) 15 A. 192 (F. B.). (08) A. N. 93 11 A. J. 832
- But when he has himself taken proceedings against the accused under the Excise Act he is not competent to try the case.—(96) A. N. 101; 5 P. W. 1912; 14 C. N. 1xii

(4) *Active part in the investigation of a case.*

40. (1) Where a District Magistrate took an active part in the investigation of a case, he was held not to be competent to have it tried by himself.—14 Bur. R. 335; 24 M. 238; 5 O. N. 864
- 40A. (2) Where it appeared from the judgment of a Magistrate and the evidence in the case, that he himself initiated the proceedings under S. 151 and 150 I. P. C. which he, as Magistrate, had subsequently tried and that he took an active part in the dispersal of the unlawful assembly, and had pursued and directed the pursuit of the members of that assembly, and that subsequently he took pains to collect the evidence, showing the connection of the accused with the unlawful assembly and the keeping of armed men, in which they were afterwards convicted, held that in these circumstances, the Magistrate should not have tried the case himself, as he had initiated and directed the entire proceedings and as he could be regarded as being personally interested in them.—20 C. 857; 20 W. R. 70
41. (3) A Magistrate taking an active part in forwarding the Police inquiries and collecting evidence against the accused is disqualified from trying the accused. A disqualifying interest may result from a purely official connection with the institution of criminal proceedings.—23 C. 324 (331); *See* 20 W. R. 70; 15 C. P. 192; 10 C. N. 441.
42. (1) As a general rule, it is undesirable that a Magistrate who by local investigation while on tour, having himself discovered the existence of crime, and collected or ascertained evidence in support of it, there-after directly recommends or instigates the institution of proceedings against it, should try the supposed criminal.—8 N. 1 8 C. P. 26; 9 N. 81.
- [Note.—But the section does not disqualify a Magistrate from dealing with any case in the

police investigation of which he has taken not more than a formal part.—2 L. B. 299; 19 Har. R. 150.]

(5) *Effect of granting sanction or making complaint.*

43. (1) A Sessions Judge who has given sanction against the accused, that he should be tried for giving false evidence may hear an appeal from conviction of the accused for that offence, but it is not desirable for him to do so.—39 P. R. 1884
44. (2) A Sessions Judge who makes a complaint before a Magistrate is not incompetent afterwards to try it without the aid of a jury, if he has no personal or pecuniary interest in the subject of the charge.—13 W. R. 60—4 B. L. 15
45. (3) A Sessions Judge is not disqualified to hear appeal, when prosecution was ordered by him as District Judge. See Note No 14 under S. 457 (p. 837 *supra*)
46. (4) A Magistrate sanctioned the prosecution of the accused for offences under Ss 463, 471, 219, 511 I. P. C., and his order was, on appeal, confirmed by the District Judge. The petitioner was thereupon tried by a Subdivisional Magistrate and was convicted. Held that the Sessions Judge ought not to have heard the appeal from the conviction.—17 C. N. xi

(6) *Magistrate holding preliminary enquiry under S. 202 Cr. P. C.*

47. A Magistrate holding preliminary enquiry under S. 202 Cr. P. C. is not disqualified from trying the case himself.—4 C. N. 604 24 B. 167 See 13 C. N. ccxxviii Con 23 C. 325 1 L. B. 86

(7) *Local Inspection as disqualification.*

48. Where a Magistrate trying a case of riot, made a local inspection of the scene of the alleged offence and was influenced by such investigation in arriving at his finding in the case. Held that by so doing the Magistrate had made himself a witness in the case and disqualified to try it.—[19 M. 263. 21 C. 920] Where a Magistrate has in the course of the local inspection done much more than viewing the place, for the purpose of following or understanding the evidence, held he was disqualified from trying the case.—[37 C. 340] As a general rule however, a Magistrate is competent to inspect personally a locality in order to test the correctness of the evidence and plans of the locality submitted in the case. Such an inspection would not disqualify him from trying the case.—[13 P. R. 1901. See 15 C. N. 414. 1 P. W. 1910] Where a Magistrate inspected the locus in quo and stated in his judgment what he saw when he inspected, held that, having regard to the amendment of the law by the addition to the explanation to S. 556 of the Code, the present case was not governed by the case reported in 19 M. 263.—[2 Weir 723: see 2 Weir 727 (728)] A Magistrate is entitled to make a local inspection for the purpose of

explaining the evidence that has been given before him, but the law casts an obligation on him to make an accurate note on the record of what he had seen and the impression that has been created on his mind relative to the evidence already given. In a case where a Magistrate made a note of the case

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C. N. 181. 3 C. N. 607. 9 C. N. ccxxii. 14 C. N. xciv. See 3 L. A. 239—26 W. R. 55].

[Note.—“The last portion of the explanation and the illustration is amended to meet the objections raised in 23 C. 328 and 19 M. 263.”—Statement of object and reasons The statement follows 19 A. 302].

49. Local! san penden alleged calling of a duran, the Magistrate went to the scene of occurrence accompanied by a partisan of the complainant and held a local enquiry into a matter, which though not the subject of the complaint against the accused, could nevertheless be imagined by the accused to be such. In the circumstances, the case was directed to be transferred.—12 C. N. 748
50. Local Inspection is not a necessary disqualification.—A case cannot be decided merely on an observation made by the Court locally. But if in looking at the place in order to understand the evidence, the Magistrate comes to the conclusion that the description of the place as given in the evidence is erroneous or false, he is not precluded from holding that the facts
- 9 C. 363
- [Note.—Where there is a dispute as to the exact spot where the occurrence is said to have taken place, the Magistrate will be wise to defer his visit until he has heard the whole of the evidence.—21 C. 920]
51. Local Inspection should not be of the nature of a police investigation.—“Under no circumstances can it be right for a Magistrate who is trying a case to hold a kind of Police investigation, questioning all kinds of people and hearing all kinds of statements, which must more or less influence his mind, which are made by irresponsible persons and are neither recorded nor made in the presence of the accused.—C. P. C. Cr. Part V, No. 14
52. Local inspections in cases under S. 147 Cr. P. C.—The rule that in Criminal cases, Courts are justified in holding a local inspection, only in order to explain the facts appearing in evidence, does not apply to cases under S. 147 Cr. P. C., nor is there anything in the law to prevent the presiding Magistrate from making an investigation himself, provided that he records what he saw and does not set upon hearsay evidence.—15 C. J. 414.

(8) Double capacity

53. (1) An officer before whom, whilst acting in a particular capacity, an offence under S 228 P. O. is committed can not in another capacity, take up and try the offence.—12 W. R. 15; 24 W. R. 1.
54. (2) But a Magistrate can try an accused person under S. 174 P. C. for disobedience of a summons issued by him in his capacity of *mamlatdar*.—Cr. R. 28 of '93. But see 22 P. R. 1879
55. (3) A Sessions Judge who in his extra-judicial capacity, on perusal of certain records, expressed an opinion that a certain witness might be tried for perjury—*held*—that the latter should not be tried by that very Sessions Judge on being committed to the Sessions.—2 Shome 35.
56. (4) District Magistrate also chairman of the Municipal Commissioners See Note No. 39 above.
57. (1) Where the Cantonment Magistrate, as the Cantonment Small Cause Court Judge issued the warrant in respect of which the obstruction occurred—*Held* that he was not debarred by reason of S. 556 from subsequently trying the case of obstruction under S. 156 I. P. C.—S S. 41 22 P. R. 1879.
58. (6) Where a District Magistrate, in his capacity as Inspector of Factories, sanctions a prosecution he is disqualified under S. 556 Cr. P. C. from trying the case.—21 Cr. 359 (P).
- 58A. (7) When a District Magistrate sanctions a prosecution under S. 18 (f) of the Arms Act, he is disqualified from trying the case.—9 C. P. 26

(9) Expression of opinion in the course of departmental enquiry.

59. A Magistrate is not disqualified from trying a case, merely by the fact that in the departmental enquiry in the case, he forwarded the papers to the Collector with his opinion that there was apparently sufficient evidence to justify criminal prosecution.—4 B. R. 512. 2 Weir 729

Note.—It is generally expedient that a Magistrate who, as an Assistant Collector, had supervised a departmental enquiry against a subordinate, should not try the criminal case against the same person.—Rat 631.

When the servant and the wife of the Magistrate are concerned in the case—The complainant (a servant of the Magistrate) accompanied the Magistrate's wife driving a dog-cart when the accused passed by driving his tonga recklessly and furiously, *held* the Magistrate was incompetent to try the case.—11 B. 572. See however.—9 B. 172.

(10) Where a Magistrate is the sole Judge of law and fact.

60. Where a Judge is the sole judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters in his judgment not stated on oath before the Court in the presence of the accused, and that by so doing he makes himself a witness in the case, and, therefore, rendered himself incompetent to try it.—19 B. 253; 21 Cr. 45 (Pat); see also 21 C. 557; 21 C. 187; 2 C. 105; 21 P. L. 1904

(11) Magistrate being himself the initiator of the proceedings.

61. (1) Where on a report being made by a Custom Official, the Cantonment Magistrate wrote "A is to blame Prosecute A" and then proceeded to try the case, *held* that the Magistrate should not have tried the case himself.—21 Cr. 359 (P) See 21 Cr. 359 (P) = 1 L. 35.
62. (2) The trial of an offence under S. 48 of the Indian Excise Act (XII of 1896) is liable to be set aside under S. 556 of Act V. of 1894 where the Magistrate himself, in his capacity of *Tehsildar*, had ordered the prosecution of the accused and the search of his house on the report of an opium contractor who was neither a Collector nor a Excise Officer.—61 P. L. 1912.
63. (3) Where a Magistrate as President of the Ootri Sub-Committee orders a prosecution for evading the payment of Ootri, he cannot himself try the case.—7 A. J. 749
64. (4) Where the Forest Divisional Officer asked he was disqualified from hearing the appeal and a conviction by the *Tehsildar*.—9 N. 51.
65. (5) A District Magistrate who sanctions the institution of the proceedings under S. 13 (f) of the Arms Act is disqualified from trying the case.—9 C. P. 26
66. (6) Where the police reported a case of file complaint for orders to the Magistrate, *held* that the latter was not precluded from trying the accused under Ss. 211 and 182 I. P. C. the complaint to the police not being a contempt of the authority of the Magistrate.—30 P. R. 1882
67. (7) Where a Magistrate took active part in the prosecution of the prisoners, and recorded the evidence of the material witnesses preliminary to deciding whether the case should go to trial or not, and by whom it should be tried, it was *held* that he was not a proper Court to hear the appeal from the conviction in the case.—22 W. R. 75
68. (8) A Magistrate, authorised by the Collector of a District to prosecute offenders against the Stamp Law is not competent to try them for the same offence.—[3 C. 622 See (84) A. N. 37.]
69. (9) Where a Cantonment Magistrate warned an accused that he must not tie his buffaloes in a certain spot, but the accused persisted, *held* that the Cantonment Magistrate though not incompetent to take cognizance of the offence was not competent to try the case.—8 P. R. 1905
70. (10) Where a Magistrate as a Chairman of a Local Board, issued notice on the petitioner to remove a certain obstruction, but the petitioner made representations against the notice without effect and the Magistrate subsequently initiated proceedings under S. 133 *Supra*; *held* that the Magistrate's concern with the case was not merely of a public capacity so as to take the case out of S. 556 Cr. P. C.—10 C. J. 484; See 3 P. R. 1911 5 P. R. 1896.
71. (11) The Sub-divisional Officer who was also the manager of an estate under the Court of Wards

drew up proceedings under S. 145 in respect of a piece of land in which the estate claimed an interest, and refused the application of the opposite party for transfer, *held* that the conduct of the Magistrate showed his lack of appreciation of ordinary principles which should guide judicial officers in matters of this kind.—9 G. N. cccxxv. See 28 G. 297. 10 G. N. 775.

72. (12) A Magistrate, who takes cognizance of an offence of mischief by cutting timber from the forest has no jurisdiction to pass an order of attachment of trees, which form the subject of the alleged offence.—37 G. 221; See 10 G. N. 775

(12) Cases illustrating the rule.

73. Where the Magistrate is himself the complainant.—The Magistrate and V, the accused, were travelling together in a Railway carriage. The Magistrate requested V to desist from smoking. The latter however contemptuously refused to do so. The Magistrate arrested V and subsequently tried and convicted him under S. 35 of the Railway Act (IV of 1879) *held* that the Magistrate was disqualified from trying V.—Rat 339

- 73A. Magistrate who makes an order under S. 144.

Cannot try a person for a breach of that order.—84 M. 262 Rat 904

Note.—Similarly a Magistrate who has made an order under S. 133 Cr. P. C. cannot himself try and convict the person directed to remove the nuisance for disobedience.—(83) A. N. 222

- 73B. Sessions Judge who, as District Judge ordered an enquiry under S. 476—is not legally debarred from trying the case or hearing an appeal nor is he personally interested in the case within the meaning of S 556 Cr. P. C.—70 C N 708

74. Trying Magistrate being master of the complainant.—The mere circumstance that a trying Magistrate is the master of the complainant, does not deprive the Magistrate of his jurisdiction, but it is expedient that such a complaint should be referred to another Magistrate.—9 B. 172.

75. Magistrate who gave information to the police and directed enquiry.

(1) under the Excise Act cannot be said to have such connection with the proceedings antecedent to the prosecution as would disqualify him from trying the accused or committing him for trial.—11 A. J. 552. see 15 A. 192 (F. B.)

(2) Where the Magistrate has merely laid before an Inspector of Police, certain information and directed the Inspector to make an enquiry on the basis of that information, and the prosecution was instituted in the ordinary course by the investigating Police officer, *held* that the Magistrate has not directed the prosecution of the accused, and his jurisdiction to try the case was not taken away by S 556 Cr. P. C.—(94) A. N. 95 (99) A. N. 74. 32 A. 631

76. Appeal heard by the District Magistrate who directed the accused to be prosecuted.—Where a District Magistrate as Deputy Commissioner on reading the report of a Forest Divisional Officer, formed an opinion that the accused who was a Mucadum had made a deliberately false report and directed his prosecution before a Subordinate Magistrate—*held*—that under the circumstances he was disqualified from hearing the appeal preferred before him against the conviction by the Subordinate Magistrate.—D. N. 51. see 1 S 98.

Note.—Where a Magistrate did not take action under S 190(1) (c) or order a local investigation *held* he was not incompetent to hear an appeal from a judgment ultimately convicting the accused, merely because he, without expressing any opinion hostile to them, summoned them to answer a charge in his capacity as Magistrate in charge of the criminal business of the *subordinate* subdivision.—36 C 569

77. Magistrate interested as a litigant.—At a special Sessions for appeals against a poor rate, the Chairman of the Magistrates, who was himself the applicant in one of the cases for hearing, took part in the decision of all the cases except his own. When his own case was called on, he left the bench, and went to the body of the Court and conducted the case himself. On objection, *held*, that the Chairman being a litigant similar to the other matters in Court, was disqualified from acting as a justice, and that the orders were void.—R. v. Great Yarmouth JJ 5 Q. B. D. 523.

78. When the magistrate was himself obstructed.—By reason of the accused sitting on the wrong side of a road, he should not have tried and convicted the accused.—Rat 321.

79. A Magistrate being a share-holder of a company—cannot try the case of an employee charged with criminal breach of trust as a servant of that company.—20 H. 502 See 8 H. L. 422 (F. B.) See *Hammond* D. L. T. 423

80. Magistrate of the District on account of being the head of the police—of the District, is not debarred by reason of S 556 from trying a person accused under S. 29 of the Police Act 1901, of a breach of the orders of a Reserve Inspector of Police.—22 A. 310

81. Mere initiation of proceedings under S. 190 Cr. P. C. in his magisterial capacity—does not debar the Magistrate (who is also Chairman of the Municipal Board) from trying the case.—99 A. N. 74

- 81A. Judge deciding a counter case whether debarred from trying.—See Note No. 77 under S 526 (p. 118 *supra*)

82. Strong opinions passed previously to disposal of the case in his newspaper by a Municipal Commissioner does not preclude him from trying the accused.—21 W. R. 31

83. By omission to record statements by an accused person in open Court.—The Magistrate does not make himself a witness and thereby disqualify himself from trying the case.—24 C. 199

84. Magistrate belonging to a community whose feelings had been outraged.—A Mahomedan Magistrate whose order for closing of a *Shukra* shop by a person has been set at defiance by the accused, ought not to try the complaint on behalf of other Mahomedans against such person, especially when the dispute had been transferred into one of a religious nature and the religious feelings of Mahomedans are supposed to be outraged.—20 P. W. 1012.

(13) What does not amount to personal interest.

85. (a) Where certain persons made an oral com-

plaint his own evidence as to the circumstances attending the making of the oral complaint at his house, and he was duly cross examined—held that the Magistrate could not be deemed "personally interested" in the case.—27 A. 37 (15); See 16 A. 112 (P. H.); L. R. 8 Q. B. 1361.

86. (b) The proceedings of a Magistrate who tries

prisoners charged with having committed offences under ss 31 and 35 are not illegal and with jurisdiction merely because the prosecution, (with the sanction of the Registrar to whom he was subordinate), instituted against the accused by the same Magistrate in his official capacity.—17 W. R. 39 [P. H. 2 Q. B. 1 Ser R. 151]

87. (c) Where the Acting Judge held at one time, while practising as a barrister, a brief for or for the company, the Court could not take the principle that a Judge because of this reason will be disqualified from trying the case.—10 C. N. 610.

88. (d) Where the Acting Judge held at one time, while practising as a barrister, a brief for or for the company, the Court could not take the principle that a Judge because of this reason will be disqualified from trying the case.—10 C. N. 610.

557. No pleader who practises in the Court of any Magistrate in a presidency-town or district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

Note.

1. Appointment of pleader as Presidency Magistrate.—After the G. O. 1809, held

pleader in the Court of any Magistrate of Presidency town or district shall sit as a Magistrate

In such Court or in any Court within the jurisdiction of the Code and that the appointment of a pleader to act as a Magistrate by any provision of the Code. The Acting Presidency Magistrate, though a practising pleader when he was appointed, gave up practice on his appointment and was not practising at the time the conviction was recorded and sentence passed. The action taken on application to him.—23 B. H. 100

558. The local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territory administered by such Government, other than the High Court established by Royal Charter.

559 All powers conferred by this Code on the Governor General in Council or on the local Government may be exercised from time to time as occasion requires.

Proposed amendment to the section.—After section 559 of the said Code, the following section shall be inserted, namely:—

(1) The powers and duties of a Judge or Magistrate under this Code may, subject to any other provision therein contained, be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purpose of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge "

Officers concerned in sales not to purchase or bid for property. 560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions with respect to offence of rape by a husband shall— 561. (1) Notwithstanding anything in this Code no Magistrate except a Chief Presidency Magistrate or District Magistrate

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence.

(2) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer, with respect to such an offence as is referred to in subsection (1), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation

Proposed amendment to the section.—After section 561 of the said Code, the following section shall be inserted, namely:—

561 A Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court."

Note.

1. Investigation by a police officer below the rank of Police Inspector.—Where an offence to which the provisions of S. 561(1) (a) Cr. P. C. applied had been taken cognizance of by a District Magistrate, the fact that the investi-

gation into the offence had been concluded by an officer below the rank of a Police Inspector was not a material irregularity which would vitiate the subsequent proceeding.—(95) A. N. 9.

First Offenders

562. In any case in which a person is convicted of theft in a building, dishonest misappropriation, cheating, or any other offence under the Indian Penal Code punishable with not more than two years' imprisonment before any Court, and no previous conviction is proved against him, if it appears to the Court before whom he is so convicted that regard being had to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, and during such period (not exceeding one year) as the Court may direct, to appear and receive sentence when called upon, and in the meantime to keep the peace and be of good behaviour:

Provided that, where any first offender is convicted by a Magistrate of the third class or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

Proposed amendment to the section.—For section 562 of the said Code, the following section may be substituted, namely:—

"562. (1) In any case in which a person is convicted of an offence punishable with imprisonment for term than three years, or of an offence punishable under any of the following sections of the Indian Penal Code, namely 317, 325, 335, 360, 361 or 129, and no previous conviction is proved against him, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances under which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour.

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 399.

(2) An order under this section may be made by any Appellate Court, or by the High Court when exercising its powers of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order and in lieu thereof pass sentence on such offender according to law.

Provided that, when the order under this section is made by a Magistrate acting otherwise than under section 34, the High Court shall not, under this sub-section, inflict a greater punishment than might have been inflicted by a Presidency Magistrate or Magistrate of the first class.

(4) The provisions of section 122 shall, so far as may be, apply to all sureties offered in pursuance of the provisions of this section."

Notes.

I. OBJECT AND SCOPE OF THE SECTION.

1. **Object of the Section**—(1) "I fancy the idea of the Legislature in framing S. 562 Cr. P. O., was that sometimes, offenders (and in especial, youthful offenders) without being persons of depraved character, may on occasion succumb to sudden temptation, for example, a poor youth without an anna in his pocket sees suddenly displayed before him, some property which is worth his stealing. He, having never previously committed any crime whatever, succumbs to temptation and steals the property and is caught. The Legislature very humanely and very properly allows the Magistrate in such a case as that, to give the young man another chance, and to deal with him under S. 562 Cr. P. O.—19 P. R. 1916
- (2) This section is a tardy recognition of a principle well established in England. It is one of the wisest features of the new Code, but being a provision hitherto entirely unknown to Indian Law may not be properly understood at first by lower ranks of Magistrary.—8 M. J. 197.
2. **S. 562 Cr. P. C. does not apply when the accused has been convicted.**—Where an accused person has not only been convicted but also sentenced, the provisions of S. 562 Cr. P. C. become inapplicable to the case.—20 Cr. 392 (A)
3. **Section must be strictly interpreted.**—When an Act gives a special power, that power must be limited to the purpose for which it conferred.—[N. 18 (19). 1 H. R. 857, 7 C. 15 12 M. 297] It is an evasion of the law to treat as aggravated an ordinary offence, and then introduce a different jurisdiction or a lower scale of punishment.—[4 N. 15 (5 C. 717 12 M. 54) B. 502 19 B. 340; 5 C. N. 372; 13 P. L. 1915]
4. **Discretion of the Court not crystallized by the terms of the section.**—In order to give a Court jurisdiction to release an offender under this section, there must co-exist two conditions precedent, there must be no previous conviction proved, and the offence must be one of those specified in the section. If these conditions are fulfilled, the Court has jurisdiction, the exercise of its discretion, to act under the section. But in exercising its discretion, the Court must have regard to the points specified in the section, viz to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances under which the offence was committed. The intention of the legislature is not to make it essential that the offender must be young, that the offence must be trivial, and that there must be extenuating circumstances but merely to indicate the lines within which the discretion of the Court should be exercised.—2 L. B. 65 (F. B.), 6 C. N. 1916

5. S. 562 should be applied to petty cases.—In a petty case arising out of a squabble between two girls of 16 and 14, the younger girl was convicted of slapping the elder's cheek and pulling her hair and was sentenced to seven days' rigorous imprisonment. *Held* that the case should have been dealt with under S. 562 Cr. P. C. [12 Cr. 242 (L. B.)] Where the person is in a good position in life, he should rather be dealt with under this section than be whipped [9 P. W. 1907]
6. Insane persons.—The section does not apply to the case of insane persons. A Magistrate who convicted the accused under S. 304—A. 1 P. C. has no power also to pass an order under S. 562 Cr. P. C. Under S. 341 Cr. P. C. he should, on conviction, have merely reported the case to the High Court for orders.—11 M. T. 404.
7. The "term of imprisonment" and not the "nature of the offence" is test for applicability.—Where a boy of 18 years was convicted under S. 324 I. P. C. read with S. 511 I. P. C. and the Magistrate ordered him to execute a bond with a surety under this section. *Held*, the object of this section was to provide a lesser and an alternative remedy for a certain class of cases. Though the maximum sentence under S. 324 I. P. C. is three years, an attempt to commit the offence is only punishable with imprisonment for 18 months. The term of imprisonment and not "the nature of the offence," being the test as to the applicability of this section, in cases as the present, the order of the Magistrate was legal.—3 L. B. 30
8. Interpretation of the Section.—In order to enable a court to exercise the power conferred by S. 562, it is not necessary that the offender should be young, that the offence should be trivial, and that there should be extenuating circumstances. The mention of these conditions and of the character and antecedents of the offender merely indicates generally considerations with regard to which the discretion of the Court should be exercised in dealing with first offenders who are convicted of any of the offences specified in the section.—2 L. B. 65.
9. Scope of the Section.—"I am clearly of opinion that the word 'cheating' in S. 5 criminal and are intended under S. 404 as well as under S. 403 I. P. C. Similarly the word 'cheating' in the same Section covers the offence of cheating in all its forms and is intended to include offences punishable under S. 418, 419, 420 as well as under S. 417 of the Indian Penal Code."—*Piggott J.* in 12 A. J. 465. *Con* 23 P. W. 1908
- [Note per contra.—See 562 is not in terms applicable to convictions of cheating and thereby dishonestly inducing delivery of property under S. 420 I. P. C. or of using as genuine a forged document under S. 471 I. P. C.—17 B. R. 921 41 M. 533 22 Cr. 150 (P) 23 P. W. 1906 10 P. R. 1911 21 Cr. 468 (Pat) 3 L. B. 95 (F. B.).]
10. Cases of theft.—The offence of stealing a cow and taking it to a slaughter yard cannot be

regarded as a light one calling for lenient treatment under S. 562 Cr. P. C.—[10 S. 185]. Theft by a servant under S. 381 I. P. C. is not one of the offences included in S. 562 [1 N. 139]. The word 'theft' in the section refers to theft in its simple form [23 P. W. 1905]. S. 562 Cr. P. C. is inapplicable to the case of an accused, who has been convicted of an offence of theft of his master's property, for he is liable to punishment under S. 381 and not S. 380 I. P. C. *Held* also that the accused had aggravated the offence by making imputations on the chastity of the complainant's wife.—[13 P. L. 1913]

11. Offence of retaining stolen property.—The offence of receiving or retaining stolen property is not one of those offences mentioned in S. 562 Cr. P. C. as it is punishable under S. 411 or S. 414 I. P. C. with more than two years' imprisonment.—2 B. R. 343 1 L. B. 150
12. Criminal Breach of Trust.—A person convicted of Criminal Breach of trust cannot be released on probation under this section.—7 B. R. 14: 111
13. Offences under Ss. 454 and 308 I. P. C.—When a person is convicted both under Ss. 454 and 350 I. P. C. no order can be made under S. 562 Cr. P. C. as a person convicted under S. 454 I. P. C. not coming under S. 562 cannot be released on executing a bond, although the other offence is referred to in this section.—2 Weir 731 (*Krishna*)
14. S. 562 does not apply to a charge of house-breaking.—S. 562 Cr. P. C. does not apply to the case of a person convicted of house-breaking.—18 Cr. 409 (M)
15. Lurking house-trespass.—S. 562 does not apply to a case in which a person is convicted of an offence under S. 437 I. P. C.—15 C. P. 11 19 P. W. 1910.
16. Section applicable to adults.—See 562 is not restricted to juvenile offenders only.—Where the accused were charged with theft of a quantity of wood, about 138 mds valued between Rs. 12 and 50 and had been about 2 months in the lock-up and there was no previous conviction standing against any of them. *Held* that the Magistrate had jurisdiction to take action under S. 562 Cr. P. C. even though none of the accused (except one) was under the age of 30.—11 P. R. 1916 2 B. R. 517 24 A. 306: 2 L. B. 314 (O4) C. B. 7 18 Cr. 469 (M)

[Note.—Under S. 562 Cr. P. C. the first offender with a past good character and antecedents, need not necessarily be a youth, such an offender may be advanced in age. The first essential is that the accused must be a first offender, and if he is one, the extenuating considerations which entitle him to the indulgence, are his youth, character and antecedents.—2 L. B. 817]

17. The Section does not apply to conviction under the Railways Act.—This section applies only when a person is convicted of one of certain offences punishable under the Code, and not of an offence under the Railways Act.—1 N. 139.

II. MAGISTRATE WHO MAY ACT UNDER THE SECTION.

18. **Second class Magistrate.**—A second class Magistrate who had not been specially empowered by the Local Government to exercise jurisdiction under S. 562 Cr. P. C. cannot act under the first part of the section, although he has been invested under the former Code with all the powers specified in the fourth Schedule of the Code which contained no provision corresponding to S. 562 Cr. P. C.—2 Weir 731 (*Dunagan*).
19. **Powers of the Magistrate to whom case is submitted under S. 562 Cr. P. C.**—A Magistrate to whom proceedings are submitted under S. 562 Cr. P. C. has authority, if on perusing the evidence, he comes to the conclusion that the accused is clearly not guilty, to acquit him—(1915) 2 U. R. 55.
20. **Powers of a Magistrate to whom the case is submitted under S. 380 supra.**—See Notes under S. 380 (p. 666 *Supra*).
21. **Only the case of the accused to be dealt with under S. 562 Cr. P. C. should be submitted.**—Two accused one of whom a boy of 11 years was charged with the offence of theft. The second class Magistrate by whom they were

2 B. R. 112.

III. PRACTICE AND PROCEDURE.

22. **Conviction must be recorded.**—A former conviction must be recorded before a bond can be required under S. 562 Cr. P. C. A minor should not be required to give a bond personally under this section—2 L. B. 137.
23. **Court cannot ask accused to appear on a day fixed to receive sentence.**—In dealing with an accused under S. 562 Cr. P. C. it is not competent to a Magistrate to ask him to appear in Court on a day fixed to receive sentence; all he can do is to release the accused on probation of good conduct for a certain period and to direct him to appear and receive sentences when called upon during such period—2 B. R. 702.
24. **Accused cannot be put merely on personal recognizance.**—Where the accused was merely put on his personal recognizance under this section, held that the Magistrate should take from the accused, a bond that should fulfil the requirements of S. 562 Cr. P. C. i. e., the bond should be taken not only for good conduct, but also to appear and receive sentence when called upon, and in the mean time to keep the peace.—2 B. R. 112.
25. **The section under which conviction is had must be clearly specified.**—Where the charge was in the alternative, either of theft under S. 380 I. P. C. or receiving stolen property under S. 411 I. P. C. and the Magistrate while convicting the accused, did not say of which of these offences he convicted them, held that in the absence of a conviction for theft, the Magistrate was not competent to pass an order under S. 562 Cr. P. C. The order was reversed and the Magistrate was directed to pass a legal order of conviction and of sentence consequent thereon—1 B. R. 857.
26. **Minor may execute a bond.**—The third proviso to S. 118 *supra* "that when the person in respect of whom the inquiry is made is a minor the bond shall be executed only by his sureties" applies in terms only to bonds under that section which is seldom used against minors and when similar provision is not found in this section which was enacted chiefly for the benefit of youth.
- section "on his entering into a bond with or without sureties" are clear—4 L. B. 12 overruling 2 L. B. 137 see 2 L. B. 169.
27. **Procedure when accused unable to furnish security.**—The proper course is for the Magistrate to ascertain before passing an order

IV. APPEAL, REVISION ETC.

Appeals.

28. (1) "It seems to me to be clear under the provisions of S. 562 that the Magistrate has authority to pass an order of appeal."—2 B. R. 112.
30. (3) Subject to the law of limitation, a convict is entitled to prefer his appeal, even after the expiration of the term for which the bond under S. 562 Cr. P. C. was executed—20 P. R. 1917.
31. **Power of Court of appeal to pass orders under S. 562 Cr. P. C.**—The powers conferred by S. 562 Cr. P. C. upon a court by which a first offender is convicted, are by virtue of S. 423 (d) exercisable by the High Court, sitting as a Court of Appeal [24 A. 308]. By the use of the words "Court before whom he is convicted" in S. 562, it is not intended by the Legislature to limit the power of making orders under that

section to the Court of the first instance. The proviso to the section is inconsistent with the view that this was the intention of the Legislature. [29 M. 567; 24 P. R. 1904; But see 16 P. R. 1911.]

32. Proper order to be passed by the Appellate or Revisional Court.—Where a Magistrate convicts a person of an offence under S. 420 but deals with him under S. 562 Cr. P. C., the proper course for the Appellate or Revisional Court is not to direct a retrial, but to set aside the order under S. 562 and remand the case to the Magistrate to pass a lawful sentence.—16 P. R. 1911; 23 P. W. 1908; 3 L. R. 95; 4 N. 18.
33. Revision.—The High Court in revision, acting under Ss 439 and 423 Cr. P. C., cannot set aside an order under S. 562 Cr. P. C., and of its own authority substitute for that order a sentence of whipping or of imprisonment.—37 A. 31 20 Cr. 99 (N). 153 P. L. 1911.
34. Revision optional with the High Court.—Although S. 562 Cr. P. C. cannot be properly used in cases falling under S. 457 Cr. P. C. yet, where it has been wrongly applied by a Magis-

trate, it is optional for the High Court on revision side to interfere or not, as it thinks fit upon a consideration of all the circumstances, with the discretion thus used by the Magistrate.—19 P. W. 1910.

35. Power of High Court in revision.—The High Court has the power to quash conviction of the accused who have been dealt with by the appellate Court under S. 562 Cr. P. C. even if the convicts have not moved the High Court to exercise that power.—67 P. L. 1912; See 21 P. L. 1914.
36. S. 562 compared with S. 31 of the Reformatory Schools Act (VIII of 1897).—S. 31 of the Reformatory Schools Act, extends very considerably the provisions of S. 562 Cr. P. C., which, although later in date, is a reproduction of earlier legislation. The section read with the definition of youthful offenders, enables practically any Court, at any rate concerned in the matter, in the case of an offender under fifteen to deliver him to his parents with or without sureties for his future good behaviour.—14 A. J. 1158. See also Cr. Rev. 204 of 1904 (A). See *All Man* p. 376.

563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

564. (1) The Court, before directing the release of an offender under section 562, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or in sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.

Previously convicted Offenders

565 (1) When any person, having been convicted of any offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again convicted of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or any Magistrate of the first class specially empowered by the Local Government in this behalf, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of residence after release be notified, as hereinafter provided, for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government, with the previous sanction of the Governor General in Council, may make rules to carry out the provisions of this section relating to the notification of residence by released convicts.

(4) Any person refusing or neglecting to comply with any rule so made shall be punishable as if he had committed an offence under section 176 of the Indian Penal Code.

Proposed amendment to the section.—For section 565 of the said Code the following section to be substituted, namely:—

"565. (1) When any person having been convicted—

(a) by a Court in British India of an offence punishable under sections 215, 189A, 489 B, 189 C, or 489 D, of the Indian Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of the said Code with imprisonment of either description for a term of three years or upwards, or

(b) by a Court or Tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor General in Council, or of any Local Government, of any offence which, if committed in British India, have been punishable under any of the aforesaid sections or Chapters of the Indian Penal Code with like imprisonment for a like term, is again convicted of any offence of the same kind, or punished under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court of Session, Presidency Magistrate, District Magistrate, Subdivisional Magistrate or any Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of, or absence from, such residence on release be notified, as hereinafter provided, for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government, with the previous sanction of the Governor General in Council, may make rules to carry out the provisions of this section relating to the notification of residence or change of, or absence from, residence, by released convicts.

(4) An order under this section may also be made by an Appellate Court, or by the High Court when exercising its powers of revision.

(5) Any person against whom an order has been made under this section, and who refuses or neglects to comply with any rule so made, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated."

Notes.

1. S. 565 should not be applied when the offence is only technical.—Where the offence of theft is of a trifling nature and is merely technical, it should not be treated more seriously with reference to S. 75 I. P. C. An order under S. 565 Cr. P. C. will not be justified in such a case.—1 P. L. 1914

2. Appellate Court cannot make the order when the original Court was not so empowered.—S. 565 requires that the order should be made by the trying Magistrate at the time of passing sentence. But the omission of similar provisions in S. 565 to those of S. 106 Cr. P. C. leads to the inference that the Appellate Court or Court of Revision cannot set aside an order under S. 565 by a Magistrate not empowered, and substitute an order by itself to the same effect.—8. S. 310.

3. S. 221 (7) does not apply to an order under S. 565 Cr. P. C.—The provisions of S. 221 (7) Cr. P. C. do not apply to an order under S. 565 Cr. P. C. and such an order can be legally passed without the previous conviction on which it is based, having been mentioned in the charge.—9 N. 88.

4. Order cannot be passed in the absence of previous conviction.—Where there is no previous conviction, an order directing an accused to notify his residence is illegal and must be set aside.—S. M. T. 352.

5. Order on the basis of previous conviction by foreign Court.—Where the accused was convicted in a Feudatory State under an Act identical in terms with the Indian Penal Code, it would be illegal to apply this section

the strength of foreign convictions—1 N. 137: see 7 C. P. 24; 4 N. 177.

6. Sec. 565 does not apply when the sentence is one of whipping.—The order contemplated by S. 565 of the Cr. P. Code, can only be passed where the convict is sentenced either to transportation or imprisonment. The section does not extend to cases where the Court, instead of passing that sentence, passes a sentence of whipping—12 B. L. 901.
7. The Section does not apply when the conviction is one for attempt.—Where either the previous or subsequent conviction of an accused person is under S. 511 I. P. C. for an attempt to commit an offence punishable for a term of three years or upwards under any of the sections specified in Ch. XII or Ch. XVII of

the I. P. C., the Court trying the case has no power to proceed and pass an order against him under this section—17 P. R. 1907

8. Temporary absence need not be notified.—A person against whom an order is passed under S. 565 Cr. P. C. is merely bound to notify his residence or change of residence after release. As long as he retains his residence in the same place, his temporary absence from home for a day or two does not require notification—40 M. 789
9. Penalty for refusing or neglecting to comply with rules.—Cases under S. 565 (4) Cr. P. C. should be dealt with under the first part of S. 176 Penal Code—31—M. 548, 1 N. 133; See 15 C. 386.

Rules relating to Notification of residence by released convicts.

I.—BURMA, BENGAL AND ASSAM.

1. Any order passed against a convict under S. 565, Act V of 1898, shall be entered on the warrant of imprisonment.

2. A convict shall, within seven days before his release, notify to the officer in charge of the place where he is confined, the place to which he intends to move after his release.

up his residence after his release. Such statement shall be in writing and shall be signed by the convict in the presence of the Superintendent of the Jail, who will countersign it. The following rules shall be also clearly explained to the convict before he leaves the jail, he shall be told for what period he is required to observe them, and a copy of them shall be given to him.

3. If the convict after release do not within ten days take up his residence in the place mentioned in such statement, he shall attend in person at the Police station within the jurisdiction of which he has taken up his residence and notify to the officer in charge his place of residence.
4. If, after taking up his residence in any place, the convict desires to change his residence, he shall attend in person at the Police station within the jurisdiction of which his then place of residence is situated and there notify to the officer in charge the place to which he intends to change his residence and the date on which the change will take place. Such

attendance shall be not less than fourteen days before his departure when he is moving to the jurisdiction of another Police station and not less than seven days when he is moving to a place within the jurisdiction of the same Police station. If for any reason he do not, within seven days of the date on which he has notified that his change of residence will begin, take up his residence at that place, he shall at once notify, in the manner above set out, any other change of residence he intends to make.—*Burma Gazette*, 1902, Part I, p. 63. In addition to these rules, the following rules are also in force in Bengal and Assam, viz—

5. If the convict intends to travel to another district, he shall not less than seven days before his departure, similarly notify the place to which he intends to proceed, and the probable dates of his arrival at and departure from such places.—See *Calcutta Gazette*, 1902, Pt. I, p. 97. *Assam Gazette*, 1900, Pt. II, p. 640
6. In applying the foregoing rules to the case of a wandering man having no "residence" in the sense of a fixed place of abode, the place of residence shall be deemed to be the place where he sleeps, even if he remains there only one night. On his release, he shall be asked under Rule 2, where he intends to stay and be told, that if he moves about the country, he must always notify the place of his temporary abode to the Police.—*Notification, Bengal Government*, No. 313 J, dated 14th January, 1902. G. L. No. 2 of 15th March, 1902

II MADRAS

In exercise of the powers conferred by sub-sec (3) of S. 565 of the Code of Criminal Procedure and with the previous sanction of the Governor-General in Council, the Governor in Council is pleased to make the following rules to carry out the provisions of the said section relating to the notification of residence by released convicts—

1. When an order has been passed under S. 565, Code of Criminal Procedure that a convict shall notify his residence and any change of residence after release for a specified term, the Court or Magistrate passing such order shall attach a copy thereof to the warrant of commitment issued under S. 383 of the Code in respect of such convict.

2. A convict in respect of whom such an order has been passed shall, when called upon by the officer in charge of the jail in which he is confined, state before his release, the place to which he intends to reside after his release, naming the village or town and the street therein

3. After release, and on arrival at his residence, he shall, *within twenty-four hours* notify at the nearest Police station that he has taken up his residence accordingly.
4. Whenever he intends to change his residence he shall, not less than two days before making such change, notify his intention at the nearest Police station, giving the date on which he intends to change his residence and the name of the village or the town and street in which he
5. The officer recording a notification under either Rule 2 or Rule 4 shall appoint such period as may be reasonably necessary to enable the convict to take up his residence in the place notified. If the convict does not take up his residence in such place within the period so appointed, he shall, not later than the day following the expiry of such period, notify his actual place of residence to the officer in charge of the Police station within the limits of which he is residing
6. Every notice required to be given by the foregoing rules shall be given by the released convict in person, unless prevented from doing so by illness or other sufficient cause, in which case the notice required shall be sent either by letter duly signed by him or by an authorized messenger on his behalf.

7. Whenever the released convict gives any notice required by the foregoing rules, he will be furnished with a certificate to the effect that he has given such notice by the officer to whom he gives it.

the substance thereof fully explained to him in a language he understands. He shall also be informed for what period he is bound to observe *these rules*, and that any neglect or failure to comply with them will render him liable to punishment as if he had committed an offence under section 176 of the Indian Penal Code.

called upon by the Police to report himself on a given day at a Police station near the place where

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III.—BOMBAY.

1. When a duly authorised Court or Magistrate at the time of passing sentence makes an order under S 563 Cr. P. C that the sentenced person's residence and any change of residence after release be notified, such Court or Magistrate shall attach a copy of such order to its warrant issued under S 383 Cr P C.
 2. Every person in respect of whom such an order may have been passed shall, within one week from the date of release, personally present himself before the officer in charge of the Police station within the jurisdiction of which he resides, and declare to him his place of residence
 3. Whenever such person changes his residence, he shall in like manner declare his change of residence to the officers in charge of the Police stations within the jurisdiction of which his old and new places of residence are situated.
 4. ~~Every person in respect of whom such an order has been made shall, within one week from the date of release, personally present himself before the officer in charge of the Police station within the jurisdiction of which he resides, and declare to him his place of residence~~
- whenever in charge thereof wherein the name and address of each person presenting himself for the first time under Rule 2 or 3, and the date of his so presenting himself, shall be entered - and such subsequent entries shall be made as may be necessary for the purpose of giving effect to the foregoing Rule 3
5. Every person duly presenting himself before the officer in charge of a Police station, as required

- by the foregoing rules, shall on each occasion be entitled to receive from such officer free of cost a copy of the entry in register relating to such fact, with a certificate that he has duly attended in person at the time and day specified.
6. One month prior to the date of release of a person in respect of whom an order has been passed under S 563, Cr P C, the Superintendent of the Prison in which he is confined shall forward to the District Magistrate of the district in which the prison is situate, and of the district in which he was convicted or of which he is known to have been a resident, a copy of the order passed under S 563, Cr P C, as aforesaid, with an intimation of the date on or about which the prisoner will be released.
7. Prior to the release of any such person as aforesaid, the Superintendent of the Prison in which he is confined, or any officer appointed by him in this behalf, shall give him a copy of the rules under sub-sec (3), S 567, Cr P C, written or printed in the language of the district in which the prison is situated, and if the prisoner is illiterate or does not understand the language in which such copy of the rules is written or printed, shall personally explain their purport to him and the consequences under S. 563 (4) of non-compliance therewith.
8. In these rules the words "District Magistrate" and "Officer in charge of the Police station" shall in so far as the Presidencies Town of Bombay is

concerned, be read as "Commissioner of Police" and "Superintendent of the Division," respectively.

ly.—Notification No. 1040, Bombay Government Gazette, 1900, Pt 1, p. 374

IV.—UNITED PROVINCES AND OUDH.

1. In these rules, the words "local area" mean a village or *muhalla* of a town.
2. When an order under S 565 of the Cr. P. C. has been passed with reference to any person, a copy of the order in the annexed form shall be sent to the Superintendent of the jail with the warrant of commitment.
3. Three months previous to the release of a convict with reference to whom an order under S. 565 of the Cr. P. C., 1898, has been passed, the Superintendent of the Jail shall enquire from the convict within what district he intends to reside on release, and shall transfer the prisoner to the headquarters of the district he names, for release on due date. A copy of the order passed under S 565, Cr. P. C., shall be sent with the prisoner. Provided that, if the convict notifies his intention to reside in any district of British India outside the United Provinces and Oudh, the Superintendent shall request the Inspector-General of Prisons to obtain, through the Local Government, an order of removal under S. 32, Act V of 1871, and, after receipt of the order, shall transfer the prisoner to the jail of the district concerned, where he will be released and dealt with in accordance with the rules there in force.
4. At the time of release, the prisoner, together with a copy of the order passed under S 565 Cr. P. C., shall be produced before the Magistrate of the district, or such officer as the Magistrate may appoint in that behalf, and shall notify to the officer before whom he is produced, the local area within which he will permanently reside after release. The Magistrate of the district, or the officer appointed by him in his behalf, shall enter the local area notified by the
5. If, at any time subsequently during the period fixed by the order under S 565 of the Cr. P. C.,

the released convict proposes permanently to change his residence, he shall, at least ten days previous to the change, notify to the Magistrate of the district, or such officer as the said Magistrate may appoint in this behalf, and also to the Police authorities of the place which the convict is leaving, as well as to the Police authorities of the place to which he is proceeding, the name of the local area to which he intends removing, and the date on which he will change his residence.

6. The notifications required by Rule 5 shall be made personally, except in the case of illness or for other adequate reason or on exemption granted by the District Magistrate, to the officers authorized to receive such notifications.

Copy of the order for notifying address of previously convicted offenders

[To be sent to the jail with the prisoner]

Whereas { name, description, and address } has been convicted on the day of 19 , of the offence of under section of Act , having been previously convicted of the offence of offences noted on the margin and has been sentenced to it has been order that the said shall notify his residence and any change of residence after release for a term years from the date of the expiration of the said sentence, of in accordance with the rules made by the Local Government

(Sd)

Magistrate.

Date
District
Date of release
District within which prisoner states that he will reside
Local area notified by prisoner before release as his permanent residence
Permanent changes of residence subsequently notified
Date of expiry of order

V.—PUNJAB.

1. Released convicts must comply with Rules.—When, at the time of passing sentence of transportation or imprisonment on any person, the Court or Magistrate also orders that his residence after release be notified for the term specified in such order, such person shall comply with and be subject to the rules next following. In these rules a person released subject to an order of the nature hereinbefore described is called "released convict."
2. Convict at the time of release, to notify, intended place of residence to releasing officer in charge of jail.—Every convict in regard to whom an order has been made under S 565, Cr. P. C., 1898, shall, not less than four

days before the date on which he is entitled to be released, notify to the officer in charge of the jail, or other place in which he may for the time being be confined, of the place at which he intends to reside after his release, and shall, as soon as he is released, proceed to such place without undue delay and there so reside accordingly.

3. Convict to notify intention to change first residence to officer in charge of Police station.—Whenever any released convict intends to change his place of residence from the place which he specified at the time of his release as the place at which he intended to reside, to any other place, he shall notify the fact of such intention and the place at which he thereafter intends

to reside, not less than twenty-four hours before he so changes his residence, to the officer in

there so reside accordingly.

4. Released convict similarly to notify all subsequent intentions to change residence.—Whenever any released convict intends to change, his place of residence from any place at which he may, at any time, be residing, under the provisions of Rule 3, he shall notify any intended change of residence in the manner in that rule provided, and shall proceed without undue delay to the place notified by him and there so reside accordingly.
5. Released convict to notify within 24 hours his place of residence.—Every released convict shall, within twenty-four hours of his arrival at the place of residence notified under Rule 2, or Rule 3 or Rule 4, notify the fact of such arrival to the officer in charge of the Police station within the limits of which, such place of residence is situate
6. Particulars of place of residence must be given.—In notifying place of residence under these rules, released convicts shall—
 - (a) if the place of residence is in a rural tract—specify the name of the village, hamlet, or locality of such place, and the Zail, Thana, Tahsil and

District within the limits of which such place is situate;

- (b) if the place of residence is in a town or city—specify the name of the town or city and the street, quarter and sub division of the town or city within the limits of which such place is situate.

7. Change of residence how to be notified.—Every notification to be made by a released convict under Rules 3, 4 and 5, respectively, shall be made by such convict, personally at the proper Police station:

Provided that—

- (a) the District Magistrate may, by order in writing, exempt any released convict from the operation of this rule and may permit such convict to make such notification in writing or in person;
- (b) if a released convict is prevented from making any notification required by these rules personally at the proper Police station, he may do so by written communication addressed to the officer in charge of the proper Police station. Such communication shall state the cause of his inability to attend in person at the Police station, and shall, before it is transmitted to the proper Police officer, be attested by a village headman or other village officer.—*Government Punjab Notification, No 674, dated 3rd April, 1900; Punjab Gazette, 1901, Part I, p. 182*

VI.—BRITISH BELUCHISTAN.

For rules in British Baluchistan see *Gazette of India*, 1900 Pt. II, p. 607; *Central Provinces, Central Provinces Gazette*, 1901, Pt. III, p. 87.

SCHEDULE I.

Repealed by Act X of 1811.

SCHEDULE II.

ABBREVIATIONS.

Col. 3—
Cog. = Cognizable.
Not. = Non-cognizable.

Col. 4—
W. = Warrant shall ordinarily
issue in the first instance,
S. = Summons shall ordinarily
issue in the first instance,

Col. 5—
B. = Bailable.
N. B. = Non-Bailable,

Col. 6—
C. = Compoundable
N. C. = Non-Compoundable

Col. 7—
7 yrs. E. I. = 7 years' imprison-
ment of either description,
2 yrs. R. I. = 2 years' rigorous
imprisonment.
3 mos. S. I. = 3 months' simple
imprisonment.
T. Life. = Transportation for life,

T. 10 yrs. = Transportation for
10 years.

F. = Fine
F. B. = Fine or both

Col. 8—
S. = Sessions Court
P. M. = Presidency Magistrate,
M. 1. = Magistrate of the First
Class
M. 1. 2. 3. = Magistrates of the
First Second and Third classes

Tabular Statement of Offences.

Explanatory Note.—The entries in the second and seventh columns of this schedule headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column. The third column of this schedule applies also to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT

1	2	3	4	5	6	7	8
Section.	Offence	Cognizable or Not	Warrant or Summons—S.	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment	Cog. if the offence abetted is cog	As in the offence abetted	As in the offence abetted	As in the offence abetted	Same punishment as for the offence abetted	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor	Do	Do	Do	Do	Do	Do
111	Abetment of any offence, when one act is abetted and a different act is done subject to the proviso.	Do	Do	Do	Do	Same punishment as for the offence intended to be abetted	Do
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor	Do	Do	Do	Do	Same punishment as for the offence committed	Do
114	Abetment of any offence, if abettor is present when offence is committed	Do	Do	Do	Do	Do	Do
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment If an act which causes harm be done in consequence of the abetment	Do	Do	N B	Do	7 yrs F I and F 14 yrs F I and F.	Do

SCHEDULE II.—*Contd.*

Abbreviations—explained on page 1.

CHAPTER V—ABETMENT—*Contd.*

1	2	3	4	5	6	7	8
Section	Offence	Cognizable or Not.	Warrant or Summons—S. 201.	Indictable or Not.	Compoundable or Not.	Punishment under the Indian Penal Code.	By what Court triable
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment. If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Cog. if the offence abetted is cog.	As in the offence abetted.	As in the offence abetted.	As in the offence abetted.	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or F. B.	The Court to which the offence abetted is triable.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Do.	Do.	Do.	Do.	Imprisonment extending to half of the longest term, and of any description, provided for the offence or F. B. 3 yrs. E. I. or F. B.	Do.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Do.	Do.	N. B.	Do.	7 yrs. E. I. and F.	Do.
119	If the offence be not committed.	Do.	Do.	N. B.	Do.	3 yrs. E. I. and F.	Do.
	A public servant concealing a design to commit an offence which it is his duty to prevent if the offence be committed.	Do.	Do.	As in the offence abetted.	Do.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or F. B.	Do.
	If the offence be punishable with death or transportation for life.	Do.	Do.	N. B.	Do.	10 yrs. E. I.	Do.
	If the offence be not committed.	Do.	Do.	As in the offence abetted.	Do.	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or F. B.	Do.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Do.	Do.	Do.	Do.	Do.	Do.
	If the offence be not committed.	Do.	Do.	Do.	Do.	Imprisonment extending to one-eighth part of the longest term, and of the description provided for the offence, or F. B.	Do.
120B	Criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards.	Cog. if the offence which is the object of the conspiracy is cog.	As in the offence which is the object of the conspiracy.	As in the offence which is the object of the conspiracy.	N. C.	Same punishment as that provided for the abetment of the offence which is the object of the conspiracy.	S. when the offence which is the object of the conspiracy is triable exclusively by a High Court or by a District Court in other offences S. P. M. M. I.
	Any other criminal conspiracy.	Not.	S.	B.	N. C.	6 mos. E. I. and F. B.	P. M. : M. I.

SCHEDULE II—Contd.

Abbreviations—explained on page 1.

CHAPTER VI—OFFENCES AGAINST THE STATE

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not	Warrant or Summons—S. 204	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code.	By what Court triable
121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Not	W	N B	N C	Death or T Life and forfeiture of property	S
121A	Conspiring to commit certain offences against the State.	Not.	W.	N B	N C	T Life or any short-term, or 10 yrs E I	S
122	Collecting arms, etc., with the intention of waging war against the Queen.	Not	W	N B	N C	T Life or 10 yrs E I and forfeiture of property	S
123	Concealing with intent to facilitate a design to wage war.	Not	W	N B	N C	10 yrs E I and F	S
124	Assaulting Governor General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Not	W	N B	N C	7 yrs E I. and F	S
124A	Sedition	Not.	W	N B	N C	T Life or for any term and F or 3 yrs E I and F or F	S Chief P M, Dist. M. or M I specially empowered by Local Govt
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war	Not	W	N B	N C	T Life and F or 7 yrs E I and F or F	S
126	Committing depredation on the territories of any power in alliance or at peace with the Queen	Not.	W	N B	N C	7 yrs E I and F and forfeiture of certain property	S
127	Receiving property taken by war or depredation mentioned in sections 125 and 126	Not	W	N B	N C	Do	S
128	Public servant voluntarily allowing prisoner of State or war in his custody to escape	Not	W	N B	N C	T Life or 10 yrs. E I and F	S
129	Public servant negligently suffering prisoner of State or war in his custody to escape	Not	W	B	N C	3 yrs S I and F	S P M M I
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner	Not	W	N B	N C	T Life or 10 yrs E I and F	S

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty	Cog	W	N B	N C	T Life or 10 yrs E I and F	S.
132	Abetment of mutiny, if mutiny is committed in consequence thereof	Cog	W	N B	N C	Death or T Life or 10 yrs E. I. and F	S
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Cog.	W	N B	N C	3 yrs E I and F	S P M M I.

SCHEDULE II.—Contd.

Abbreviation—explained on page 1.

CHAPTER VII.—A.—OFFENCES RELATING TO THE ARMY AND NAVY.

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not	Wharant or Summons N. 291	Arrestable or Not.	Compoundable or Not.	Punishment under the Indian Penal Code.	By what Court tried?
134	Abetment of such assault, if the assault is committed	Cog.	W.	N. B.	N. C.	7 yrs. E. I. and F.	S
135	Abetment of the desertion of an officer, soldier or sailor.	Cog.	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I.
136	Harbouring such an officer, soldier or sailor who has deserted	Cog.	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I.
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Not.	S.	B.	N. C.	Rs 500.	P. M. M. I.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	Cog.	W.	B.	N. C.	6 mos. E. I. or F. B.	P. M. M. I.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Cog.	S.	B.	N. C.	3 mos. E. I. or both Rs 500.	Any M.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY

143	Being member of an unlawful assembly.	Cog.	S.	B.	N. C.	6 mos. E. I. or F. B.	Any M.
144	Joining an unlawful assembly armed with any deadly weapon.	Cog.	W.	B.	N. C.	2 yrs. E. I. or F. B.	Any M.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse	Cog.	W.	B.	N. C.	2 yrs. E. I. or F. B.	Any M.
147	Rioting	Cog.	W.	B.	N. C.	2 yrs. E. I. or F. B.	Any M.
148	Rioting armed with a deadly weapon	Cog.	W.	B.	N. C.	3 yrs. E. I. or F. B.	S. P. M. M. I.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence	Cog. if offence Cog.	As in the offence.	As in the offence.	N. C.	Same as for the offence.	The Court which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly	Cog.	Accor. to the offence committed by the persons.	As in the offence.	N. C.	Same as for a member of such assembly, and for any offence committed by any member of such assembly.	Do
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Cog.	S.	B.	N. C.	6 mos. E. I. or F. B.	Any M.
152	Assaulting or obstructing public servant	Cog.	W.	B.	N. C.	3 yrs. E. I. or F. B.	S. P. M. M. I.
153	intent	Cog.	W.	B.	N. C.	1 yr. E. I. or F. B.	Any M.
153A	Promoting enmity between classes	Cog.	S.	B.	N. C.	6 mos. E. I. or F. B.	Any M.
154	Owner or occupier of land not giving information of riot etc.	Not	W.	N. B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it	Not.	S.	B.	N. C.	Rs 1000 F.	P. M. M. I.

SCHEDULE II.—*Contd*

Abbreviation—explained on page 1.

CHAPTER VIII.—A—OFFENCES AGAINST THE PUBLIC TRANQUILITY—*Contd*

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or Not.	Warrant or Summons—S. 204	punishable or Not.	Compoundable or not.	Punishment under the Indian Penal Code	By what Court triable
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Not	S	B	N C.	I'	P M M, 1 2
157	Harbouring persons hired for an unlawful assembly.	Cog.	S	B	N C	6 mos E I or I' B	P M M 1 2
158	Being hired to take part in an unlawful assembly or riot.	Cog.	S	B	N C	6 mos E I or I' B	P M M 1, 2.
159	Or to go armed.	Cog	W.	B	N C.	2 yrs E I or F B	P M M, 1 2
160	Committing affray.	Not	S	B	N C	1 Mo E I or Rs 100 F B	Any M

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Not	S	B	N C	3 yrs E I or F B	S P M M 1.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant	Not.	S.	B	N C	3 yrs E I or I' B.	S P M M 1
163	Taking a gratification for the exercise of personal influence with a public servant.	Not	S	B	N C	1 yr S I or F B	P M, M 1.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Not.	S.	B	N C	3 yrs E I or F B	S P M M 1.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant	Not	S	B	N C	2 yrs S I or F B	P M M 1 2
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Not	S	B	N C	1 yr S I or F B	P M M 1 2
167	Public servant framing an incorrect document with intent to cause injury.	Not	S	B	N C	3 yrs E I or F B	S P M, M 1
168	Public servant unlawfully engaging in trade	Not	S	B	N C	1 yr S I or F B	P M M 1
169	Public servant unlawfully buying or bidding for property	Not	S	B	N C	2 yrs S I or F B and confiscation property is purchased	P M M 1
170	Personating a public servant	Cog	W	B	N C	2 yrs E I or F B	Any M
171	Wearing garb or carrying tokens used by public servant with fraudulent intent	Cog	S	B	N C	3 mos F I or F B or Rs 200 F B	Any M.

CHAPTER X.—CONTUMPT OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

172	Abeying to avoid service of summons or other proceedings from a public servant	Not	S	B	N C	1 mos S I or Rs 500 F B	Any M
	If summons or notice require attendance in person, etc., in a Court of Justice	Not	S	B	N C	6 mos S I or Rs 1000 F B	Any M
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation	Not	S	B	N C	1 mos S I or Rs 500 F B	P M M 1 2.
	If summons, etc., require attendance in person, etc., in a Court of Justice	Not	S	B	N C	1 mos S I or Rs 1000 F B	P M M 1 2
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Not	S	B	N C	1 mo S I or Rs 500 F B	Any M.
	If the order require personal attendance, etc., in a Court of Justice	Not	S	B	N C	6 mos S I or Rs 1000 F B	Any M

SCHEDULE II.—*contd*

Abbreviation—explained on page 1.

CHAPTER X.—CONTENTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*Contd*

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not	Warrant or Summons—S 204.	Bailable or Not	Compoundable or not.	Punishment under the Indian Penal Code	By what Court tried
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document	Not	S	B	N. C.	1 mo S I or R. 500 P. B.	The Court which the offence is committed, subject to the provisions Chapter XV, or, if committed in a Court, P. M. I, 2
176	If the document is required to be produced If the notice or information required respects the commission of an offence, etc. Knowingly furnishing false information to a public servant	Not	S	B	N. C.	6 mos S I or R. 1000 P. B. 1 mo S I. or Rs 500 P. B.	Do P. M. M. I
177	If the information required respects the commission of an offence, etc.	Not	S	B	N. C.	6 mos S I or Rs 1000 P. B.	P. M. M. I
178	Refusing oath when duly required to take oath by a public servant	Not	S	B	N. C.	6 mos S I. or Rs 1000 P. B.	P. M. M. I
179	Being legally bound to state truth, and refusing to answer questions	Not	S	B	N. C.	6 mos S I or Rs, 1000 P. B.	The Court which the offence is committed, subject to the provisions Chapter XV, or, if committed in a Court, P. M. I, 2
180	Refusing to sign a statement made to a public servant when legally required to do so	Not	S	B	N. C.	3 mos S I or Rs 500 P. B.	Do
181	Knowingly stating to a public servant on	Not	S	B	N. C.	3 yrs S. I. and P.	The Court which the offence is committed, subject to the provisions Ch. XX-V or, if committed in a Court, P. M. I, 2
182		Not	S	B	N. C.	6 mos S I or Rs 1000 P. B.	S. P. M. M. I
183	Refusing to give evidence of property by the lawful authority of a public servant	Not	S	B	N. C.	6 mos S I. or Rs 1000 P. B.	P. M. M. I

SCHEDULE II.—*contd*

Abbreviations—explained on page 1.

CHAPTER X A—CONTRACTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*Contd*

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not	Warrant or Summons—S 204.	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code.	By what Court triable
184	Obstructing sale of property offered for sale by authority of a public servant	Not	S	B	N C	1 mo E I or Rs 500 F B	P M M 1 2.
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Not	S	B	N C	1 mo E I or Rs 200 F B	P M M 1 2.
186	Obstructing public servant in discharge of his public functions.	Not	S	B	N C	3 mos E I or Rs 500 F B	P M M 1 2
187	Omission to assist public servant when bound by law to give such assistance	Not	S	B	N C	1 mo S I or Rs 200 F B.	P M M 1.2.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc	Not	S	B	N C	6 mos S I or Rs 500 F B	P M M 1 2
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Not	S	B	N C	1 mo S I or Rs 200 F B	P M M 1 2
	If such disobedience causes danger to human life health or safety, etc.	Not	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
189	Threatening a public servant with injury to him, or one in whom he is interested, induce him to do or forbear to do any official Act	Not	S	B	N C	2 yrs E I or F B	P M M 1 2
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Not	S	B	N C	1 yr E I or F B	P M M 1 2

CHAPTER XI—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

193	Giving or fabricating false evidence in a judicial proceeding.	Not	W	B	N C	7 yrs E I and F	S P M M. 1.
	Giving or fabricating false evidence in any other case	Not	W	B	N C	3 yrs E I and F	S P M M. 1.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence	Not	W	N B	N C	T Life or 10 yrs R I and F	S
	If innocent person be thereby convicted and executed	Not	W	N B	N C	Death or T Life or 10 yrs R I and F	S
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 yrs or upwards	Not	W	N B	N C	Same as for the offence	S
196	Using in a judicial proceeding evidence known to be false or fabricated	Not	W	As in the offence of giving such evidence	N C	Same as for giving or fabricating false evidence	S P M M. 1.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Not	W	B	N C	Same as for giving false evidence	S P M M. 1
198	Using as a true certificate one known to be false in a material point	Not.	W	B	N C	Do	S P M M. 1.

SCHEDULE II—Contd

Abbreviations—explained on page 1.

CHAPTER IX—A—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—Contd

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not.	Warrant or Summons—S. 20f	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable
199	False statement made in any declaration which is by law receivable as evidence	Not	W.	B.	N. C.	Same as for giving false evidence	S: P. M. M I
200	Using as true any such declaration known to be false.	Not	W.	B.	N. C.	Do.	S. P. M. M I
201	Causing disappearance of evidence of an offence committed, or giving false information tending to screen the offender, if a capital offence	Not	W.	B.	N. C.	7 yrs. E. I. and F.	S
	If punishable with transportation for life or imprisonment for 10 years	Not	W.	B.	N. C.	3 yrs. E. I. and F.	S P M M I
	If punishable with less than 10 years' imprisonment	Not	W.	B.	N. C.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or F. B.	P. M. M. I. or Court by which the offence is triable
202	Intentional omission to give information of an offence by a person legally bound to inform.	Not	S.	B.	N. C.	6 mos. E. I. or F. B.	P. M. M. I. 2
203	Giving false information respecting an offence committed	Not	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I 2
204	Securing or destroying any document to prevent its production as evidence.	Not.	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Not	W.	B.	N. C.	3 yrs. E. I. or F. B.	S. P. M. M I
206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Not	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I 2
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree	Not	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I 2
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied	Not	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I
209	False claim in a Court of Justice	Not	W.	B.	N. C.	2 yrs. E. I. and F.	P. M. M. I
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied	Not	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I
211	False charge of offence made with intent to injure.	Not	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. I
	If offence charged be punishable with imprisonment for 7 years or upwards.	Not	W.	B.	N. C.	7 yrs. E. I. and F.	S. P. M. M. I
	If offence charged be capital, or punishable with transportation for life	Not	W.	B.	N. C.	7 yrs. E. I. and F.	S
212	Harbouring an offender, if the offence be capital.	Cog.	W.	B.	N. C.	5 yrs. E. I. and F.	S. P. M. M. I
	If punishable with transportation for life or with imprisonment for 10 years	Cog.	W.	B.	N. C.	3 yrs. E. I. and F.	S. P. M. M. I

SCHEDULE II—Contd.

Abbreviations—explained on page 1.

CHAPTER XI A—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—Contd.

1	2	3	4	5	6	7	8
Section	Offence	Cognizable or Not	Warrant or Summons or Not	Inalienable or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable
212— contd.	If punishable with imprisonment for 1 year and not for 10 years	Cog.	W	B	N C	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or F B	P M M I or Court by which the offence is triable
213	Taking gift, etc., to screen an offender from punishment, if the offence be capital.	Not.	W	B	N C	7 yrs E 1 and F	S
	If punishable with transportation for life or with imprisonment for 10 years	Not.	W	B	N C	3 yrs E 1 and F	S P M M I.
	If with imprisonment for less than 10 years	Not.	W	B	N C	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or F B	P M M I or Court by which the offence is triable
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital	Not.	W	B	N C	7 yrs E 1 and F	S
	If punishable with transportation for life or with imprisonment for 10 years	Not.	W	B	N C	3 yrs E 1 and F	S P M M I.
	If with imprisonment for less than 10 yrs	Not.	W	B	N C	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or F B	P M M I or Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender	Not.	W	B	N C.	2 yrs E 1 or F B	P M M I
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital	Cog.	W	B	N C	7 yrs E 1 and F	S P M M I.
	If punishable with transportation for life or with imprisonment for 10 years	Cog.	W	B	N C	3 yrs E 1 with or without F	S P M M I
	If with imprisonment for 1 year, and not for 10 years	Cog.	W	B	N C	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or F B	P M M I, or Court by which the offence is triable
216A	Harbouring robbers or dacoits	Cog.	W	B	N C	7 yrs R 1 and F	S P M M I.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture	Not.	S	B	N C	2 yrs E 1 or F B	P M M I 2
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture	Not.	W	B	N C.	3 yrs. F 1 or F B	S
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law	Not.	W	B	N C	7 yrs F 1 or F B	S
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Not.	W	B	N C.	7 yrs F 1 or F B	S

SCHEDULE II—*Contd.*

Abbreviations—explained on page 1.

CHAPTER XI. A—FUGITIVE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*Contd.*

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not.	Warrant or Summons—S. 204	Arrestable or Not	Compellable or Not	Punishment under the Indian Penal Code.	By what Court triable
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender if the offence be capital If punishable with transportation for life, or imprisonment for 10 years If with imprisonment for less than 10 years	Not	W.	B	N. C.	7 yrs E. I. with or without F.	S
		Not	W.	B	N. C.	3 yrs E. I. with or without F.	S; P. M. M. I
		Not.	W.	B.	N. C.	2 yrs E. I. with or without F.	P. M. M. I 2
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend persons under sentence of a Court of Justice if under sentence of death If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards If under sentence of imprisonment for less than 10 years or lawfully committed to custody	Not	W	N. B	N. C.	T. life or 14 yrs E. I. with or without F.	S
		Not	W.	B	N. C.	7 yrs E. I. with or without F.	S
		Not	W.	B	N. C.	3 yrs E. I. or F. B.	S. P. M. M. I
223	Escape from confinement negligently suffered by a public servant	Not	S	B	N. C.	2 yrs S. I. or F. B.	P. M. M. I 2
224	Resistance or obstruction by a person to his lawful apprehension	Cog.	W.	B	N. C.	2 yrs E. I. or F. B.	P. M. M. I 2
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody If charged with an offence punishable with transportation for life, or imprisonment for 10 years If charged with a capital offence If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards. If under sentence of death.	Cog.	W	B	N. C.	2 yrs E. I. or F. B.	P. M. M. I 2
		Cog.	W.	N. B	N. C.	3 yrs E. I. and F.	S. P. M. M. I
		Cog.	W.	N. B	N. C.	7 yrs E. I. and F.	S
		Cog.	W.	N. B	N. C.	7 yrs. E. I. and F.	S
225A.	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for— (a) in cases of intentional omission or sufferance; (b) in case of negligent omission or sufferance	Cog.	W	N. B	N. C.	T. life or 10 yrs E. I. and F.	S
		Not.	W	B	N. C.	3 yrs. E. I. or F. B.	S. P. M. M. I
		Not.	S.	B	N. C.	2 yrs S. I. or F. B.	P. M. M. I 2
225B.	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for	Cog.	W	B	N. C.	6 mos E. I. or F. B.	P. M. M. I 2
226	Unlawful return from transportation	Cog.	W.	N. B	N. C.	T. life and F. and 3 yrs E. I. before T. Punishment of original sentence, or if part of the punishment has been undergone, the residue	S.
227	Violation of condition of remission of punishment	Not	S.	N. B	N. C.		The Court by which the original offence was triable

SCHEDULE II.—*Contd.*

Abbreviations—explained on page 1.

CHAPTER XI—A—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*Contd.*

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable, or Not.	Warrant or Summons— S. 204	Bailable or Not.	Compound- able or Not	Punishment under the Indian Penal Code.	By what Court triable.
228	Intentional insult or interruption to a public servant sitting in any stage of judicial proceeding	Not	S	B	N C	6 mos S I or Rs. 1000 F B	The Court in which the offence is committed, subject to the provisions of Chapter X- XXV
229	Personation of a juror or assessor.	Not	S	B	N C	2 yrs E I or F B	P M M I

CHAPTER XII—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

231	Counterfeiting, or performing any part of the process of counterfeiting, coin	Cog	W	N B	N C	7 yrs E I and F	S
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin	Cog	W	N B	N C	T life or 10 yrs E I and F	S
233	Making, buying or selling instrument for the purpose of counterfeiting coin	Cog.	W	N B	N C	3 yrs E I and F	S P M M I
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin	Cog	W	N B	N C	7 yrs E I and F	S
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin	Cog	W	N B	N C	3 yrs E I and F	S P M M I
236	If Queen's coin	Cog	W	N B	N C	10 yrs E I and F	S
	Abetting in British India the counterfeiting out of British India of coin	Cog	W	N B	N C	The punishment provided for abetting the counterfeiting of such coin within British India.	S
237	Import or export of counterfeit coin knowing the same to be counterfeit	Cog	W	N B	N C	3 yrs E I and F	S P M M I
238	Import or export of counterfeit of the Queen's coin, knowing the same to be counterfeit	Cog	W	N B	N C	T life or 10 yrs E I and F	S
239	Having any counterfeit coin known to be such when it came into possession, and delivering, etc., the same to any person	Cog	W	N B	N C	7 yrs E I and F	S P M M I
240	The same with respect to the Queen's coin	Cog	W	N B	N C	10 yrs E I and F	S P M M I
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit	Cog	W	N B	N C	2 yrs E I or fine of ten times the value of the coin counterfeited, or both	P M M I 2
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof	Cog	W	N B	N C	3 yrs E I and F	S P M M I
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof	Cog	W	N B	N C	7 yrs E I and F	S P M M I
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law	Cog	W	N B	N C	7 yrs E I and F	S
245	Unlawfully taking from a Mint any coming instrument	Cog	W	N B	N C	7 yrs E I and F	S

SCHEDULE II.—Contd

Abbreviations—explained on page 1.

CHAPTER XII.—A—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—Contd

1	2	3	4	5	6	7	8
Section	Offence	Cognizable or Not.	Warrant or Summons—R 201	Indictable or Not.	Compoundable or Not.	Punishable under the Indian Penal Code.	By what Court triable
246	Fraudulently diminishing the weight or	Cog.	W.	N. B.	N. C.	3 yrs E. I. and F.	S. P. M. M 1
247		Cog.	W.	N. B.	N. C.	7 yrs E. I. and F.	S. P. M. M 1
248	... that it shall pass as a coin of a different description	Cog.	W.	N. B.	N. C.	3 yrs E. I. and F.	S. P. M. M 1
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description	Cog.	W.	N. B.	N. C.	7 yrs E. I. and F.	S. P. M. M 1
250	Delivery to another of coin possessed with the knowledge that it is altered	Cog.	W.	N. B.	N. C.	5 yrs E. I. and F.	S. P. M. M 1
251	Delivery of Queen's coin possessed with the knowledge that it is altered	Cog.	W.	N. B.	N. C.	10 yrs E. I. and F.	S. P. M. M 1
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof	Cog.	W.	N. B.	N. C.	3 yrs E. I. and F.	S. P. M. M 1
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof	Cog.	W.	N. B.	N. C.	5 yrs E. I. and F.	S. P. M. M 1
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered	Cog.	W.	N. B.	N. C.	2 yrs E. I. or hue of ten times the value of the coin	P. M. M 12
255	Counterfeiting a Government stamp	Cog.	W.	B.	N. C.	7 yrs E. I. and F.	S.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp	Cog.	W.	B.	N. C.	7 yrs E. I. and F.	S.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp	Cog.	W.	B.	N. C.	7 yrs E. I. and F.	S.
258	Sale of counterfeit Government stamp	Cog.	W.	B.	N. C.	7 yrs E. I. and F.	S.
259	Having possession of a counterfeit Government stamp	Cog.	W.	B.	N. C.	7 yrs E. I. and F.	S. P. M. M 1
260	Using as genuine a Government stamp known to be counterfeit	Cog.	W.	B.	N. C.	7 yrs E. I. or F. B.	S. P. M. M 1
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government	Cog.	W.	B.	N. C.	3 yrs E. I. or F. B.	S. P. M. M 1
262	Using a Government stamp known to have been before used.	Cog.	W.	B.	N. C.	2 yrs E. I. or F. B.	P. M. M 12
263	Erasure of mark denoting that stamp has been used	Cog.	W.	B.	N. C.	3 yrs E. I. or F. B.	S. P. M. M 1
263A	Fictitious stamps	Cog.	W.	B.	N. C.	Rs 200 F	P. M. M 1

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES

264	Fraudulent use of false instrument for weighing	Not.	S.	B.	N. C.	1 yr E. I. or F. B.	P. M. M. 1-2
265	Fraudulent use of false weight or measure	Not.	S.	B.	N. C.	1 yr E. I. or F. B.	P. M. M 1-2

SCHEDULE II.—*Contd*

Abbreviations—explained on page 1.

CHAPTER XIII. A.—OFFENCES RELATING TO WEIGHTS AND MEASURES.—*Contd*

	2	3	4	5	6	7	8
	Offence	Cognizable or Not	Warrant or Summons—S. 201	Indictable or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable.
66	Being in possession of false weights or measures for fraudulent use.	Not	S	B	N C	1 yr E I or F B	P M M 1 2.
67	Making or selling false weights or measures for fraudulent use	Not	S	B	N C	1 yr E I or F B	P M M 1 2

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

203	Negligently doing any act known to be likely to spread infection of any disease dangerous to life	Cog	S	B	N C	6 mos E I or F B	P M M 1 2
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life	Cog	S	B	N C	2 yrs E I or F B	P M M 1 2
271	Knowingly disobeying any quarantine rules	Not	S	B	N C	6 mos E I or F B	P M M 1 2
272	Adulterating food or drink intended for sale, so as to make the same noxious	Not.	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
273	Selling any food or drink as food and drink knowing the same to be noxious	Not	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy or to change its operation, or to make it noxious	Not.	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated	Not	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation	Not	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
277	Defiling the water of a public spring or reservoir	Cog	S	B	N C	3 mos E I or Rs 500 F B	Any M.
278	Making atmosphere noxious to health	Not.	S	B	N C	Rs 500 F	Any M
279	Driving or riding on a public way so rashly	Cog	S	B	N C	6 mos E I or Rs 1000 F B	Any M
280		Cog	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
281		Cog	W	B	N C	7 yrs E I or F B.	S
282	Conveying for hire any person, by water, in a vessel in such a state, or so loaded, as to endanger his life.	Cog.	S	B	N C	6 mos E I or Rs 1000 F B	P M M 1 2
283	Causing danger, obstruction or injury in any public way or line of navigation.	Cog	S	B	N C	Rs. 200 F.	P M M 1 2.
284	Dealing with any poisonous substance so as to endanger human life, etc	Not.	S	B	N C	6 mos E I or Rs 1000 F B.	P M M 1 2.
285	Dealing with fire or any combustible matter so as to endanger human life, etc	Cog	S	B	N C	6 mos E I or Rs 1000 F B	Any M
286	So dealing with any explosive substance.	Cog.	S	B	N C	6 mos E I or Rs 1000 F B	Any M.
287	So dealing with any machinery	Not.	S	B	N C	6 mos E I or Rs 1000 F B.	P M M 1 2

SCHEDULE II.—*Contd.*

Abbreviations—explained on page 1.

CHAPTER XIV A.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—
Continued.

1	2	3	4	5	6	7	8
Section	(Offence.	Cognizable or Not.	Warrant or Summons—S. 201	Penalizable or Not.	Compoundable or Not.	Punishment under the Indian Penal Code	In what Court triable
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has right entitling him to pull it down or repair it	Not	S.	B	N. C.	6 mos. E. I. or Rs 1000 P. M. F. B.	P. M. M. 12
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal	Cog.	S.	B	N. C.	6 mos. E. I. or Rs 1000 P. B.	Any M.
290	Committing a public nuisance.	Not	S.	B	N. C.	Rs 2000	Any M.
291	Continuance of nuisance after injunction to discontinue	Cog.	S.	B	N. C.	6 mos. S. I. or F. B.	P. M. M. 12
292		Cog.	W.	B.	N. C.	3 mos. E. I. or 1' B.	P. M. M. 12
293	te	Cog.	W.	B	N. C.	3 mos. E. I. or F. B.	P. M. M. 12
294		Cog.	W.	B	N. C.	3 mos. E. I. or P. B.	P. M. M. 12
294A		Not	S.	B	N. C.	6 mos. E. I. or 1' B.	Any M.
		Not.	S.	B	N. C.	Rs 1000 F.	Any M.

CHAPTER XV.—OFFENCES RELATING TO RELIGION

295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	Cog.	S.	B	N. C.	2 yrs. E. I. or 1' B.	P. M. M. 12
296	Causing a disturbance to an assembly engaged in religious worship	Cog.	S.	B	N. C.	1 yr. E. I. or P. B.	P. M. M. 12
297	Trespassing in place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Cog.	S.	B	N. C.	1 yr. E. I. or P. B.	P. M. M. 12
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling	Not.	S.	B	C	1 yr. E. I. or P. B.	P. M. M. 12

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

302	Murder	Cog.	W.	N. B.	N. C.	Death or T. Life and F.	S.
303	Murder by a person under sentence of transportation for life	Cog.	W.	N. B.	N. C.	Death	S.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	Cog.	W.	N. B.	N. C.	T. Life or 10 yrs. E. I. and F.	S.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Cog.	W.	N. B.	N. C.	10 yrs. E. I. or 1' B.	S.
304A	Causing death by rash or negligent act	Cog.	W.	B	N. C.	3 yrs. E. I. or P. B.	S. P. M. M. 1
305	Attempt of suicide committed by a child, or insane or delirious person or an idiot, or a person intoxicated	Cog.	W.	N. B.	N. C.	Death or T. Life or 10 yrs. E. I. and F.	S.
306	Attempting the commission of suicide	Cog.	W.	N. B.	N. C.	10 yrs. E. I. and F.	S.

SCHEDULE II—*Contd.*

Abbreviation—explained on page 1.

CHAPTER XVI—OFFENCES AFFECTING THE HUMAN BODY—*Contd.*

Section	Offence.	Cognizable or Not	Warrant or Summons	Public or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable.
307	Attempt to murder If such act cause hurt to any person	Cog Cog	W W	N B N B	N C N C	10 yrs E 1 and F T life or 10 yrs E 1 and F	S S
	Attempt by life convict to murder, if hurt is caused	Cog	W	N B	N C	Death or T life or 10 yrs E 1 and F	S
308	Attempt to commit culpable homicide If such act cause hurt to any person	Cog Cog	W W	B B	N C N C	3 yrs E 1 or F B 7 yrs E 1 or F B	S S
309	Attempt to commit suicide	Cog	W	B	N C	1 yr S 1 or F B	P M M 1 2
311	Being a thug	Cog	W	N B	N C	T life and F	S

Of the Causing of Miscarriage, of Injuries to Unborn Children, of the Exposure of Infants and of the Concealment of Births

312	Causing miscarriage If the woman be quick with child	Not Not	W W	B B	N C N C	3 yrs E 1 or F B 7 yrs E 1 and F	S S
313	Causing miscarriage without woman's consent	Not	W	N B	N C	T life or 10 yrs E 1 and F	S
314	Death caused by an act done with intent to cause miscarriage If act done without woman's consent	Not Not	W W	N B N B	N C N C	10 yrs E 1 and F T life or 10 yrs E 1 and F	S S
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth	Not	W	N B	N C	10 yrs F 1 or F B	S
316	Causing death of a quick unborn child by an act amounting to culpable homicide	Not	W	N B	N C	10 yrs E 1 and F	S
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it	Cog	W	B	N C	7 yrs F 1 or I B	S
318	Concealment of birth by secret disposal of dead body	Cog	W	B	N C	2 yrs E 1 or F B	S P M M 1 2

Of Hurt.

323	Voluntarily causing hurt	Not	S	B	C	1 yr F 1 or Rs 1000 F B	Any M.
324	Voluntarily causing hurt by dangerous weapons or means	Cog	S	B	C with permission of Court	3 yrs E 1 or F B	S P M M 1 2
325	Voluntarily causing grievous hurt	Cog	S	B	Do	7 yrs E 1 and F	S P M M 1 2
326	Voluntarily causing grievous hurt by dangerous weapons or means	Cog	S	N B	N C	T life or 10 yrs E 1 and F	S P M M 1
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence	Cog	W	N B	N C	10 yrs F 1 and F	S
328	Administering stupefying drug with intent to cause hurt, etc	Cog	W	N B	N C	10 yrs F 1 and F	S
329	Extortion or extortionate demand	Cog	W	N B	N C	T life or 10 yrs E 1 and F	S

SCHEDULE II.—Contd.

Abbreviations—explained on page 1.

CHAPTER XVI—OFFENCES AFFECTING THE HUMAN BODY—Contd.
Of Hurt—contd.

1	2	3	4	5	6	7	8
Section	Offence	Cognizable or Not	Warrant or Summons—S 204	Beatable or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc	Cog.	W	B	N. C.	7 yrs. E. I. and F.	S
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc	Cog.	W	N. B.	N. C.	10 yrs. E. I. and F.	S
332	Voluntarily causing hurt to deter public servant from his duty	Cog.	W	B	N. C.	3 yrs. E. I. or F. B.	S, P, M, M ¹²
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Cog.	W	N. B.	N. C.	10 yrs. E. I. and F.	S
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation	Not	S.	B	C	1 mo. E. I. or Rs. 500 F. B.	Any M
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation	Cog.	S	B	C with permission of Court	4 yrs. E. I. or Rs. 2000 F. B.	S P M M ¹²
336	Doing any act which endangers human life or the personal safety of others	Cog.	S	B.	N. C.	3 mos. E. I. or Rs. 250 F. B.	Any M.
337	Causing hurt by an act which endangers human life, etc	Cog.	S.	B	C with permission of Court	6 mos. E. I. or Rs. 500 F. B.	P. M. M ¹²
338	Causing grievous hurt by an act which endangers human life, etc	Cog.	S.	B	Do	2 yrs. E. I. or Rs. 1000 F. B.	P. M. M ¹²
<i>Of Wrongful Restraint and Wrongful Confinement</i>							
341	Wrongfully restraining any person.	Cog.	S	B	C	1 mo. S. I. or Rs. 500 F. B.	Any M
342	Wrongfully confining any person	Cog.	S	B	C.	1 yr. E. I. or Rs. 1000 F. B.	P. M. M ¹²
343	Wrongfully confining for three or more days.	Cog.	S.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M ¹²
344	Wrongfully confining for 10 or more days.	Cog.	S	B	N. C.	3 yrs. E. I. and F.	S P M M ¹²
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation	Not	S	B	N. C.	2 yrs. E. I. in addition to imprisonment under any other section.	S P M M ¹²
346	Wrongful confinement in secret	Cog.	S	B	N. C.	Do	S P M M ¹²
347	Wrongful confinement for the purpose of extorting property or constraining to an illegal act, etc	Cog.	S	B	N. C.	3 yrs. E. I. and F.	S. P. M M ¹²
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling a restoration of property, etc.	Cog.	S	B	N. C.	3 yrs. E. I. and F.	S P M M ¹²
<i>Of Criminal Force and Assault</i>							
352	Assault or use of criminal force otherwise than on grave provocation	Not	S	B	C.	3 mos. E. I. or Rs. 500 F. B.	Any M
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	Cog.	W.	B	N. C.	2 yrs. E. I. or F. B.	P. M. M ¹²

SCHEDULE II.—*contd*

Abbreviations—explained on page 1.

CHAPTER XVI—OFFENCES AFFECTING THE HUMAN BODY *Contd*Of Criminal Force and Assault *contd*

1	2	3	4	5	6	7	8
Section.	Offence	Cognizable or Not	Warrant or Summons— s. 204.	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code.	By what Court triable.
354	Assault or use of criminal force to a woman with intent to outrage her modesty	Cog	W	B	N C	2 yrs E I or F B	P M M 1, 2.
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Not	S	B	C	2 yrs E I or F B	P M M 1, 2.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person	Cog	W	N B	N C	2 yrs E I or F B	Any M
357	Assault or use of criminal force in attempt wrongfully to confine a person	Cog	W	B	N C	1 yr E I or Rs 1000 F B	Any M
358	Assault or use of criminal force on grave and sudden provocation	Not	S	B	C	1 mo S I or Rs 200 F B	Any M

Of Kidnapping, Abduction, Slavery and Forced Labour

359	Kidnapping	Cog	W	N B	N C	7 yrs E I and F	S P M M 1
360	Kidnapping or abducting in order to murder	Cog	W	N B	N C	T life or 10 yrs E I and F	S
361	Kidnapping or abducting with intent secretly and wrongfully to confine a person	Cog	W	N B	N C	7 yrs E I and F	S P M M 1
362	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc	Cog	W	N B	N C	10 yrs E I and F	S
363	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc	Cog	W	N B	N C	10 yrs E I and F	S
364	Concealing or keeping in confinement a kidnapped person	Cog	W	N B	N C	Punishment for kidnapping or abduction	S
365	Kidnapping or abducting a child with intent to take property from the person of such child	Cog	W	N B	N C	7 yrs E I and F	S P M M 1.
366	Buying or disposing of any person as a slave.	Not	W	B	N C	7 yrs E I and F	S
367	Habitual dealing in slaves.	Cog	W	N B	N C	T life or 10 yrs E I and F	S
368	Selling or letting to hire a minor for purposes of prostitution	Cog	W	N B	N C	10 yrs E I and F	S P M M 1
369	Buying or obtaining possession of a minor for the same purposes	Cog	W	N B	N C	10 yrs E I and F	S P M M 1.
370	Unlawful compulsory labour	Cog	W	B	C	1 yr E I or F B	Any M

Of Rape

371	Rape— If the sexual intercourse was by a man with his own wife In any other case	Not	S	B	N C	T life or 10 yrs E I and F	S
372		Cog	W	N B	N C	T life or 10 yrs E I and F	S
373	Unnatural offences	Cog	W	N B	N C	T life or 10 yrs E I and F	S P M M 1.

SCHEDULE II.—*Contd.*

Abbreviations—explained on page 1.

CHAPTER VIII.—OFFENCES AGAINST PROPERTY.

Of Theft.

1	2	3	4	5	6	7	8
Section	Offence	Cognizable or Not	Warrant or Summons—S 201	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code.	By whom Court tries
379	Theft	Cog	W	N B	N C	3 yrs. E. I. or P. B.	Any J.
380	Theft in a building, tent or vessel	Cog	W	N B	N C	7 yrs. E. I. and P.	Any J.
381	Theft by clerk or servant of property in possession of master or employer	Cog	W	N B	N C.	7 yrs. E. I. and P.	Any J.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft, or to retaining after committing it, or to retaining property taken by it	Cog	W	N B	N C	10 yrs. E. I. and P.	S. P. M.
383	Extortion	Not	W	B	N C.	3 yrs. E. I. or P. B.	S. P. M.
384	Putting or attempting to put in fear of injury, in order to commit extortion.	Not	W	B	N C	2 yrs. E. I. or P. B.	S. P. M.
385	Extortion by putting a person in fear of death or grievous hurt	Not	W	N B	N C	10 yrs. E. I. and P.	S.
386	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion	Not	W	N B	N C	7 yrs. E. I. and P.	S.
387	Extortion by threat of accusation of an offence punishable with death, transportation for life or imprisonment for 10 years.	Not	W	B	N C	10 yrs. E. I. and P.	S.
388	If the offence threatened be an unnatural offence	Not	W	B	N C	T. Life	S.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Not	W	B	N C	10 yrs. E. I. and P.	S.
	If the offence be an unnatural offence	Not	W	B	N C	T. Life	S.
<i>Of Robbery and Dacoity.</i>							
392	Robbery	Cog	W	N B	N C	10 yrs. R. I. and P.	S. P. M.
	If committed on the highway between sunset and sunrise.	Cog	W	N B	N C	14 yrs. R. I. and P.	S. P. M.
393	Attempt to commit robbery.	Cog	W	N B	N C	7 yrs. R. I. and P.	S. P. M.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Cog.	W	N. B.	N C	T. Life or 10 yrs. R. I. and P.	S. P. M.
395	Dacoity	Cog	W	N B	N C	T. Life or 10 yrs. R. I. and P.	S.
396	Murder in dacoity	Cog	W	N B	N C	Death or T. Life or 10 yrs. R. I. and P.	S.
397	Robbery or dacoity, with attempt to cause death or grievous hurt	Cog	W	N B.	N C	10 yrs. R. I. and P.	S.
398	Attempt to commit robbery or dacoity when armed with deadly weapon	Cog.	W	N. B	N C	7 yrs. R. I. for not less than	S.
399	Making preparation to commit dacoity.	Cog	W.	N B	N C	7 yrs. R. I. for not less than	S.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Cog	W	N. B.	N. C.	10 yrs. R. I. and P.	S.

SCHEDULE II—*Contd.*

Abbreviation—explained on page 1.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Contd.**Of Robbery and Dacoity—contd.*

2	3	4	5	6	7	8
Offence.	Cognizable or Not	Warrant or Summons	1948	1949	Punishment under the Indian Penal Code	By what Court triable.
Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Cog.	W	N B	N C	7 yrs. R. I and F	S P M M I
Being one of five or more persons assembled for the purpose of committing dacoity.	Cog.	W	N B	N C	7 yrs R I and F	S
<i>Of Criminal Misappropriation of Property</i>						
Dishonest misappropriation of moveable property, or converting it to one's own use	Not	W	B	N C	2 yrs F I or F B	Any M
Dishonest misappropriation of property knowing that it was in possession of a deceased person at his death, and that it has not since been to the possession of any person legally entitled to it.	Not	W	B	N C	3 yrs E I and F	S P M M I 2.
If by clerk or person employed by deceased	Not	W	B	N C	7 yrs. E I and F	S P M M I 2
<i>Of Criminal Breach of Trust</i>						
Criminal breach of trust	Cog	W	N B	N C	3 yrs E I or F B	S P M M I 2
Criminal breach of trust by a carrier, wharfinger, etc.	Cog	W	N B	N C	7 yrs E I and F	S P M M I.
Criminal breach of trust by a clerk or servant	Cog	W	N B	N C	7 yrs. E I and F	S P M M I 2.
Criminal breach of trust by public servant or by banker, merchant or agent etc	Cog	W	N B	N C	T Life or 10 yrs E I and F	S P M M I
<i>Of the Recovery of Stolen Property</i>						
Dishonestly receiving stolen property knowing it to be stolen.	Cog	W	N B	N C	3 yrs E I or F B	S P M M I 2.
Dishonestly receiving stolen property knowing that it was obtained by dacoity	Cog	W	N B	N C	T Life or 10 yrs E I and F	S
Habitually dealing in stolen property	Cog	W	N B	N C	T Life or 10 yrs E I and F	S
Assisting in concealment or disposal of stolen property, knowing it to be stolen	Cog	W	N B	N C	3 yrs E I or F B	S P M M I 2
<i>Of Cheating</i>						
Cheating	Not	W	B	N C	1 yr F I or F B	P M M I 2
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect	Not	W	B	N C	3 yrs F I or F B	S P M M I 2
Cheating by personation	Cog	W	B	N C	3 yrs. E I or F B	S P M M I 2
Cheating and thereby dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security	Cog	W	B	N C	7 yrs. F I and F	S P M M I
<i>Of Fraudulent Deeds and Disposition of Property</i>						
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Not	W	B	N C	2 yrs F I or F B	P M M I 2

SCHEDULE II.—*Contd.*

Abbreviation—explained on page 1.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Contd.*
(Of Fraudulent Deeds and Disposition of Property—Contd)

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not.	Warrant or Summons—S. 204	Arrestable or Not.	Compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender	Not	W	B	N. C.	2 yrs. E. I. or F. B.	P. M. M. 12
423	Fraudulent execution of deed of transfer containing a false statement of consideration	Not	W.	B.	N. C.	2 yrs. E. I. or F. B.	P. M. M. 12
424	Fraudulent removal or concealment of property, or himself, or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Not	W	B	N. C.	2 yrs. E. I. or F. B.	P. M. M. 12
<i>Of Mischief.</i>							
426	Mischief	Not	S	B	C when private person is injured	3 mos. E. I. or F. B.	Any M
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards	Not	W	B	Do	2 yrs. E. I. or F. B.	P. M. M. 12
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards	Cog	W	B	N. C.	2 yrs. E. I. or F. B.	P. M. M. 12
429	Mischief by killing, poisoning maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value, or any other	Cog	W.	B	N. C.	5 yrs. E. I. or F. B.	S. P. M. M. 12
430		Cog	W	B	N. C.	5 yrs. E. I. or F. B.	S. P. M. M. 12
431		Cog.	W	B	N. C.	5 yrs. E. I. or F. B.	S. P. M. M. 12
432	travelling or conveying property Mischief by causing inundation or obstruction to public drainage, attended with damage	Cog	W	B	N. C.	5 yrs. E. I. or F. B.	S. P. M. M. 12
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights	Cog	W	B	N. C.	7 yrs. E. I. or F. B.	S.
434	Mischief by destroying or moving, etc., a land-mark fixed by public authority	Not	W	B	N. C.	1 yr. E. I. or F. B.	P. M. M. 12
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards	Cog	W.	B	N. C.	7 yrs. E. I. and F.	S. P. M. M. 12
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Cog	W	N. B	N. C.	T. Life or 10 yrs. E. I. and F.	S.
437	Mischief with intent to destroy or make unsafe a docked vessel or a vessel of 20 tons burden	Cog	W.	N. B	N. C.	10 yrs. E. I. and F.	S.

SCHEDULE II.—*Contd.*

Abbreviations—explained on page 1.

CHAPTER XVII—OFFENCES AGAINST PROPERTY—*Contd.*
Of Mischief—contd.

1	2	3	4	5	6	7	8
Section	Offence	Cognisable or Not.	Warrant or Summons—S. 204	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable
438	The mischief described in the last section when committed by fire or any explosive substance.	Cog	W	N B	N C	T Life or 10 yrs E 1 and F	S
439	Running vessel ashore with intent to commit theft, etc	Cog	W	N B	N C	10 yrs E 1 and F	S
440	Mischief committed after preparation made for causing death, or hurt, etc.	Cog	W	N B	N C	5 yrs E 1 and F	S P M M, 1
<i>Of Criminal Trespass</i>							
447	Criminal trespass	Cog	S	B	C	3 mos E 1 or Rs 500 F B	Any M
448	House-trespass	Cog	W	B	C	1 yr E 1 or Rs 1000 F B	Any M
449	House trespass in order to the commission of an offence punishable with death	Cog	W	N B	N C	T Life or 10 yrs E 1 and F	S
450	House-trespass in order to the commission of an offence punishable with transportation for life	Cog	W	N B	N C	10 yrs E 1 and F	S
451	House-trespass in order to the commission of an offence punishable with imprisonment If the offence is theft	Cog	W	B	N C	2 yrs E 1 and 1	Any M
452	House trespass, having made preparation for causing hurt, assault, etc	Cog	W	N B	N C	7 yrs E 1 and F	S P M M 12
453	Lurking house-trespass or house-breaking	Cog	W	N B	N C	7 yrs E 1 and F	S P M M 12
454	Lurking house trespass or house-breaking in order to the commission of an offence punishable with imprisonment	Cog	W	N B	N C	2 yrs E 1 and F	P M M 1, 2
455	If the offence is theft	Cog	W	N B	N C	3 yrs E 1 and F	S P M M 12
456	Lurking house trespass or house-breaking after preparation made for causing hurt assault, etc	Cog	W	N B	N C	10 yrs E 1 and F	S P M M 12
457	Lurking house trespass or house-breaking by night	Cog	W	N B	N C	10 yrs E 1 and F	S P M M 1
458	Lurking house trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment	Cog	W	N B	N C	3 yrs E 1 and F	S P M M 12
459	If the offence is theft	Cog	W	N B	N C	7 yrs E 1 and F	S P M M 12
460	Lurking house-trespass or house-breaking by night after preparation made for causing hurt, etc	Cog	W	N B	N C	14 yrs E 1 and F	S P M M 12
461	Grievous hurt caused whilst committing lurking house-trespass or house-breaking	Cog	W	N B	N C	11 yrs E 1 and F	S P M M 1
462	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc	Cog	W	N B	N C	T Life or 10 yrs E 1 and F	S
463	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc	Cog	W	N B	N C	T Life or 10 yrs E 1 and F	S
464	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property	Cog	W	B	N C	2 yrs E 1 and F	P M M 12
465	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same	Cog	W	B	N C	3 yrs E 1 and F	S P M M 12

SCHEDULE II—Contd.

Abbreviations—explained on page 1.

CHAPTER XVIII—OFFENCES RELATING TO DOCUMENTS AND TO TRUTH OR PROPERTY MARKS

1	2	3	4	5	6	7	8
Section	Offence	Cognizable or Not.	Warrant or Summons—S. 404	Bailable or Not.	Compoundable or Not.	Punishment under the Indian Penal Code.	By what Court triable
465	Forgery	Not	W	B	N C	2 yrs. E. I or F. I.	S P M M I
466	Forgery of a record of a Court of Justice or of a Register or Births, etc., kept by a public servant	Not	W	N B	N C	7 yrs. E. I and F.	S
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.	Not	W	N B	N C	T. life or 10 yrs. E. I and F.	S
	When the valuable security is a promissory note of the Government of India	Cog	W	N B	N C	T. life or 10 yrs. E. I and F.	S
468	Forgery for the purpose of cheating	Not	W	N B	N C	7 yrs. E. I and F.	S P M M I
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose	Not	W	B	N C	10 yrs. E. I and F.	S P M M I
471	Using as genuine a forged document which is known to be forged	Not	W	B	N C	Punishment for forgery of such document	Same Court as that by which the forgery is triable
	When the forged document is a promissory note of the Government of India	Cog	W	B	N C	Do	S
472	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 467 of the Indian Penal Code or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit	Not	W	B	N C	T. life or 7 yrs. E. I and F.	S
473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit	Not	W	B	N C	7 yrs. E. I and F.	S.
474	Having possession of a document knowing it to be forged, with intent to use it as genuine, if the document is one of the description mentioned in section 466 of the Indian Penal Code	Not	W	B	N C	7 yrs. E. I and F.	S
	If the document is one of the description mentioned in section 467 of the Indian Penal Code	Not	W	B	N C	T. life or 7 yrs. E. I and F.	S
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material	Not	W	B	N C	T. life or 7 yrs. E. I and F.	S
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material	Not	W	N B	N C	7 yrs. E. I and F.	S
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will, etc.	Not	W	N B	N C	T. life or 7 yrs. E. I and F.	S
477A	Falsification of accounts	Not	W	N B	N C	T. life or 7 yrs. E. I and F.	S

SCHEDULE II—*Contd.*

Abbreviations—explained on page 1.

CHAPTER XVIII—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS—*Contd.*
Of Trade and Property Marks

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or Not	Warrant or Summons—s. 201	Bailable or Not	Compoundable or Not	Punishment under the Indian Penal Code	By what Court triable.
482	Using a false trade or property mark with intent to deceive or injure any person	Not	W	B	X C	1 yr. E. 1 or F. B.	P. M. M. 1, 2
483	Counterfeiting a trade or property mark used by another, with intent to cause damage or injury.	Not	W	B	X C	2 yrs. E. 1 or F. B.	P. M. M. 1, 2
484	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Not	S	B	X C	3 yrs. E. 1 and F.	S. P. M. M. 1.
485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property or trade-mark.	Not	S	B	X C	3 yrs. E. 1 or F. B.	S. P. M. M. 1.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Not	S	B	X C	1 yr. E. 1 or F. B.	P. M. M. 1, 2
487	Fraudulently making a false mark upon any package or receptacle containing goods with intent to cause it to be believed that it contains goods which it does not contain, etc.	Not	S	B	X C	3 yrs. E. 1 or F. B.	S. P. M. M. 1, 2
488	Making use of any such false mark	Not	S	B	X C	3 yrs. E. 1 or F. B.	S. P. M. M. 1, 2
489	Removing, destroying or defacing any property-mark with intent to cause injury	Not	S	B	X C	1 yr. E. 1 or F. B.	P. M. M. 1, 2
<i>Of Currency Notes and Bank Notes</i>							
489A	Counterfeiting currency notes or bank notes	Cog.	W	N B	X C	T. life or 10 yrs. E. 1 and F.	S
489B	Using as genuine forged or counterfeit currency-notes or bank-notes	Cog.	W	N B	X C	T. life or 10 yrs. E. 1 and F.	S
490	Possession of forged or counterfeit currency-notes or bank-notes	Cog.	W	B.	X C	7 yrs. E. 1 or F. B.	S
490D	Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes	Cog.	W	N B	X C	T. life or 10 yrs. E. 1 and F.	S

CHAPTER XIX—CRIMINAL BREACH OF CONTRACTS OF SERVICE

490	Being bound by contract to render personal service during a voyage or journey or to convey or guard any property or person and voluntarily omitting to do so	Not	S	B	C	1 mo. E. 1 or Rs. 1000 F. B.	P. M. M. 1, 2
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so	Not	S	B	C	3 mos. E. 1 or Rs. 200 F. B.	P. M. M. 1, 2.
492	Being bound by contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Not	S	B	C	1 mo. E. 1 or fine of double the expense incurred, or both	P. M. M. 1, 2.

SCHEDULE II—*Contd.*

Abbreviation—explained on page 1.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE

1	2	3	4	5	6	7	8
Section	Offence	Cognizable or Not	Warrant or Summons—S 304.	Bailable or Not	Compoundable or Not.	Punishment under the Indian Penal Code.	By what Court triable
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Not	W	N B	N C.	10 yrs E. I. and F.	S
494	Marrying again during the life time of a husband or wife	Not	W	B.	N. C	7 yrs. E. I and F.	S.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted	Not	W	N B	N C	10 yrs E. I and F.	S
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married	Not	W	N B	N C	7 yrs. E. I and F.	S.
497	Adultery	Not	W	B	C	5 yrs. E. I. or F. B.	S P.M. M I
498	Enticing or taking away or detaining with a criminal intent a married woman	Not	W	B	C.	2 yrs. E. I. or F. B.	P. M. M I 2

CHAPTER XXI—DEFAMATION.

500	Defamation	Not	W	B	C	2 yrs S. I. or F. B	S P.M. M I
501	Printing or engraving matter knowing it to be defamatory	Not	W	B.	C	2 yrs S. I. or F. B	S P.M. M I
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Not	W	B	C	2 yrs. S. I. or F. B.	S P.M. M I

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503	Insult intended to provoke a breach of the peace	Not	W	B	C	2 yrs E. I. or F. B	Any V
505	False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace	Not	W	N. B	N C	2 yrs E. I or F. B	P. M. M I
506	Criminal intimidation. If threat be to cause death or grievous hurt, etc	Not. Not	W W	B. B.	C N C.	2 yrs E. I or F. B. 7 yrs E. I or F. B.	P.M. M I 2 S P.M. M I
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Not.	W	B	N C	2 yrs E. I in addition to the punishment under above section	S P.M. M I.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Not	W	B	N. C	1 yr. E. I. or F. B	P. M. M I 2
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Not	W	B	N. C	1 yr. S. I. or F. B.	P. M. M. I
510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Not.	W	B.	N. C.	2 hrs S. I. or Rs10. F. B.	Any V

SCHEDULE II.—*Contd.*

Abbreviations—explained on page 1.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

2	3	4	5	6	7	8
Offence.	Cognizable or Not.	Warrant or Summons—S. 204.	Bailable or Not.	Compoundable or Not.	Punishment under the Indian Penal Code.	By what Court triable.
I Attempting to commit offences punishable with transportation or imprisonment, and in an attempt doing any act towards the commission of the offence.					Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS

If punishable with death, transportation or imprisonment for 7 years or upwards	Cog.	W.	N. B.	N. C.	S.
If punishable with imprisonment for 3 years and upwards, but less than 7.	Cog.	W.	N. B. Except in cases under the Indian Arms Act, 1878, section 19 which shall be bailable	N. C.	S. P. M. I.
If punishable with imprisonment for 1 year and upwards, but less than 3 years.	Not.	S.	B.	N. C.	S. P. M.; M. I. 2.
If punishable with imprisonment for less than 1 year, or with fine only	Not	S.	B.	N. C.	Any N.

SCHEDULE III.

(See section 36)

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

1. Ordinary Powers of a Magistrate of the Third Class

- | | |
|---|--|
| <p>(1) To arrest or direct the arrest of, and to commit to custody, a person committing an offence in his presence, S. 84.</p> <p>(2) To arrest, or direct the arrest in his presence of, an offender, S. 85.</p> | <p>(3) To endorse a warrant, or to order the removal of an accused person arrested under a warrant, Ss 83, 84 and 86.</p> <p>(4) To issue proclamations in cases judicially before him, S. 87.</p> |
|---|--|

SCHEDULE III—Contd.

- (5) To attach and sell property in cases judicially before him, S 89.
- (6) To restore attached property, section 89
- (7) To require search to be made for letters and telegrams, section 93
- (8) To issue search-warrant, section 96
- (9) To endorse a search-warrant and order delivery of things found, S 99
- (10) To command unlawful assembly to disperse, section 127
- (11) To use civil force to disperse unlawful assembly, section 128
- (12) To require military force to be used to disperse unlawful assembly, section 130
- (13) To record statements or confessions during a police-investigation, section 164.
- (14) To authorise detention of a person during a police-investigation, section 167.
- (15) To detain an offender found in court, section 351.
- (16) To take cognizance of offence, although committed by European British subject, and to issue process returnable before a Magistrate having jurisdiction, section 443
- (17) To apply to District Magistrate to issue commission for examination of witness, section 506 (2)
- (18) To recover forfeited bond for appearance before Magistrate's Court, section 514
- (19) To make order as to disposal of property, section 517
- (20) To sell perishable property of a suspected character, section 523.

II—Ordinary Powers of a Magistrate of the Second Class

- (1) The ordinary powers of a Magistrate of a third class
- (2) To order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.
- (3) To postpone issue of process, section 202
- (4) To order destruction of libellous and other matter, section 521

III—Ordinary Powers of a Magistrate of the First Class.

- (1) The ordinary powers of a Magistrate of the second class
- (2) To issue search-warrant otherwise than in course of an inquiry, section 98.
- (3) To issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) To require security to keep the peace, section 107.
- (5) To require security for good behaviour, section 109.
- (6) To discharge sureties, section 126.
- (7) To make orders, etc., in possession cases, sections 145, 146 and 147
- (8) To commit for trial, section 206
- (9) To stop proceedings when no complaint, section 249.
- (10) To make orders of maintenance, sections 458 and 459
- (11) To take evidence on commission, section 503.
- (12) To recover penalty on forfeited bond, section 514.
- (13) To make order as to first offenders, section 562

IV.—Ordinary Powers of a Sub-divisional Magistrate

- (1) The ordinary powers of Magistrate of the first class
- (2) To direct warrants to landholders, section 78.

- (3) To make orders under section 144
- (7) To depute Subordinate Magistrate to make local inquiry, section 149.
- (8) To order police investigation into cognizable case, section 156
- (9) To receive report of police-officer and pass order, section 173.
- (10) To hold inquest, section 174
- (11) To issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (12) To entertain complaints, section 190.
- (13) To receive police-reports, section 190
- (14) To entertain cases without complaint, section 190
- (15) To transfer cases to a Subordinate Magistrate, section 192.
- (16) To pass sentence on proceedings recorded by a Subordinate Magistrate, section 346
- (17) To forward record of inferior Court to District Magistrate
- (18) To order released convicts to notify residence, section 563

V—Ordinary Powers of a District Magistrate.

- (1) The ordinary powers of a Sub-divisional Magistrate
- (2) To require delivery of letters, telegrams, etc., section 95
- (3) To issue search-warrants for documents in custody of postal or telegraph authority, section 96
- (4) To require security for good behaviour in case of offenders, section 109
- (5) To require security to keep the peace, section 107
- (6) To require security for good behaviour, section 109
- (7) To discharge sureties, section 126
- (8) To make orders, etc., in possession cases, sections 145, 146 and 147
- (9) To commit for trial, section 206
- (10) To stop proceedings when no complaint, section 249.
- (11) To make orders of maintenance, sections 458 and 459
- (12) To take evidence on commission, section 503.
- (13) To recover penalty on forfeited bond, section 514.
- (14) To make order as to first offenders, section 562
- (15) To require security to keep the peace, section 107
- (16) To require security for good behaviour, section 109
- (17) To discharge sureties, section 126
- (18) To make orders, etc., in possession cases, sections 145, 146 and 147
- (19) To commit for trial, section 206
- (20) To stop proceedings when no complaint, section 249.

SCHEDULE IV.

(See sections 37 and 39)

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

		(1) To require security for good behaviour in case of sedition, section 108.		
		(2) " " " " " "		
		(3) " " " " " "		
		(4) " " " " " "		
		(5) " " " " " "	section 143;	
		(6) " " " " " "		
		(7) To issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction section 186;		
POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.	By THE LOCAL GOVERNMENT.	(8) To take cognizance		
		(9) To take cognizance		
		(10) To take cognizance		
		(11) To try summarily, section 206		
		(12) To hear appeals from convictions by Magistrates of the second and third classes, section 407.		
		(13) To sell property alleged or suspected to have been stolen, etc., section 521		
		(14) To order released convicts to notify residence, section 505;		
		(15) To try cases under section 121A of the Indian Penal Code		
		(1) To make orders prohibiting repetitions of nuisances, section 143		
		(2) To make orders under section 144		
		(3) To hold inquests, section 174;		
		(4) To take cognizance of offences upon complaint, section 190,		
		(5) To take cognizance of offences upon police reports, section 190.		
		(6) To transfer cases, section 192		
POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED.	By THE LOCAL GOVERNMENT.	(2) To make orders prohibiting repetitions of nuisances S. 143		
		(3) To make orders under S. 144		
		(4) To hold inquests, S. 174		
		(5) To take cognizance of offences upon complaint, S. 190		
		(6) To take cognizance of offences upon police reports, S. 190		
		(7) To take cognizance of offences without complaint S. 190		
		(8) To commit for trial, S. 206		
		(9) To make orders as to first offenders, S. 502		
		(1) To make orders prohibiting repetitions of nuisances, S. 143.		
		(2) To make orders under S. 144		
		(3) To hold inquests, S. 174		
		(4) To take cognizance of offences upon complaint, S. 190		
		(5) To take cognizance of offences upon police-reports, S. 190		
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED.	By THE DISTRICT MAGISTRATE.	(1) To make orders prohibiting repetitions of nuisances, S. 143		
		(2) To make orders under S. 144		
		(3) To hold inquests, S. 174		
	By THE LOCAL GOVERNMENT	(4) To take cognizance of offences upon complaint, S. 190		
		(5) To take cognizance of offences upon police reports, S. 190		
		(6) To commit for trial, S. 206.		
		(1) To make orders prohibiting repetitions of nuisances, S. 143		
		(2) To make orders under S. 144		
		(3) To hold inquests, S. 174		
		(4) To take cognizance of offences upon complaint, S. 190.		
		(5) To take cognizance of offences upon police-reports, S. 190		
	POWERS WITH WHICH A SUBORDINATE MAGISTRATE MAY BE INVESTED	By THE DISTRICT MAGISTRATE	(4) To take cognizance of offences upon complaint, S. 190.	
			(5) To take cognizance of offences upon police-reports, S. 190	
	By THE LOCAL GOVERNMENT	To call for records, S. 445		

* The words and figures "(1) Power to pass sentences of whipping, section 32" were repealed by the Whipping Act, 1904 (IV of 1904) General Acts, Vol. VI, Appendix.

SCHEDULE V.

(See section 535.)

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(See section 63.)

To _____ of _____
 WHEREAS your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of _____, on the day of _____ Herein fail not.
 Dated this _____ day of _____ 18 ____.
 (Seal) _____ (Signature.)

II.—WARRANT OF ARREST

(See section 75.)

To (name and designation of the person or persons who is or are to execute the warrant.) WHEREAS of _____ stands charged with the offence of (state the offence). you are hereby directed to arrest the said _____, and to produce him before me Herein fail not
 Dated this _____ day of _____ 18 ____.
 (Seal) _____ (Signature.)

(See section 76.)

This warrant may be endorsed as follows:—
 If the said _____ shall give bail himself in the sum of _____, with one surety in the sum of _____ (or two sureties each in the sum of _____) to attend before me on the day of _____ and to continue so to attend until otherwise directed by me, he may be released
 Dated this _____ day of _____ 18 ____.
 (Signature.)

III.—BOND AND BAIL-BOND AFTER ARREST

UNDER A WARRANT

(See section 86.)

I (name), of _____, being brought before the District Magistrate of _____ (or as the case may be) under a warrant issued to compel my appearance to answer to the charge of _____, do hereby bind myself to attend in the Court of _____ on the day of _____ next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court, and, in case of my making default herein, I bind myself to forfeit, to Her Majesty the Queen, Empress of India, the sum of rupees _____
 Dated this _____ day of _____ 18 ____.
 (Signature.)

I do hereby declare myself surety for the abovesaid _____ of _____ that he shall attend before _____ in the Court of _____ on the day of _____ next, to answer to the

sum of rupees _____
 Dated this _____ day of _____ 18 ____.
 (Signature.)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(See section 87.)

Whereas complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of _____ punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) can not be found, and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said _____ and _____ of _____ is required to appear at (place) before (the Court (or before me) to answer the said complaint (on the day of _____)

Dated this _____ day of _____ 18 ____.
 (Seal) _____ (Signature.)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(See section 87.)

Whereas complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of (mention the offence concisely) and a warrant has been issued to compel the attendance of (name description and address of the witness) before this Court to be examined touching the matter of the said complaint, and whereas it has been returned to the said warrant that the said (name of witness) cannot be served and it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (name) is required to appear at (place) before the Court of _____ on the day of _____ next at _____ o'clock to be examined touching the offence complained of.

Dated this _____ day of _____ 18 ____.
 (Seal) _____ (Signature.)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(See section 88.)

To the Police-officer in charge of the Police-station at _____

Whereas a warrant has been duly issued to compel the attendance of (name, description and address) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served, and whereas it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said _____ to appear and give evidence at the time and place mentioned therein, and he has failed to appear:

SCHEDULE V.—*Contd.*

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(Seal.)

(Signature)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE
OF A PERSON ACCUSED.

(See section 88.)

To (name and designation of the person or persons who is or are to execute the warrant).

Whereas complaint has been made before me that (name description and address) has committed (or is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) can not be found, and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (or town) of in the District of , and an order has been made for the attachment thereof.

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18

(Seal)

(Signature)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY
COMMISSIONER AT MUDGOLTA

(See section 88.)

To the Deputy Commissioner of the District of

Whereas complaint has been made before me (name, description and address) has committed (or is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared, and whereas the said is possessed of certain land paying revenue to Government in the village (or town) of in the District of

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of the Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of 18

(Seal)

(Signature)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(See section 90.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant).

Whereas complaint has been made before me that of (name) (or is suspected to have) committed the offence of (mention the offence concisely), and it appears likely that (name and description of witness) can give evidence concerning the said complaint, and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so.

This is to authorize and require you to arrest the said (name), and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of 18

(Seal)

(Signature)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant)

Whereas information has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (mention the offence concisely)

This is to authorize and require you to search for the said (the thing specified) in the (describe the house or place or part thereof to which the search is to be confined) and if found to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18

(Seal)

(Signature)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(See section 93.)

To (name and designation of a Police-officer above the rank of Constable).

Whereas information has been laid before me, and on due inquiry thereupon had, I have been led to believe that the (describe the house or other place) is used as a place for the deposit (or sale) of stolen property (or if for either of the other purposes expressed in the section state the purpose in the words of the section).

This is to authorize and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or if the search is to be confined to a part, specify the part clearly) and to seize and take possession of any property (or documents or stamps, or seals, or coins, as the case may be)—(Add if from the case requires

SCHEDULE V.—*Contd.*

(d) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals or counterfeit coin (as the case may be), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and seal of the Court, this
day of 18 .

(Seal).

(Signature).

X.—BOND TO KEEP THE PEACE.

(See section 107)

Whereas I (name), inhabitant of (place), have been called upon to enter into a bond to keep the peace, for the term of

I herby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term, and in case of my making default therein, I herby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of 18 .
(Signature.)

XI.—BOND FOR GOOD BEHAVIOUR

(See sections 108, 109 and 110)

Whereas I (name), inhabitant of (place), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all

Dated day of 18 .
(Signature.)

(If there a bond with sureties is to be executed, add)—We do heroby declare ourselves sureties for the above named

to Her Majesty the sum of rupees
Dated this day of 18 .
(Signature.)

XII.—SUMMONS BY INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(See section 114)

To of
Whereas it has been made to appear to me by credible information that (state the substance of the information), and that you are likely to commit a breach of the peace (or by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (or by a duly authorized agent) at the Office of the Magistrate of on the day of 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees (when sureties are required add, and also to give security by the bond of one (or two, as the case may be)

surety (or sureties) in the sum of rupees (each more than one)] that you will keep the peace for the term of

Given under my hand and the seal of the Court
this day of 18 .
(Seal) (Signature.)

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(See section 123)

To the Superintendent (or Keeper) of Jail at

Whereas (name and address) appeared before me in person (or by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (or a bond with two sureties, each in rupees), that he, the said (name), would keep the peace for the period of months; and whereas an order was then made requiring the said (name) to enter into and find such security (state the security ordered when it differs from that mentioned in the summons), and he has failed to comply with the said order.

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment) unless he shall in the meantime (be lawfully ordered to be released) and to return this warrant with an endorsement certifying the manner of its execution

Given under my hand and the seal of Court, this
day of 18
(Seal) (Signature)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(See section 123)

To the Superintendent (or Keeper) of the Jail at

Whereas evidence of the general character of (name and description) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house-breaker, etc., as the case may be).

And whereas an order has been recorded stating the same and requiring the said (name) to furnish security for his good behaviour for the term of (state the period) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for rupees, and the said surety (or each of the said sureties) for rupees; and the said (name) has failed to comply with the said order and for such default has been adjudged imprisonment for (state the term) unless the said security be sooner furnished.

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment) unless he shall in the meantime (be lawfully ordered to be released) and to return this warrant

SCHEDULE V.—*Contd.*

with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18

(Seal) (Signature)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See sections 123 and 121)

To the Superintendent (or Keeper) of the Jail at (or other officer in whose custody the person is).

Whereas (name and description of prisoner) was committed to your custody under warrant, of the Court, dated the day of and has since duly given security under section of the Code of Criminal Procedure

or

and there has appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorize and require you forthwith to discharge the said (name) from your custody unless he is liable to be detained for some other cause

Given under my hand and the seal of the Court, this day of 18

(Seal) (Signature)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(See section 133)

To (name, description and address)

Whereas it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public road-way (or other public place) which, etc., (describe the road or public place), by, etc., (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists.

or

Whereas it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (state the particular trade or occupation and the place where it is carried on), and that the same is injurious to the public health (or comfort) by reason (state briefly in what manner the injurious effect is caused), and should be suppressed or removed to a different place

or

Whereas it has been made to appear to me that you are owner (or) are in possession of or have the control over a certain tank (or well or excavation) adjacent to the

or

Whereas, etc., etc., (as the case may be)

I do hereby direct and require you within (state the time allowed) to (state what is required to be done to abate the nuisance) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced

or

I do hereby direct and require you within (state the time allowed) to cease carrying on the said trade or

occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.

or

I do hereby direct and require you within (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced), or to appear, etc.;

or

I do hereby direct and require you, etc., (as the case may be)

Given under my hand and the seal of the Court, this day of 18

(Seal) (Signature)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 139)

Whereas on the day of 18, an order was issued to (name) requiring him (state the effect of the order), and whereas the said (name) has applied to me by a petition bearing date the day of, for an order appointing a Jury to try whether the said recited order is reasonable and proper, I do hereby appoint (the names, etc., of the five or more Jurors) to be the Jury to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at

Given under my hand and the seal of the Court, this day of 18

(Seal) (Signature)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(See section 140)

To (name, description and address).

I hereby give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (state sub.)

Given under my hand and the seal of the Court, this day of 18

(Seal) (Signature)

XIX.—INJUNCTION TO PREVENT AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY

(See section 142)

To (name, description and address)

Whereas the inquiry by a Jury appointed to try whether my order issued on the day of

15, is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger, to the public as to render necessary immediate measures to prevent such danger I do hereby under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (state plainly what is required to be done as a temporary

SCHEDULE V.—*Contd.*

safeguard), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this
day of 18.

(Seal)

(Signature.)

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPE-
TION ETC., OF A NUISANCE

(See section 143.)

To (name, description and address)

Whereas it has been made to appear to me that, etc.,
(state the proper verbal, guided by Form No. XVI or Form
No. XXI, as the case may be).

I do hereby strictly order and enjoin you not to repeat
the said nuisance by again placing or causing or permit-
ting to be placed, etc., (as the case may be).

Given under my hand and the seal of the Court, this
day of 18.

(Seal)

(Signature.)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION,
RIOT, ETC.

(See section 141.)

To (name, description and address)

Whereas it has been made to appear to me that you
are in possession (or have the management) of (describe
clearly the property), and that, in digging a drain on the
said land, you are about to throw or place a portion of
the earth and stones dug up upon the adjoining public
road, so as to occasion risk of obstruction to persons using
the road

or

Whereas it has been made to appear to me that you
and a number of other persons (mention the class of
persons) are about to meet and proceed in a religious
procession along the public street, etc., (as the case may
be), and that such procession is likely to lead to a riot
or an affray.

or

Whereas, etc., etc., (as the case may be):

I do hereby order you not to place or permit to be
placed any of the earth or stones dug from land on any
part of the said road

or

I do hereby prohibit the procession passing along the
said street, and strictly warn and enjoin you not to take
any part in such procession (or as the case recited may
require)

Given under my hand and the seal of the Court, this
day of 18.

(Seal)

(Signature.)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED
TO RETAIN POSSESSION OF LAND, ETC., IN DISPUTE

(See section 115.)

It appearing to me, on the grounds duly recorded,

concerning certain (state concisely the subject of dispute),
situate within the local limits of my jurisdiction, and
the said parties were called upon to give in a written
statement of their respective claims as to the fact of
actual possession of the said (the subject of dispute), and
being satisfied by due inquiry had thereupon without
reference to the merits of the claim of either of the
said parties to the legal right of possession, that the
claim of actual possession by the said (name or names
or description) is true;

I do decide and declare that he is (or they are) in
possession of the said (the subject of dispute) and entitled
to retain such possession until ousted by due course of
law, and do strictly forbid any disturbance of his (or
their) possession in the meantime

Given under my hand and the seal of the Court, this
day of 18.

(Seal)

(Signature.)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A
DISPUTE AS TO THE POSSESSION OF LAND ETC.

(See section 146.)

To the Police-officer in charge of the Police-station at
(or, To the Collector of)

Whereas it has been made to appear to me that a
dispute likely to induce a breach of the peace existed
between (describe the parties concerned by name and resi-
dence or residence only if the dispute be between holders of
villages) concerning certain (state concisely the subject of
dispute) situate within the limits of my jurisdiction and
the said parties were thereupon only called upon to
state in writing their respective claims as to the fact of
actual possession of the said (the subject of dispute), and
whereas, upon due inquiry into the said claim, I have
decided that neither of the said parties was in possession
of the said (the subject of dispute), [or I am unable to
satisfy myself as to which of the said parties was in
possession as aforesaid]

This is to authorize and require you to attach the said
(the subject of dispute) by taking and keeping possession
thereof and to hold the same under attachment until
the decree or order of a competent Court determining
the rights of the parties, or the claim to possession, shall
have been obtained, and to return this warrant with an
endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this
day of 18.

(Seal)

(Signature.)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE
DRAINING OF ANYTHING ON LAND OR WATER

(See section 147.)

A dispute having arisen concerning the right of use
(state concisely the subject of dispute) situate within the
limits of my jurisdiction, the possession, of which land
(or water) is claimed exclusively by (describe the person
or persons), and it appearing to me on due inquiry into
the same that it is not possible to determine the right

SCHEDULE V.—Contd.

I do order that the said *(the claimant or claimants of possession)*, or any one in their interest, shall not take *(or retain)* possession of the said land *(or water)* to the exclusion of the enjoyment of the right of use aforesaid, until he, *(or they)* shall obtain the decree or order of a competent Court adjudging him *(or them)* to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of 18 .
(Seal.) (Signature)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER

(See section 169)

I *(name)*, of being charged with the offence of and after inquiry required to appear before the Magistrate of or and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at in the Court of on the day of next, *(or on such day as I may hereafter be required to attend)* to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of 18 .
(Signature)

I hereby declare myself *(or we jointly and severally)* declare ourselves and each of us surety *(or sureties)* for the above said that he shall attend at in the Court of on the day of next *(or on such day as he may hereafter be required to attend)*, further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself *(or we hereby bind ourselves)* to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of 18 .
(Signature)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE

(See section 170)

I *(name)*, of *(place)*, do hereby bind myself to attend at in the Court of at o'clock on the day of next and then and there to prosecute *(or to prosecute and give evidence)* *(or to give evidence in the matter of a charge of against one A. B. and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees*

Dated this day of 18 .
(Signature)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PRISON.

(See section 214)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc. *(state the offence as in the charge)*.

Dated this day of 18 .
(Signature)

XXVIII.—CHARGES

(See sections 221, 222, 223)

(1) CHARGES WITH ONE PRISONER

(a) I *[name and office of Magistrate, etc.]* hereby charge you *[name of accused person]* as follows:—

(b) that you on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session *[when the charge is framed by a Presidency Magistrate, for Court of Session]*

To be substituted for (b)] —

(2) That you, on or about the day of , at , with the intention of inducing the Hon'ble A. B., Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*

(3) That you, being a public servant in the Department, ment, directly accepted from *[state the name]*, for another party *[state the name]* a gratification motive for forbearing committed an offence the Indian Penal Code the Court of Session

(4) That you, on or about the day of , at , did *[or omitted to do, as the case may be]* such conduct being contrary to the provisions of Act , section and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*

(5) That you, on or about the day of , at , in the course of the trial of before , stated in evidence that " " which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*

(7) That you, on or about the day of , at , abetted the commission of suicide by A. B. a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*

SCHEDULE V.—*Contd.*

(8) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

(9) That you, on or about the day of , at , committed [state the name] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

(10) That you, on or about the day of , at , robbed [state the name], an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

[In cases tried by Magistrates substitute "within my cognizance" for "within the cognizance of the Court of Session," and in (c) omit "by the said Court"]

(II) CHARGE WITH TWO OR MORE HEADS

(a) I [name and office of Magistrate, etc.] hereby charge you [name of accused person] as follows—

(b) First.—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name A. B., to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(c) And I hereby direct that you be tried by the said Court on the said charge

[Signature and seal of the Magistrate]

[To be substituted for (b)]—

(2) First.—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Secondly.—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

(3) First.—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Secondly.—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

Penal Code, and within the cognizance of the Court of Session [or High Court]

(4) That you, on or about the day of , in the Alternative course of the inquiry into , before charges on section , stated in evidence that " , and that you, on or about the day of , at , in the course of the trial of , before , stated in the evidence that " , one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

[In cases tried by Magistrates substitute "within my cognizance" for "within the cognizance of the Court of Session" and in (c) omit "by the said Court"]

(III) CHARGE FOR THEFT AFTER PREVIOUS CONVICTION.

I [name and office of Magistrate, etc.] hereby charge you [name of accused person] as follows—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court]

[or (Magistrate) as the case may be]

And you, the said (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (state Court by which conviction was had) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (describe the offence in the words used in the act under which the accused was convicted), which conviction is still in full force and effect and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, etc.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See section 245 and 259.)

I, at , of person, in case of (mention the sections) of the Indian Penal Code (or of Act), and was sentenced to (state the punishment fully and distinctly).

SCHEDULE V.—Contd.

This is to authorize and require you, the said Superintendent (or Keeper) to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(Seal) (Signature)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(See section 230)

To the Superintendent (or Keeper) of the Jail at

Whereas (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely) and the same has been dismissed as frivolous (or vexatious), and the order of dismissal awards payment by the said (name of complainant) of the sum of rupees as amendes and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (name of complainant) and an order has been made for his simple imprisonment in Jail for the period of days, unless the aforesaid sum be sooner paid

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of section 69 of

sum be sooner set him at enforcement

this day of 18 f the Court.
(Seal) (Signature)

XXXI.—SUMMONS TO WITNESS

(See sections 65 and 232)

To of

Whereas complaint has been made before me that (name) has (or is suspected to have) committed the offence of (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence for the prosecution

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint and not to depart thence without leave of the Court and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date a warrant will be issued to compel your attendance

Given under my hand and the seal of the Court this day of 18 (Seal) (Signature)

XXXII.—PRIVILEGE TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSASSORS

(See section 126)

To the District Magistrate of

Whereas a Criminal Session is appointed to be held in the Court house at on the day of

next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of Jurors and Assessors furnished to this Court, you are hereby required to summon the said persons to attend at the said Court of Session at 10 a.m. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(Here enter the names of Jurors and Assessors.)

Given under my hand and the seal of the Court, this day of 18 .

XXXIII.—SUMMONS TO ASSASSOR OR JUROR.

(See section 235)

To (name) of (place)

Pursuant to a precept directed to me by the Court of Sessions of requiring your attendance as an Assessor (or a Juror) at next Criminal Session, you are hereby summoned to attend at the said Court of Session at (place) at ten o'clock in the forenoon on the day of next

Given under my hand and the seal of office, this day of 18 (Seal) (Signature)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH

(See section 271)

To the Superintendent (or Keeper) of the Jail at

Whereas at the Session held before me on the day of 18 (name of prisoner), the (1st, 2nd, 3rd, or the case may be) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court

Given under my hand and seal of the Court this day of 18 (Seal) (Signature)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH

(See section 271)

To the Superintendent (or Keeper) of the Jail at

Whereas (name of prisoner) the (1st, 2nd, 3rd, or the case may be) prisoner in case No. of the Calendar at the Session held before me on the day of 18, has been by warrant of this Court, dated the day of committed to your custody under sentence of death and when as the order of the Court of confirming the said sentence has been received by this Court

This is to authorize and require you, the said Superintendent (or Keeper), to carry into effect the said sentence by causing the said to be hanged to the

SCHEDULE V.—Contd.

guard of the said order has failed to pay rupees _____ during the amount of the allowance for the month (or months) of _____. And thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment in the said Jail for the period of _____.

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant, with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of _____ 18 ____.

(Seal)

(Signature)

LI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(See section 488)

To (name and designation of the Police-officer or other person to execute the warrant).

Whereas an order has been duly made requiring (name) to allow to his said wife (or child) for maintenance be monthly sum of rupees _____, and whereas the said (name) in wilful disregard of the said order has failed to pay rupees _____, being the amount of the allowance for the month (or months) of _____.

This is to authorize and require you to make distress seizure of any moveable property belonging to the said (name) which may be found within the district of _____ and if within (state the number of days or hours allowed) next after such distress the said sum shall not be paid or forthwith), to sell the moveable property distrained or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of _____ 18 ____.

(Seal)

(Signature)

LIH.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(See sections 495 and 499)

I (name), of (place), being brought before the Magistrate of (as the case may be) charged with the offence of _____, and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge and, should the case be sent for trial by the Court of Session, to be, and appear before the said Court when called upon to answer the charge against me and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____.

Dated this

day of

18 ____

(Signature)

I hereby declare myself (or We jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name) that he shall attend at the Court of

on every day of the preliminary inquiry into the offence _____.

Queen, Empress of India, the sum of rupees _____.

Dated this

day of

18 ____

(Signature)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See section 500)

To the Superintendent (or Keeper) of the Jail at _____ (or other officer in whose custody the person is)

Whereas (name and description of prisoner) was committed to your custody under warrant of this Court, dated the _____ day of _____, and has since with his surety (or sureties) duly executed a bond under section 499 of the Code of Criminal Procedure.

This is to authorize and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of _____ 18 ____.

(Seal)

(Signature)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 514.)

To the Police-officer in charge of the Police-station at _____.

Whereas (name, description and address of person) has _____.

(person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him.

This is to authorize and require you to attach any moveable property of the said (name) that you may find within the district of _____ by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of _____ 18 ____.

(Seal)

(Signature)

XLV.—NOTICE TO SURETY IN BREACH OF A BOND.

(See section 514)

To _____ of _____
Whereas on the _____ day of _____ 18 ____ you became surety for (name) of (place) that he should appear before this Court on the _____ day of _____ and bound yourself in default thereof to forfeit the sum of rupees _____ to Her Majesty the Queen, Empress of India, and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees _____.

SCHEDULE V.—Contd.

neck until he be dead at (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of 18 .

(Seal)

(Signature)

XXXVI.—WARRANT AFTER A COMMITMENT OF A SENTENCE.

(See sections 351 and 352.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at a Session held on the day of (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody, and whereas by the order of the Court of (a duplicate of which is herewith annexed) the punishment adjudged by the said sentence has been committed to the punishment of transportation for life (or as the case may be),

This is to authorize and require you, the said Superintendent (or Keeper), safely to keep the said (prisoner's name) in your custody in the said Jail as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said Jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court this day of 18 .

(Seal)

(Signature)

XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE

(See section 356.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant)

Whereas (name and description of the offender) was on the day of 18 , convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of rupees , and whereas the said (name) although required to pay the said fine, has not paid the same or any part thereof,

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (name) which may be found within the district of and if within (state the number of days or hours allowed) next after such distress the said sum shall not be paid (or forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(Seal)

(Signature)

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(See section 450.)

To the Superintendent (or Keeper) of the Jail at

Whereas at a Court holden before me on this day (name and description of the offender) in the presence (or view) of the Court committed wilful contempt,

And whereas for such contempt the said (name of offender) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (state the number of months or days),

This is to authorize and require you, the Superintendent (or Keeper) of the said Jail, to receive the said (name of offender) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), unless the fine be sooner paid, and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(Seal)

(Signature)

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(See section 453.)

To (name and description of officer of Court).

Whereas (name and description), being summoned (a brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (term of detention adjudged),

This is to authorize and require you to take the said (name) into custody and him safely to keep in your custody for the space of days unless in the meantime he shall consent to be examined and to answer the question asked of him, and on the last of the said day, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution,

Given under my hand and the seal of the Court this day of 18 .

(Seal)

(Signature)

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(See section 489.)

To the Superintendent (or Keeper) of the Jail at

Whereas (name, description and address) has been

sent an order has been duly made requiring the said (name) to allow to his said wife (or child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (name) is wilful dis-

SCHEDULE V.—*Contd*

regard of the said order has failed to pay rupees being the amount of the allowance for the month (or months) of : And thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment in the said Jail for the period of

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant, with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 , (Seal) (Signature.)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(See section 488)

To (name and designation of the Police-officer or other person to execute the warrant).

Whereas an order has been duly made requiring (name) to allow to his said wife (or child) for maintenance the monthly sum of rupees , and whereas the said (name) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (or months) of :

This is to authorize and require you to make distress seizure of any moveable property belonging to the said (name) which may be found within the district of and if within (state the number of days or hour allowed) next after such distress the said sum shall not be paid (or forthwith), to sell the moveable property distrained or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 (Seal.) (Signature.)

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE

(See sections 496 and 499)

of and Cou myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge and, should the case be sent for trial by the Court of Session, to be, and appear before the said Court when called upon to answer the charge against me, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of 18

(Signature.)

I hereby declare myself (or We jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name) that he shall attend at the Court of

on every day of the preliminary inquiry into the offence

Queen, Empress of India, the sum of rupees

Dated this day of 18

(Signature)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See section 500)

To the Superintendent (or Keeper) of the Jail at (or other officer in whose custody the person is)

Whereas (name and description of prisoner) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (or sureties) duly executed a bond under section 499 of the Code of Criminal Procedure.

This is to authorize and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of 18 (Seal) (Signature.)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND
(See section 514.)

To the Police-officer in charge of the Police-station at

Whereas (name, description and address of person) has

person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him

This is to authorize and require you to attach any moveable property of the said (name) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution

Given under my hand and the seal of the Court, this day of 18 (Seal) (Signature.)

XLV.—NOTICE TO SURETY ON BREACH OF A BOND

(See section 514)

To of Whereas on the day of 18 you became surety for (name) of (place) that he should appear before this Court on the day of and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees

SCHEDULE V.—Contd.

You are hereby required to pay the said penalty or show cause, within _____ days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this _____ day of _____ 18 ____.

(Seal)

(Signature)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See Section 514.)

To _____ of _____

Whereas on the _____ day of _____ 18 __, you became surety by a bond for (name) of (place) that he would be of good behaviour for the period of _____ and bound yourself in default thereof to forfeit the sum of rupees _____ to Her Majesty the Queen, Empress of India; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited.

You are hereby required to pay the said penalty of rupees _____ or to show cause within _____ days why it should not be paid.

Given under my hand and the seal of the Court, this _____ day of _____ 18 ____.

(Seal)

(Signature)

XLVII.—WARRANT BY ATTACHMENT AGAINST A SURETY

(See section 511)

To _____ of _____

Whereas (name, description and address) has bound himself as surety for the appearance of (mention the condition of the bond), and the said (name) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees _____ (the penalty in the bond).

This is to authorize and require you to attach any moveable property of the said (name) which you may find within the district of _____, by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 18 ____.

(Seal)

(Signature)

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL

(See section 514)

To the Superintendent (or Keeper) of the Civil Jail at _____

Whereas (name and description of surety) has bound himself as a surety for the appearance of (state the condition of the bond) and the said (name) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India and whereas the said (name of surety) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (specify the period).

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody with this warrant and him safely to keep in the said Jail for the said (term of imprisonment) and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 18 ____.

(Seal)

(Signature)

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF BOND TO KEEP THE PEACE.

(See section 514)

To (name, description and address).

Whereas on the _____ day of _____ 18 __, you entered into a bond not to commit, etc., (as in the bond), and proof of the forfeiture of the same has been given before me and duly recorded.

You are hereby called upon to pay the said penalty of rupees _____ or to show cause before me within _____ days why payment of the same should not be enforced against you.

Dated this _____ day of _____ 18 ____.

(Seal)

(Signature)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE

(See section 514)

To (name and designation of Police-officer), at the Police station of _____

Whereas (name and description) did on the _____ day of _____ 18 __, enter into a bond for the sum of rupees _____ binding himself not to commit a breach of the peace, etc., (as in the bond), and whereas the said bond has been forfeited, and whereas calling upon _____ not to be paid, and he has failed to do so or to pay the said sum.

This is to authorize and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees _____ which you may find within the district of _____, and, if the said sum be not paid within _____, to sell the property so attached or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 18 ____.

(Seal)

(Signature)

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE

(See section 514)

To the Superintendent (or Keeper) of the Civil Jail at _____

Whereas proof has been given before me and duly recorded that (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees _____, and whereas

SCHEDULE V.—*Continued*

the said (name) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment),

This is to be satisfied (or) the said (name) in and him safely (term of imprisonment), and to return that warrant with an endorsement certifying the manner of its execution

Given under my hand and the seal of the Court, this day of 18 (Seal) (Signature)

LII—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 311)

To the Police-officer in charge of the Police-station at

Whereas (name, description and address) did, on the day of 18, give security by bond in the sum of rupees for the good behaviour of (name etc., of the principal), and proof has been given before me and duly recorded of the commission by the said (name) of the offence of whereby the said bond has been forfeited, and whereas notice has been given to the said (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum

This is to authorize and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees which you may and within

the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution

Given under my hand and the seal of the Court, this day of 18 (Seal) (Signature)

LIII—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 311)

To the Superintendent (or Keeper) of the Civil Jail at

Whereas (name, description and address) did, on the day of 18, give security by bond in the sum of rupees for the good behaviour of (name, etc., of the principal), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (name) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees, and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment),

This is to authorize and require you, the Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution

Given under my hand and the seal of the Court this day of 18 (Seal) (Signature)

SUPPLEMENT
TO RAY'S
CODE OF CRIMINAL PROCEDURE, 1898.
CONTAINING
AMENDMENTS INTRODUCED BY CRIMINAL PROCEDURE
(AMENDMENT) ACT 1923.

S. 4 (h)

Notes.

1. Complaint to police no complaint—A complaint as defined in S. 4, (1) (A) must be made to a Magistrate. Therefore a complaint of an offence under S. 498 I. P. C. to the police is not sufficient for the purposes of S. 193 C. P. C.—23 Cr. 302 (ND).
2. Memorandum by Collector no complaint—A memorandum under the signature of the Collector cannot be accepted in the place of a complaint as to authorise the issuing of summonses—S. R. H. (C.C.) 45.
3. Chalan by subordinate police officer under Defence of India Rules is complaint—Where a District Magis-

trate, by virtue of an amendment in the Police Act vide rule 25 (1) of the D. P. C. the case and complaint is not validly made.

of
towns,
the Chief
Presidency
Presidency

S. 4 (k)

Notes.

1. Enquiry in connection with tender of pardon.—The Code does not make any provision for enquiry by the District Magistrate or any other Magistrate in connection with a tender of pardon. Any such

in the
the
4 (1)

the Local
Presidency
powers
in force,

S. 4 (o)

Notes.

1. Breach of Contract under Workman's Breach of Contract Act—The Legislature has described the order, which a Magistrate is authorised to make against a workman in a case proved, as "punishment." Therefore the act if proved amounts to an "offence" punishable by law within the meaning

—

S. 11.

Notes.

Temporary disability of District Magistrate due to illness—There is no vacancy in the office of the District Magistrate and no temporary succession to such office within the meaning of S. 11 of the

Cr. P. C., where the District Magistrate has not left the District, but is only temporarily incapacitated from attending to work.—24 O. C. 255.

S. 12.

Notes.

1. Jurisdiction of Mofassil Magistrates—If the juris-

valid order transferring the case from the file of that Court to his file—24 O. C. 255.

2. Sub-divisional Magistrates.—A Sub-divisional Magistrate has no jurisdiction to take cognizance of matters outside the local area within which the District Magistrate has appointed him to act.—19 A. J. 77.

S. 16.

Notes.

1. Order of execution issued by Magistrate not present

2. Withdrawal by Magistrate who hears the case.—It is the duty of a Magistrate who has heard the case

D.—Courts of Presidency Magistrates.

18. (1) The Local Government shall, from time to time, appoint a sufficient number of person (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.

(3) A Presidency Magistrate may be appointed under this section for such term as the Local Government may, by general or special order, direct

(4) The Local Government may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the Local Government may direct.

Changes introduced

(1) The words "any person" in the new sub-clause (4) which provides for the appointment of Additional

Chief Presidency Magistrates have been introduced for the following reason: "We think there is force in

the suggestion of the Calcutta Bar Library Club that it is not necessary to restrict the appointment of an Additional Chief Presidency Magistrate to persons who are already Presidency Magistrates, and we have therefore substituted the words "any person" for the words "any Presidency Magistrate." It is of interest to note that the Select Committee of 1916 sought to restrict the

appointment of Additional Chief Presidency Magistrates to persons who were already Presidency Magistrates." It may be noted in passing that the relation between the Chief and the Additional Chief Presidency Magistrate is left undefined. It is left no doubt to the discretion exercisable by the Local Government under S. 21 (2).

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
- (b) the times and places at which Benches of Magistrates shall sit;
- (c) the constitution of such Benches;
- (d) the mode of settling differences of opinion which may arise between Magistrates in session; and
- (e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates including Additional Chief Presidency Magistrates are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

Changes introduced.

The amendment to Cl (2) is consequential upon the amendment introduced in S. 18 by which "Addi-

tional Chief Presidency Magistrates" are created.

29. (1) Subject to the other provisions of this code any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

Changes introduced.

The changes introduced supply an omission. Trials under Special Acts, even when no reference is made therein to the particular Court or Courts

entitled to try the offender, are made subject to the special provisions applicable to the trial of European British subjects.

29A. No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such.

Trial of European British Subjects by second and third class Magistrates

Sec 29A has been added by the Criminal Law Amendment Act 1923 (XII of 1923).

29B. Any offence, other than one punishable with death or transportation for life by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the Local Government to exercise the powers conferred by section 8, sub-section (1), of the Reformatory Schools Act, 1897, or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.

Changes introduced.

Section 29B is new. It makes a special provision for juvenile offenders. "In view of the fact that the Reformatory Schools Act 1897, has to a considerable extent been repealed in Madras by the Madras Children Act 1920, and may be repealed elsewhere, we have proposed an addition to the new S. 29A to

S. 32.

Notes.

Deterrent sentences to be passed only in exceptional cases.—"Deterrent punishments are now regarded only as of utility—and it cannot be denied that they have, under circumstances, their value—in what are luckily as a rule exceptional circumstances. When waves of imitative crime, such for example (and I speak from personal experience) garroting, gang robbery (or dacoity as it is called here) and forgery of counterfeit coin or notes, commence to sweep over a State, judicious and increasing severity may properly be utilized to check and deter such an inundation; again in times of public tumult, when there is danger of a wide breach of public peace or security, or where a highly organised or what one may call semi-professional association of persons engineer series of offences, such as swindling or burglary, deterrent punishments may be with caution advantageously

inflicted,—such a category is naturally not exhaustive but illustrative only; and sound knowledge of the facts and circumstances of the case is essential.

Section 35 of Indian Companies Act not governed by S. 32.—Under S. 35 of the Companies Act, a Magistrate is bound to impose a fine of Rs. 500 in respect of each offence of issuing a share-warrant.

more than two such share-warrants have been issued.—20 C. 676

S. 33.

Notes.

1. Deterrent sentences to be passed only in exceptional cases.

sentences on juveniles beyond what the sentences would amount in the case of adults, in order that juveniles should get the advantage of being confined in a juvenile prison.—*MacLeod, C. J.* in 23 R. R. 1199.

2. Sentences of whipping by second class Magistrates.—Magistrates of the second class, who had, under

Act X of 1872, power to inflict the punishment of whipping, could not, after Act X of 1882, had come into force, pass that sentence, unless the power had been specially conferred upon them.—7 R. 303.

3. Section 33 controlled by S. 65 I. P. C.—A Magistrate is not empowered, under S. 33, Cr. P. Code, to award imprisonment in default of fine, in excess of the term prescribed by S. 65 Penal Code.—10 M. 165 (F.B.)=2 Weir 30 (1 M. 277 overruled); 10 M. 166 (N.)=2 Weir 26.

4. Can imprisonment in Reformatory terminate on payment of fine?—There is no authority for direc-

ting that imprisonment in a Reformatory shall terminate on payment of a fine.—(93-00) L. B. 491.

Sentences which Courts and Magistrates may pass upon European British Subjects.

34A. Notwithstanding anything contained in sections 31, 32 and 34—

(a) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and

(b) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both.

Note.—Section 34 has been inserted by the Criminal Law Amendment Act 1923 (XII of 1923).

35. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code

Sentences in cases of conviction of several offences at one trial.

sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent

to inflict; such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court;

Provided as follows.—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 31), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Changes introduced.

- (1) The scope of the section has been limited by the provisions of S. 71 I. P. C. The words "subject to the provisions of S. 71 of the Indian Penal Code" added to Cl. (1) leave no room for doubt. The explanation has been repealed as unnecessary.

Rulings rendered obsolete.—11 C. 349; 19 C. 105 (110)
15 C. 725 (728); 4 C. J. 90; 23 B. 708 (F.B.); 17
B. 260 (F.B.); 12 M. 36; 1 Weir 34; 2 A. 101;
10 A. 63; 10 A. 146; 1 L. B. 3; 6 L. B. 160; 31
P. R. 1894.

By substituting the words "the aggregate of consecutive" for the word "aggregate," the Legislature has now definitely confined the operation of Cl. (3) to the cases of consecutive (as opposed to concurrent) sentences only. The amendment follows the rulings cited under S. 351 (107) at p. 51. See also Note No. 5 below.

Rulings rendered obsolete.—15 C. N. 734; 17 C. N. 72.

Notes.

1. Change of Law. Under the Code of 1882, there was no provision in the Code to pass concurrent sentences.—(97) 17 A. N. 207.
2. Cumulative Sentences—When, in the same penal statute there are two clauses applicable to the same act of the accused, cumulative punishments are not to be awarded unless it is so expressly provided in the statute—11 B. H. 13.
3. Sentences in separate trials cannot be made concurrent—Where separate trials are held and separate sentences passed upon the accused at each trial, the sentences under S. 397 Cr. P. C. must be served consecutively. The Court has no power in such a case to direct under S. 35 of the Code, that the sentences do run concurrently as that section relates to sentences in cases of convictions of several offences at one trial.—19 A. J. 310
4. Separate sentences can be inflicted only in case of distinct offences.—Where an offence is committed

cannot be inflicted under S. 35 Cr. P. C. and S. 71 I. P. C. Thus, where a person commits house-trespass and attempts to murder an occupant of the house, he may be convicted of both these offences, but a separate sentence for each offence is not justified.—22 Cr. 198 (L.) (23 B. 706 (F.B.) Fd.)

Note.—See also the cases reported at . 1 L. B. 279 : 8 B. R. 850 : 8 B. R. 855

5. Appeals—Computation of sentences—A first class

6. Solitary imprisonment for each distinct offence.—It is not against the spirit of the law to make three months' solitary confinement a part of each sentence of rigorous imprisonment to which the accused is sentenced in succession, on separate convictions for distinct offences.—(93-07) L. B. 213.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout the continuance of powers of officers transferred any local area is appointed to an equal or higher office of the same nature, within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, * * exercise the same powers in the the local area in which he is so appointed

Changes introduced.

- (1) By substituting the word "appointed for the word "transferred," the Legislature has met the objection raised by Markby J. in 2 C. 117 that the posting
- officer not transferred but appointed on his return from leave to an equal or higher office of the same

nature, to exercise the powers with which he was invested before he went on leave (Sec. 2 B. It. 530)

- (2) By the omission of the words "continues to," the Legislature confirms the decision in 3A 563 (F.B.), 15 C P. 15 and 14 Cr 239(A) [8 40(3)], that a reverted officer ceases to exercise the powers with which he was invested during his temporary incumbency of a higher office of a like nature.

S. 42.

Notes.

Refusal to join police in search of a suspect no offence.—The Law does not intend that Police officers should have a general power of calling upon members of the public to join them in doing the work for which they are paid, such as tracing

out the whereabouts of a fleeing criminal, or collecting evidence to warrant his conviction. By refusing to join in such a case, a person does not incur criminal liability.—21 Cr. 501 (A.)

45. (1) Every village headman, village-accountant, village-watchman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier in charge of the

of that land and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may possess respecting—

Village headmen, accountants, landholders and others bound to report certain matters.

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;
- (b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;
- (c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147 or 148 of the Indian Penal Code;
- (d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances; or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person.
- (e) the commission of, or intention to commit, at any place out of British India near such village any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489A, 489B, 489C, and 489D
- (f) any matter likely to affect the maintenance of order or the prevention of crimes or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

(2) In this section—

- (i) "village" includes village-lands; and
- (ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor-General in Council in any part of India, in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

(3) Subject to rules in this behalf to be made by the Local Government, the District Magistrate or Sub-divisional Magistrate may from time to time

Appointment of village-headmen by District Magistrate in certain cases for purposes of this section.

appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.

Changes introduced.

- (1) The words "in charge of the management of that land" introduce a necessary restriction. The operation of Cl (1) is now confined to those agents only who are actually concerned in the management of the property in question
- (2) The word "possess" has been substituted for the word "obtain," thus making it obligatory to give information only when the persons specified in Cl (1) have personal knowledge of the fact. See (400) A.N. 207
- (3) The reason for amplifying subsection (d) is as follows: "We think that, in the cases referred to in Cl (d), the obligation to give information should only arise

when a reasonable suspicion exists that a non-bailable offence has been committed." (Joint Com., 1922)

- (4) The scope of subsection (e) has been amplified by the addition of twelve new sections, s. 231 to 233 refer to offences relating to counterfeit coins, and Ss 489A to 489D to counterfeiting currency-notes
- (5) "

Notes.

1. Section is not punitive.—"The provisions of the Section are not intended to be punitive in themselves but are intended to deal with a person who is guilty of an offence."

admittedly correct in all particulars, no further duty or obligation lies on that person for failing his own weight to the information by furnishing fresh information on the same lines—3 O J 590 (4 C. 623 • 20 C 316 7 M 436 1 Weir 102 R)

2. Mukaddam and Kotwar in C. P.—Under S 45 of the Criminal Procedure Code, every Mukaddam and Kotwar is bound to communicate forthwith to the nearest Station House Officer or Magistrate, the occurrence in and near the village of any sudden or unnatural death or any death under any suspicious circumstances—23 Cr 345 (N)
3. Meaning of "unnatural" death.—In the ordinary sense of the word "unnatural" means "not according

to nature." A natural death means death on account of disease, old age etc., i.e. death brought about by the operation of the ordinary laws of nature. An unnatural death means a death caused by unnatural means e.g. accident, murder culpable homicide, etc. In 23 Cr 345 (N.) Halifa A J C held, that to come within the meaning of the word "unnatural" as used in S 45 of the Cr. P. C., as to be sure to be reported immediately, the effect (death) must occur fairly soon after the cause (accident etc.). In that case one T B fell

from a height of about 100 feet from the effects of that fall, that would surely not have been regarded as a death which had to be reported forthwith, though it would be just as unnatural as if T had died within a few minutes of his fall or had been killed by it instantaneously."

S. 46.

Notes.

Application of subsection (3) to the Punjab Frontier.—The limits laid down by subsection (3) of S 46 do not apply where the Punjab Frontier Crimes Regulation III of 1901 is in force (24 P R 1834) "But this section gives a right to cause the death

of a person against whom those portions of the Punjab Frontier Crime Regulations 1897, which are not of general application may be enforced, etc."—See s 33 of the Regulation.

B—Arrest without Warrant

When police may arrest without warrant.

54 (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest—

Notes.

1. Issue of warrant by Magistrate amounts to "reasonable complaint."—In order to justify a police officer to arrest without warrant any person "against whom a reasonable complaint has been made that he has been concerned in a cognizable offence," it is not necessary that the complaint should have been made to the police officer himself. It is sufficient that a reasonable complaint should have been made to any person who was entitled to entertain it—*e.g.*—a Magistrate and that the latter after taking the statement of the complainant had acted upon it and had issued a warrant for the arrest of the person concerned. 3 U. P. (A) 198.
2. Power to arrest under S. 54 not confined to any particular local area.—Section 54 Cr. P. C. gives the police power to arrest without a warrant a person who is charged with a cognisable offence and "it seems to me that it makes no difference so long as it is within British India." (Kumarswami Sastri, J.), that it is to say, a police officer is authorised not only to arrest in such cases within the limits of his own Police Station but anywhere in British India.—41 M. J. 441.

S. 55.

Notes.

1. Magistrate cannot order bad character to leave any place.—The law does not authorise a Magistrate to order any person to leave any place under threat of being prosecuted as a bad character—19 A J. 951 : (97) A N 59 R.
2. Power to order further detention after discharge.—Where persons arrested on suspicion under S. 53 in connection with a case of dacoity are discharged from custody, no Magistrate has any authority to direct their further detention in custody on a different matter unless and until they had been re-arrested by the Police under S. 53 of the Cr. P. C.—43 A 186.

56. (1) When any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV requires any officer subordinate

Procedure when police-officer deposes subordinate to arrest without warrant

to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall before making the arrest notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) This section applies also to the police in the town of Calcutta.

Changes introduced.

The "any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV" is changed to "any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV".

police station. This is a useful innovation and

likely to promote facility of work. "We consider that a police-officer making an investigation should, no less than an officer in charge of a police station, have power to depute a subordinate to effect arrest under the provisions of S. 53 (1) and we propose an amendment in this subsection accordingly (Sd. Com. 1916).

Notes.

Rescue from lawful custody.—A constable in pursuance of written orders by a Sub-Inspector under S. 54 Cr. P. C. arrested certain persons. The accused thereupon pushed aside the constable, and rescued

them from lawful custody. Held, that the accused were guilty under S. 353 read with S. 225 Indian Penal Code.—41 A 253.

59. (1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.

Arrest by private persons Procedure on such arrest

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Changes introduced.

The words "or cause him to be taken in custody to the nearest police station" put the legislative seal on the view taken by the Madras High Court in 11 M 480 and 17 M 103, the Calcutta High Court in 41 C 17 and the Allahabad High Court in 29 A. 475 and 23 A 266, that the law does not require that the private person who arrests the offender

should personally take him to the Police Station. If he cause the offender to be taken to the thana, he does all that is required of him. "We think that the words "without unnecessary delay" should govern all that follows and we have made a slight drafting change to effect this. (Joint Com. 1922.)

Notes.

Limits of arrest by private person.—Section 59 of the Criminal Procedure Code empowers a private person to arrest any person who, in his view, commits a non-bailable and cognizable offence. A private

person who attempts to arrest a person who has not committed a cognizable offence in his view is not entitled to the protection of that section, or of S. 225 of the Penal Code.—2 L. 303.

S. 68.

Notes.

1. None attendance due to illness.—"It appears to me that if a person is sufficiently incapacitated by illness to have given up his ordinary avocations, this would be sufficient excuse for him not to attend a Court in obedience to a summons. If the applicant was so ill that his absence could not be regarded as a wilful disobedience to the Court's

order, the fact that he did not send a man to inform the Court of his illness, would render him liable to punishment."—Ryves, J.—23 Cr. 208 (A.)

2. Summons not sealed is illegal.—A summons not sealed as required by S. 68 of the Cr. P. C. is illegal. 21 Cr 800 (M.) (42 C. 708 Fd.)

Ss. 69-70-71.

Notes.

Substituted service to be ordered when.—Substitute service of summons should not be ordered until proper steps have been taken to effect a personal

service. In the absence of reasonable diligence in attempting to personally serve the summons, substituted service is bad.—23 Cr. 739 (N.).

S. 87.

Notes.

Application of the section.—A man who files a petition against the order issuing the warrant and takes steps to procure an order of a superior Court that he should be allowed to remain on bail after such warrant has been issued, can neither be said to be

absconding nor concealing himself. In such a case no action can be taken under S. 87 Cr. P. C. by the Court which issued the warrant—23 Cr. 454 (L.) (See (1886) 2 Weir. 40).

88 (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made, and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

- (a) by seizure; or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

- (e) by taking possession, or
- (f) by the appointment of a receiver, or
- (g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf, or
- (h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property,

and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part.

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section (2), in the Court of such Magistrate.

(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made.

Provided that, if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.

(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under sub-section 6A has been disposed of under that sub-section unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Changes introduced.

The whole of the amendment has been framed with a view to remove a glaring omission in the Code.

is made by a person other than the subconductor to such property, the Magistrate should stay the sale of the property and give the claimant time to establish his title in Civil Court" (20 M. 88) The only remedy was by a regular suit (See 88 (16) The clauses now introduced provide,

- (1) for trial of such claims by the Magistrate who issued the order of attachment, or in the special case provided for in Cl. (2) by the District Magistrate

or the Chief Presidency Magistrate provided that the claim is preferred within 6 months and has not been designedly or unnecessarily delayed.

- (2) that on the death of the claimant during the pendency of the objection, his heir or legal representative may prosecute the same
- (3) If the claim is disallowed, a Civil Suit may be instituted within one year to establish the right.
- (4) "We think that a limited power to transfer claims and objections for disposal to Subordinate Magistrates would be useful, and we have, therefore, provided that District Magistrates may transfer such cases to Magistrates not below the rank of

order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious matter.

Hearing by Special Bench.

99C. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

99D. (1) On receipt of the application, the Special Bench shall if it is not satisfied that

Order of Special Bench setting aside forfeiture

the issue of the newspaper, of the book or other document, in respect of which the application has been made, contained seditious matter of the nature referred to in sub-section (1) of section 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those Judges.

99E. On the hearing of any such application with reference to any newspaper, any copy

Evidence to prove nature or tendency of newspaper.

of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper

which are alleged to be seditious matter.

99F. Every High Court shall, as soon as conveniently may be, frame rules to regulate

Procedure in High Court.

the procedure in the case of such application, the amount of the costs thereof and the execution of orders passed thereon and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications

99G. No order passed or action taken under section 99A shall be called in question in any

Jurisdiction barred

Court otherwise than in accordance with the provisions of section 99B.

Note.—Secs. 99 A to G have been inserted by the Press Law Repeal and Amendment Act 1922 (XIV of 1922)

103. (1) Before making a search under this Chapter, the officer or other person about to

Search to be made in presence of witnesses.

make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in his behalf, shall in every

Occupant of place searched may attend.

instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) *Any person who without reasonable cause refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code.*

Changes introduced.

Sections 93 A to G have been inserted by the Press Law Repeal and Amendment Act 1922 (Act XIV of 1922)

- (1) The addition of the words "and may issue an order in writing to them or any of them so to do," gives an important and necessary power to the police officer conducting the search
- (2) By making a refusal to attend and witness a search, when called upon to do so, punishable under S 187 I. P. C. the Legislature confirms the decision in

38 M. J. 27. "We accept the proposal of the Bill to penalise an unreasonable refusal or neglect to attend as a search witness, but would make it

section (5) unless the order in writing has been delivered or tendered to the person to whom it is addressed" (*Joint Com. 1922*).

Notes.

1. Evidentiary value of search lists—A search list is not evidence of the facts stated therein and search, that certain formalities were observed and certain events took place. *Oral evidence may, therefore, be given as to what took place at the time of the search.*—2 Weir. 770

2. *fore no application to such a search*—23 Cr. 621 (L).

106. (1) Whenever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 143, section 149, section 153A or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court including a Court hearing appeals under section 407 or by the High Court when exercising its powers of revision.

Changes introduced.

- (1) The necessity of the words "or of assembling armed men or taking other unlawful measures with the evident intention of committing the same" is removed by the amendment introduced into the Section 112, any offence punishable under Chapter

of the section by including all offences under Chapter VIII I. P. C. than to involve the Court in an enquiry whether the offence of which the accused has been convicted though not involving a breach of the peace was nevertheless likely to have occasioned a breach" (*Sel. Com.* 1916). "We agree generally that convictions for offences under Chapter VIII of the I. P. C. would justify action under S. 106, but we have made an exception in the case of S. 163A of the Indian Penal Code (*Joint Com.* 1922). The Legislature at the time

of final consideration has further excluded Ss 143, 149 and 154"

- (2) By introducing the words "including a Court

of Patna in 2 Pat J. 21 (F.B.)

Rulings rendered obsolete.—The following rulings in so far as they lay down a contrary proposition are overruled: 30 M. 182, 30 M. 43 (49); 29 M. 170; 8 M. T. 291; 7 M. T. 104; 6 M. T. 238. (81) A. N. 71; 7 A. J. 910; 17 A. 67; 19 Cr. 220 (C); 35 C 434; 21 C. 622; 16 C. 779; 5 P. R. 1918; 7 P. R. 1909; 21 P. R. 1908; 6 P. R. 1907; 21 P. R. 1906; 1 O. C. 237.

Notes

1. Offences involving a breach of the peace.—The words "offence involving a breach of the peace" have been taken from S. 106 Cr. P. C.

to breach of the peace—S. 149.

2. Offences under S. 143 and 297 I. P. C.—An order under S. 106 Cr. P. C. cannot be passed on a conviction under S. 143 or 297 I. P. C. as those offences do not necessarily involve a breach of the peace.—*Ibid* 35 C. 315 and 26 M. 469 Ed.)
3. Conviction for criminal intimidation must precede order.—It is not sufficient in order to justify an
4. Offences under S. 323 and 325 I. P. C.—It has been held by this Court (Allahabad II. C.) that offences under sections 323 and 325 are offences involving a breach of the peace, and that where persons are convicted under either of these sections of the Indian Penal Code, they may be bound over

to keep the peace under S. 106 Cr. P. C. To me it seems quite clear that there is nothing to prevent a Magistrate from taking security from persons who have been convicted under section 323 to keep the peace under this section.—Per Lindsay J. in 19 A. J. 836 (Compare with the views of the same Judge in 24 Cr. 227 (O).)

5. Offence under S. 342 I. P. C.—It cannot be said that a breach of the peace is necessarily involved in the commission of the offence of wrongful confinement, and therefore an order under section 106 of the Criminal Procedure Code cannot be passed where a person is convicted of the offence of wrongful confinement—24 Cr. 271 (L)
6. Power of Appellate Court to take security.—The Section as amended has put the power of appellate

1918 must be regarded as obsolete.

B.—Security for keeping the Peace in other Cases and security for Good Behaviour.

107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate

Security for keeping the peace in other cases.

or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate, if in his opinion there is sufficient ground for proceeding, may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this chapter.

Changes introduced.

- (1) The words "if in his opinion there is sufficient ground for proceeding" provide a safeguard against arbitrary exercise of powers under the section.
- (2) In subs. (4) the words "sub-section (3)" have replaced the words "this section" thus clearly emphasising the fact that only in the special circumstances referred to in subs. (3), a Magistrate may detain a person against whom proceedings are instituted under that sub-section. This amendment follows

32 C. 80, 31 M. 315 (F.B.) 36 M. 474 and O.S. 158 (See 107 (187, 188)).

- (3) The words "until the completion of the enquiry" have been added.

under this Chapter."

Notes.

1. What is information within the meaning of S. 107 Cr. P. C.—

- (1) Information of the kind mentioned in Section 107 of the Code must be of a clear and definite kind,

- (2) It is not open to a Magistrate to draw up or direct, against particular persons, proceedings under S. 107 Cr. P. C. merely on the basis of *general or vague statements* which do not contain any direct allegation or accusation against the individuals proceeded against—2 Pat. T. 669

2. Defective notice when not fatal.—Where the appellants had ample notice of the case that was made against them and also ample time to produce evidence in support of their own case, and the omission of "the substance of the information received" in the notice, did not in fact prejudice

the accused in putting forward their case before the Magistrate: *held*, that the defect was cured by S. 537 Cr. P. C.—23 Cr. 42 (Pat.).

3. Section 107 applies only to case of undisputed possession.—Proceedings under section 107 Cr. P. C. are justified only in the case of undisputed possession. Where there is a dispute about possession of land, proceeding under S. 145 should be instituted—22 Cr. 574 (Pat.) (See also 22 Cr. 86 (Pat.))

4. Duty to maintain possession given by Civil Court.—

5. Apprehension of breach of peace must be real and not

- sufficient to justify an order under S. 107. It is for the Court to see whether there was any apprehension of an actual breach of the peace on their part apart from this.—8 O. J. 282.
6. Where both parties are dangerous.—Where there is a long standing dispute between the two parties who are on the very worst of terms and have fought
7. Jurisdiction does not depend on place of residence only.—The fact that a person is within the territorial limits of the jurisdiction of the Magistrate, when an apprehension of a breach of the peace arises, is sufficient to give the Magistrate jurisdiction to bind such person over under S. 107 Cr. P. C. and such jurisdiction is not ousted merely because the person to be bound over has his place of residence outside the jurisdiction.—22 Cr. 109 (A) (11 C. 737: 12 C. 133: 6 A. 26 (F.B.): 24 C. 344 Fd.)
8. Proceedings against person resident outside jurisdiction.—A District Magistrate acting in the exercise of his powers under section 107 Cr. P. C. can pass an order against an accused person residing outside the local limits of his jurisdiction, when the breach of the peace or disturbance is apprehended within the local limits of his jurisdiction.—23 Cr. 396 (A)
9. Accused willing to give security.—The mere statement of person that he is willing to give security is not sufficient ground for asking security from him for keeping the peace.—23 Cr. 175 (L.) (24 P. R. 1915: 27 P. R. 1917 Fd.)
10. Instigators come within S. 107.—Section 107 applies to persons who merely instigate a breach of the peace or disturbance of the public tranquillity.—23 Cr. 394 (N)
11. Section 107 not ousted by applicability of S. 145.—

even when the cause of the likelihood of the breach of the peace has its origin in a dispute about land.—23 Cr. 123 (Pat.): 23 Cr. 567 (N.).

12. Civil Suit to set aside an order under S. 107 Cr. P. C.—“It is clearly not the intention of the Legislature to prevent persons, even though bound over under S. 107, from seeking to enforce their rights in Civil Court.” The institution of a civil suit by the person bound over, cannot be made a ground for forfeiture of the bond, as in that case no person bound over under S. 107, would be able to institute a civil or criminal proceeding without endangering the forfeiture of the bond.—1 L. 310.
13. Dispossession which is prima facie illegal does not necessarily justify proceedings.—Where the complainant is out of possession, the fact that his
14.
- sufficient to prove that there exists a gang of
- 23 Cr. 141 (N.)
15. Can proceedings once cancelled be revived?—In

plaint can be entertained by the same Magistrate.—24 Cr. 232 (A.).

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing or in any other manner intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of:—
- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Code, or
- (b) any matter the publication of which is punishable under section 153A of the Indian Penal Code, or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate *if in his opinion there is sufficient ground for proceeding* may (in manner herein-after provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, *and edited, printed and published* in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, *with reference to any matter contained in such publication* except by the order or under the authority of the Governor General in Council or the Local Government or some officer empowered by the Governor General in Council in this behalf.

Changes introduced.

- (1) "Or in any other manner intentionally" enlarges the scope of the section. For instance, "pictures

introduced to clarify the object of the section. "In view of the recent amendments in the Press and Registration of Books Act 1867, regulating the editing of newspapers, we have made a consequential amendment here. We also think that the protec-

published," are substituted for "or printed or published," and the words "with reference to any matter contained in such publication," have been

COM. 100-1

S. 109.

Notes.

1. Meaning of ostensible means.—A person who has no means of his own but is maintained by his father who earns an honest living, is not "a person who has no ostensible means of subsistence."—22 Cr 749 (A.).
2. Giving false name and address.—If a person, when

Dist.).

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction—

Security for good behaviour for habitual offenders.

- (a) is by habit a robber, house-breaker, thief or forger or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or
- (d) habitually commits or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion or cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, or under Section 489A, Section 489B, Section 489C, or Section 489D of that Code, or
- (e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Changes introduced.

1. By including a habitual forger in cl. (a) the Legislature has removed a glaring omission. The Courts were formerly helpless when the reported forger could not be proved to be in the habit of either cheating or extortion. (See 23 P. R. 1914; 25 P. R. 1884; 20 O. C. 129; 19 Cr. 883 (N); 16 A. J. 776 S. 110 (163)). "We agree that habitual kidnappers should be brought under this section, but doubt the necessity of any reference to abduction. We think that it is desirable to include all offences under Chapter XII of the Indian Penal

Code and also habitual forgers." (S. 1 Cr. 1916) "We notice that clause (d) of S. 110 as redrafted by the Bill omits the reference to the counterfeiting of currency notes, which appears in the present law. We have therefore included offences under S. 489 A to 489 C of the Indian

Notes.

Jurisdiction lies where crimes are committed.—Section 110 has left the matter of permanent residence open. It is sufficient that the accused is within the local limits of the Magistrate when proceedings are initiated. The question is not where he resides but where he carries on his career of crime.—23 Cr. 86 (A.)

2. Verdict of not guilty fully establishes innocence of

procure evidence against him on a charge of a substantive offence. Section 110 Cr. P. C. is not intended for furnishing the Police with means of detaining persons against whom a definite charge has been made out but broken down (24 O. C. 317; 22 Cr. 269 (L); 43 A. 185)

- 3.

the evidence in the prosecution.—24 Cr. 307 (L); 24 Cr. 257 (A)

4. Evidence of general repute must be overwhelming.—When there is nothing but evidence of general repute to go upon, that evidence must be so general and overwhelming, as to leave no practical doubt that the accused is in the habit of committing any

one or more of the offences specified in the section.—Rat. 639; 2 P. R. 1898; 12 P. R. 1892

Note.—Although it is not necessary to prove the commission of specific offences, it is still necessary that there should be, at least evidence of a general repute of the accused being a habitual offender.

5. Points to consider in weighing evidence.—In cases under S. 110 Cr. P. C., it is the weight of the evidence and not merely the number of witnesses on each side, which the Court has and ought to consider.—24 O. C. 225.

6. Evidence of witnesses who have volunteered, not to be legally rejected.—In a proceeding under S. 110,

evidence, notwithstanding that they admit frankly that they have come forward because they look

237 (A.).

7. Vague allegations no evidence.—Where the evidence against the accused is extremely vague and general in character, consisting almost entirely of repetition and the prosecution fails in their attempt to bring home to the accused complicity with any definite act of *badmashi*, the conviction cannot be upheld.—19 A. J. 668; 24 Cr. 257 (A.). See 34 C. J. 35

8. Confession of co-accused.—The confession of an accused person in a divorce case is inadmissible in evidence against a co-accused in that case in a proceeding against the latter under S. 110 Cr. P. C.—25 C. N. 239; 22 C. N. 408.

9. Admissibility of judgment in 110 case in substantive trials.—Where an accused person is on his trial for an offence under S. 306 of the Penal Code, the fact that in proceedings under S. 110 Cr. P. C., he had been required to give security and had been unable to give it is not admissible.—32 C. J. 89
10. Admission of accused by itself cannot be basis of order.—An admission by the accused of his bad character cannot form the basis of an order (3 B. R. 368). Evidence must be recorded even when the accused offers to give security.—(97-00) L. B. 637.
11. Proceedings without preliminary notice illegal.—Proceeding instituted without service of the preliminary order on the accused are illegal.—(97-01) 4 U. B. 16
- (2) "Before a hearing under S. 110 of the Cr. P. C. can by law take place, it is incumbent on the Magistrate under S. 112 to make an order setting forth the substance of the information which he has received, the amount of the bond to be executed, the period for which it is to be executed, and the number, character and class of sureties, if any required. Merely informing an accused person that he is a suspected thief is not sufficient as, however substantial the expression may be as an
- 12.
13. Fresh proceedings against discharged accused without taking fresh evidence is illegal.—When the District Magistrate without taking fresh evidence, and without issuing a notice to the accused to show cause why the order of discharge should not be set aside, ordered proceedings to be taken up by another Magistrate on the same materials *Held*, the order was illegal. It was however open to the District Magistrate to issue notice himself to the accused to show cause why the order of discharge should not be set aside and the case retried.—19 A. J. 985 (00) A. N. 206 F).
14. Joint trial—Principles governing.—(1) The legality of a joint trial does not depend on what is alleged for the prosecution, but on facts subsequently found to be true.—23 Cr. 100 (Pat.).
15. (2) "In a case under s. 110 of the Cr. P. C. in which the evidence of bad character of the accused persons and of the individual nefarious acts committed by them forms the integral part of the
- 100 (Pat.)
16. (3) All the accused need not belong to the same village.—The joint trial of several persons in a proceeding under S. 110 of the Cr. P. C. is not bad in law by reason of the fact that all the accused persons
17. (4) Where there is evidence of conspiracy.—The joint trial of persons called upon to show cause under S. 110 (f) is not bad where there is evidence
- 24 Cr. 217 (A.)
18. Finding under cl. (f) altered to one under cl. (e) by District Magistrate on appeal.—Where the accused was bound down under S. 110 (f) but on appeal, the District Magistrate altered the finding to one under cl. (e) and reduced the period and amount of security *Held* that as S. 110 (f) des.
19. Appellate Court cannot enhance the amount of security.—In an appeal from an order directing an accused person to furnish security for good behaviour, the Appellate Court has no jurisdiction to enhance the amount of security required by the Trial Court.—24 O. C. 280
20. Appeal from order by Additional District Magis-
- Code—43 C. 814.
21. Intimacy with accused no reason for rejection of surety.—The mere fact that the surety offered is a relation of the accused is on intimate terms with him and is named by him as a witness, is not a valid reason in law for refusing to accept the surety.—22 Cr. 22 (A.)
22. Residence at a distance no disqualification.—Unnecessary difficulties ought not to be put in the way of people required to furnish security for good behaviour, and sureties should not be rejected merely on the ground that they live several miles away from the residence of the accused. 22 Cr. 395 (A) 24 O. C. 292.
23. Sureties can be rejected only after recording evidence.—Before finally rejecting the sureties offered, it is the duty of the Magistrate to have some materials on which he can act judicially, he cannot do so merely on the police report.—24 O. C. 303
24. Rejection of sureties on hearsay evidence.—A Court is not justified in refusing as "unfit", persons who are offered as sureties under S. 110 Cr. P. C. on
- (O.)
25. Nature of imprisonment which should be awarded in default.—Section 110 being essentially a preven-

five rather than a punitive section, in ordinary cases the imprisonment, in default of furnishing security, should be simple and the Magistrate in

each case has to exercise his discretion and decide whether on the facts of each case, the imprisonment should be simple or rigorous.—12 A. 533.

117. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed

(3) Pending the completion of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that—

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

Changes introduced.

- (1) "We approve of the principle of new sub-section (3)"

"117. When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary."

Amended at 100, clause 111 proceedings under A. 101.
(Sd. Com. 1910).

Rulings rendered obsolete.—32 C. 80; 10 B. R. 943; 14 A. 45; 1 C. L. 130; 39 M. 928 in so far as they lay down that "the law did not empower a Magistrate to detain the accused in custody until the completion of the enquiry" are obsolete.

- (2) Sub-section (1) amended at 100, clause 111 was amended

"so desperate and dangerous" as to render his being at large without security hazardous to the community" to be proved by evidence of general repute." (Scl. Com. 1916).

Rulings rendered obsolete.—

(05) A. N. 41 : 27 A. 273 - 29 C. 779, 35 M. 253 ; 8 P. W. 1917 : 9 O. C. 89 : *Rev. Case No. 438 of 1900 (C)* : 19 Cr. 871 (N) (See S. 110 (172))

Notes.

1. "Persons" — Persons
"not" "enquiry"
2. Condition precedent to application of sub-cl. (4).—
In order to entitle a Magistrate to try several

persons jointly for offences under S. 110 Cr. P. C., the circumstances, mentioned in S. 117 (4), namely, the association of several persons in the commission of the offences mentioned in S. 110, Criminal Procedure Code, must be established.—23 Cr. 100 (Pat) : 25 C. N. 334.

122 (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit

Power to reject sureties

person for the purposes of the bond.

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him

(2) Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person by whom the surety was offered, and shall in making the inquiry record the substance of the evidence adduced before him

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing.

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him

Changes introduced.

The section has been entirely recast. An attempt

50 : 35 C. 403, 13 C. N. clx, 6 C. N. 593 : 110

section as finally recast by the Joint Committee of 1916:

- (1) The Committee of 1916 held that "it would be a mistake to attempt any definition of unfitness for the purpose of acceptance as a surety" but the second Committee specified the grounds which were (1) moral (2) pecuniary and (3) precautionary

have included are the only points that have been considered by the High Courts." (Joint Com. 1922) At the time however of final emergence from the Legislature, the amendments introduced by the Joint Committee have been deleted and the law left in the inchoate state in which it was before

- (2) By requiring the enquiry into the fitness of a surety

to be held on oath—the Legislature has finally settled the nature of the enquiry to be so held, viz. that it should be a judicial enquiry. The change accords with the view consistently taken by the High Courts in a series of decisions (See 110 (262) 122 (3: 4). But by investing the Magistrate with the power to delegate the duty of holding the enquiry to subordinate Magistrates the Legislature has definitely overruled quite a host of decisions.

Rulings rendered obsolete—43 C. 1024; 42 C. 706.
37 C. 91 (Per BYRNE, J.); 12 C. N. 226; 10 C. N. 1027.
30 C. 1373; 15 A. J. 848; 12 A. J. 104; 27 A. 293;
20 A. 371; 25 A. 272; (98) A. N. 154; 15 O. C. 263;

11 O. C. 113; 7 O. C. 113; 88. 173; 78. 94; 38. 57;
4 S. 15; 2 S. 15; 2 S. 11; 56 and 57 P. L. 197;
18 P. R. 1906; 6 P. R. 1914.

- (3) The procedure laid down is as follows:—(a) duty to record the substance of the evidence allowed. (This accords with 43 C. 1024; 27 A. 293; 21 C. 365 (A.); 4 S. 15 is overruled. See also S. 122 (4) and (b) duty to record reasons for rejection or refusal to accept a surety has been recognised in 14 C. N. 709; 37 C. 91; 44 B 343; Cr. P. 21 of 11-3-04; Cr. R. 9 of 7-12-02 (c) duty to give reasonable notice to the surety and to the person by whom the security is offered. (This accords with the decision in 14 C. N. 709.)

123 (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit.

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3A) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

Kind of imprisonment

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108 or section 109, be simple and, where the proceedings have been taken under section 110 be rigorous or simple as the Court or Magistrate in each case directs.

Changes introduced.

(1) Subsection (3A) has been enacted for the following reason :

"The Bombay Government have suggested that where the case of one accused has to be referred to the Sessions Judge S 123, the case of all should be referred whether they give security or not " We have adopted this suggestion (Joint Com 1922)

(2) Clause 3(1) will give the necessary relief to the congested files of Sessions Judges—Ruling rendered obsolete—Rat 830

(3) The most important amendment is that it is definitely laid down that imprisonment in cases under ss 108 and 109 shall be simple "We have added another amendment to provide that sub-section (6) of S 123 as it stands shall apply only to cases for security under S. 110 We think that imprisonment in cases under ss 108 and 109 in default of furnishing security should be simple. (Joint Com. 1922).

Notes.

1. Order of detention under S 123 is not a sentence of imprisonment.—An order detaining a person in

effect on the expiry of the previous detention.—
15 S 205 (37 B. 178 : 31 M 515 14 P. R 1893 F)

Note.—It should be noted that the Legislature has now definitely accepted the proposition that an order of detention under S 123 is not a sentence of im

on any charge We think therefore that there is no reason why imprisonment for a subsequent offence should not ordinarily be made to run concurrently with the committal or detention under S. 123"—
Sel Com. 1918)

2. Date of commencement of period of security to be fixed.—The procedure laid down in Chapter VIII Cr. P. C. is that a date shall be fixed on which the period for which the security is to be given, shall

before that date, then a further order may be made—(93 03.) L.B. 245

3. Escape from jail during detention.—A person who escapes from a jail in which he is confined under a warrant under section 123 of the Criminal Procedure Code, by reason of his having failed to furnish security to be of good behaviour, should be convicted under S 225 B I P C. and not under S 224 I P C.—43 A 185 (7 A 67R)

124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter, may be released without hazard to the community or to any other person, he may

Powers to release persons imprisoned for failing to give security.

order such person to be discharged

(2) Whenever any person has been imprisoned for failing to give security under this Chapter the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts.

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(£) The Local Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he has in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

Changes introduced.

The section has practically been recast in its entirety. The most important change is the provision for discharge on conditions and the power to re-arrest and detain in the case of a breach of these conditions.

The Local Government may prescribe the conditions upon which a conditional discharge may be made.

S. 125.

Ntoes.

1. Scope of the section —(1) An application under section 123 Cr. P. C. is not an appeal and does not

fers no power on him to set aside a proceeding under S 107 even though the subordinate Magistrate has acted without jurisdiction. — 23 Cr 231 (Pat.). 23 Cr. 398(A): 23 Cr 394(N): 11 N. 98. (4 P. R. 1912 Diss.)

(Note: The above information is for informational purposes only and is not to be used for any other purpose.)

section merely empowers a District Magistrate to cancel a bond for any sufficient reason. It con-

can only be on the ground that the bond are no longer necessary. —23 Cr. 398(A).

126A. When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him the Magistrate shall cancel the bond executed by such person, and shall order such person to give for the unexpired portion of the term of such bond, fresh security of the

same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

Changes introduced

Subsection (3) of S. 126 has been re-enacted as S. 126(a) with slight modifications.

PUBLIC NUISANCES

133. (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,
- that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or
 - that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or
 - that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or
 - that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or
 - that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or
 - that any dangerous animal should be destroyed confined or otherwise disposed of,
- such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,
- to remove such obstruction or nuisance; or
 - to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or
 - to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or
 - to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or
 - to remove or support such tree; or
 - to alter the disposal of such substance; or

under cl. (2) of that section dropping a proceeding started under S. 133 Cr. P. C., he must take evidence

in the manner as directed by cl. (1) of S. 137 Cr. P. C.—22 Cr. 239 (C) (42 C 702; 10 C. J. 432 Ed.).

139A (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of

Procedure where existence of public right is denied.

any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against

whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138.

Changes introduced.

We would refer our readers to the Notes appearing at p. 197 of the main volume under s. 133-142 (Ch. XII Bonafide claim of right) This section which is new supplies a real omission in the Code of 1898. The principal question in connection with this clause, is whether as provided in the Bill, questions of title in relation to rights of way and the like, should, for the purpose of the Chapter, be finally decided by the Magistrate, or whether the almost uniform decisions of the High Court, which lay down that the Magistrate must stay proceedings, if he is satisfied that the question has been raised *bonafide*, should be followed. We prefer to accept the latter view as laid down in *Manipurdy v. Bidhu Ghosan Sircar* L. R. 42 Cal 159; and as the case will not arise in all proceedings under this section, and more especially, as we incline to the opinion that the proposed re-

drafting of the S. 133 is not altogether satisfactory we have provided for it as a special case in a new S. 139A. Our proposals involve the necessity of laying down clearly that the Magistrate only (i.e., not the jury), is competent to inquire into a claim relating to title. In view of S. 142 and the fact that in a case of any importance, either the person against whom the order was originally made or some member of the public will bring the matter before a Civil Court, "we do not think it necessary to lay down that the Magistrate may resume the proceedings upon the failure by the person against whom the order was made to institute civil proceedings within a reasonable time" *Joint Com* 1922) The section incorporates the decisions noted in Chapter XII notes no. 161 to 163 which should be studied in this connection.

Notes.

1. In the Full Bench decision of the Calcutta High Court. (*See Sagor Mondal v. Alex Naskar* (49 C. 682)) the law as to bonafide claim of right has recently been exhaustively reviewed. All the rulings of the Calcutta High Court bearing on the point have carefully been examined—viz.—5 C. 853; 11 C. 8; 13 C. 123; 19 C. 201; 19 C. 400; 19 C. 411; 19 C. 412.

- (3) When in proceedings under S. 133 Cr. P. C. arises out of an alleged obstruction of a way used by the public, the defendant sets up a claim of right, which is found by the Magistrate to be made in good faith, the Magistrate's Jurisdiction is not entirely ousted.

(2) The Magistrate can continue the proceedings under S. 133 Cr. P. C.

the Magistrate can continue the proceedings under S. 133 Cr. P. C.

The real controversy out of which the Full Bench Reference arose, raged round a distinction drawn in the leading case 15 C. 564 *Luckee Narain v. Ramkumar* between a claim of right which the Magistrate thinks well-founded and a claim of right which the Magistrate does not think well-founded but considers to have been made *bonafide*. (This ruling has been followed in *Belat Ali v. Abdur Rahim* 8 C N. 143).

It appears to the Editors that the Full Bench decision seems to lay down that (1) where, in the opinion of the Magistrate himself the claim of right appears to be well-founded, he should drop the proceedings and proceed no further, (2) where, in

the opinion of the Magistrate such claims, though *bonafide*, does not appear to well-founded, he should stay his hands and allow the parties reasonable time to establish their claims in the Civil Court,

final order in the case, as he may think fit

In this connection it should be particularly noted that the Legislature has advisedly adopted the suggestion of the Joint Committee that no hard and fast rule should be laid down with reference to the resumption of proceedings on failure to institute civil proceedings within a reasonable time. (See Notes above.) In the result therefore, the decision in the Full Bench Ruling holds good, and it is within the competence of the Magistrate, to carry at his option, the proceedings to the final stage in the contingency just referred to.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the Local Government or the Chief

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

Presidency Magistrate or the District Magistrate to act under this section there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 131, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of of a notice upon the person against whom the order is directed, be passed *ex parte*

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may either on his own motion or on the application of any person aggrieved rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

dispute arose between two parties of Mahammadans regarding the reading of prayers in a mosque. The Magistrate tried to have the dispute settled privately but without success. He thereupon passed the following order: "The only course left for me to be taken is to pass orders under S. 144, Cr. P. C. to the effect that no man of either party will be allowed to read the prayers in the above mosque." Held, that the effect of the order was that no Muhammadan would be allowed to say his prayer in the mosque. Such an order was not justified under S. 144 Cr. P. C. The proper course was to find out which party was in the wrong and to prevent that party from interfering unnecessarily with the exercise of the legal powers of the other party.—24 Cr. 154(G)

9. Order under S. 144 must be definite as to time.—An order under S. 144, Criminal Procedure Code which is indefinite as to time and which prohibits a party from doing a certain act until the question in dispute is settled by a Civil Court, is in effect a perpetual injunction, and is therefore without jurisdiction.—23 Cr. 404 (M). see 28 M. J. 132.

10. Where the person could be justly—
Pat T. 455)
to revise an
acted by the
High Court on the ground that the period of the order had elapsed, does not preclude a Magistrate in a trial under S. 188 I. P. C. from questioning the legality of the order. (34 C. J. 578.)

11. When the disobedience is punishable.—A disobedience of a valid order under S. 144 Cr. P. C. is punishable under S. 189 I. P. C. prosecution for which might be started either by sanction given under S. 193 Cr. P. C. or by an order passed under S. 476 Cr. P. C. but the disobedience itself is not punishable under the said section unless the disobedience causes or tends to cause obstruction, annoyance, or injury to any person lawfully employed.—23 Cr. 381 (Pat). see 14 C. N. 234(236).
12. District Magistrate under sub S. (4) cannot direct substitution of proceedings under S. 145.—A District Magistrate, while setting aside an order under S. 144 Cr. P. C. has no jurisdiction to direct the Subordinate Magistrate to substitute a proceeding under S. 145 Cr. P. C. He can only recommend the latter to look into the circumstances and to find out whether, in those circumstances, he should institute a proceeding under S. 145 Cr. P. C. or not.—2 Pat. T. 392
13. Orders in the nature of a perpetual injunction.—
Successive orders under S. 144 Cr. P. C. are illegal. Such orders amount virtually to an extension of a similar order already issued and amount to an abuse of the power of the Court.—23 Cr. 689(M) (20 C. N. 758 Fu)
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DISPUTES AS TO IMMOVEABLE PROPERTY

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such disputes to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, ..

Inquiry as to possession.

all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject.

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto; and

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Changes introduced.

- (1) The amendment of sub clause (4) viz. substitution of the words, "receive the evidence" by the words "receive all such evidence as may be" (which by

the way is the exact phraseology used in S. 244(1)) removes all possible doubts as to the scope of the phrase. The amendment accords with the view

taken in Calcutta and other High Courts (See 145 (233)) and overrules the following rulings in so far as they lay down an opinion to the contrary

Rulings now obsolete: 3 C J 478; 16 C. 513; 26 C. 625.
32 C. 1093; 24 A. 315; 1 Pat. J. 336 (F.B.)

(2) Other rulings cited in S. 145(362) must be taken to be largely modified in view of this amendment.
Ruling superseded: 2 Weir 93; 2 Weir 99; 40 P. R. 1917.

Notes.

I. Scope of the Section.

1. Claim to weigh grain and realise weightment dues.—A claim to weigh grain in a market and realise the weightment dues is not covered by S. 145 Cr. P. C.—23 Cr. 612(A).
2. Subsoil rights.—The provisions of S. 145 Cr. P. C. apply to disputes with regard to subsoil rights. The definition of land as given in Cr. P. C. is wide enough to cover mining rights and even prospecting and boring licenses—24 Cr. 108 (C) (32 C. J. 54 and 23 W. R. 45 Diss.), 4 Pat. J. 154; 2 Pat. W. 45. Cr. M. Case No. 21 of 1921 (Pat.).
3. Crops lying on the threshing floor.—The words crops or other produce of land refer only to crops or other produce still attached to the land—23 Cr. 650 (O) (28 A. 266; 30 C. 110 F.).
- 4a. *Lac*.—"lac" does not fall within the meaning of the expression 'land'—24 C. N. 1039; 48 C. 522 (F.B.).
5. Easements.—S. 145 Cr. P. C. does not apply to a dispute about an easement in respect of which action must be taken under S. 147 of the Code.—22 Cr. 768 (N.).
6. Offerings at a temple.—"The dispute with regard to collection of offerings at a temple or at a karbafa, cannot by any stretch of reasoning be said to be a dispute concerning land or water, and therefore a dispute with respect to collection of offerings can not come within the purview of S. 145"—Sultan Ahmed J. in 5 Pat. J. 246 (38 C. 387; 37 C. 578 F.).

II. Likelihood of Breach of Peace.

7. Likelihood of breach of peace.—A Magistrate has no jurisdiction to make any enquiry as to possession, still less any final order, unless and until he is satisfied of the likelihood of a breach of the peace, and that it is absolutely essential that the fact and the grounds of his being so satisfied should appear in his first order directing the issue of a notice and

order effective against all likely disputants.

- (4) Subsection (8) now clearly gives power to the Magistrate to appoint receivers pending completion of the enquiry. It adopts the opinion of *Santaran Nair J.* in 13 Cr. 293 which was followed in 27 M. T. 234 and overrules 4 Pat. W. 339 and 8 M. T. 314 (See 145(172)).
- (5) We have added a new sub clause 8A on the lines of S. 24(2F)—*Joint Com.* 1922.
- (6) Subclause (9) gives effect to the decision of a special Bench of High Court in 39 C. 150 (S. B.); 24 C. N. 1075.

the grounds stated must be such as to satisfy a Court of revision before which the case may be brought by any of the parties concerned.—22 Cr. 768 (N) (12 C. P. 2 R.) 2 Pat. T. 650, 24 C. N. 621 20 C. 867, 20 C. 520, 25 C. N. 214, 215.

8. Final order need not contain any finding as to likelihood of breach of peace. See under Final Order below
9. Police report not suggesting likelihood.—Where there is nothing in the Police report on which the proceedings are founded, to suggest that there was any apprehension of a breach of the peace, the proceeding is without jurisdiction—1 Pat. T. 387.
10. (Note.—Where however the police report contains materials upon which the Magistrate is entitled to be satisfied in his mind of the existence of a dispute likely to cause a breach of the peace there is jurisdiction.—1 Pat. T. 733) See 24 Cr. 203 (Pat.).
11. Proceedings dropped on compromise when may be revived.—During the course of the proceedings the parties filed a written deed of compromise duly verified by them and the Magistrate thereupon ordered the file to be consigned to the record room (25th Jan'y) on the 17th Feby. the complainant again appeared and stated that in violation of the

plaint as a fresh complaint was no grave irregularity and did not call for interference.—23 Cr. 721 (L.).

III. Jurisdiction.

12. The Law regarding Jurisdiction.—If during the progress of the proceeding under S. 145, circumstances intervene which have the effect of taking away the initial jurisdiction, anything done in spite of those circumstances, in the exercise of the same jurisdiction must be treated as having been done without jurisdiction. A decision or order at any state of a case to be valid, must fall within the category of the circumstances which constitute the

jurisdiction of the Court from the beginning to the end. If circumstances arise during the process of the proceeding and are such as have the effect of destroying the jurisdiction, the jurisdiction must cease as soon as those circumstances come into being, no matter at what stage of the case they arise. The existence of the prescribed conditions is as much necessary for the inception of jurisdiction as for its continuance.—24 O. C. 167.

13. Power to decide whether he has jurisdiction.—A Magistrate has jurisdiction to decide whether the land, the subject-matter of a proceeding under S. 145 Cr. P. C. is within the local limits of his jurisdiction, and where rightly or wrongly, he comes to the conclusion that the land is not within his jurisdiction and passes an order dropping the proceedings, his act does not amount to a failure to exercise jurisdiction.—22 Cr. 392 (C).

IV. Proceeding.

14. Finding as to breach of peace how far essential.—Where the notice issued by a Magistrate purporting to act under S. 145 Cr. P. C. shows that he was satisfied that there was a serious dispute between the parties, the proceeding is one contemplated by S. 145 Cr. P. C. even though there is no finding in it about any likelihood of a breach of the peace.—23 Cr. 303 (A).
15. Subject-matter of dispute must be specified.—In drawing up a proceeding under S. 145 Cr. P. C. the subject-matter of the dispute should be clearly specified; an omission to do so amounts to a serious defect.—24 C. N. 621.
16. Formalities which must be observed.—S. 145 Cr. P. C. gives the Magistrate very extensive powers, but as a protection to the public, requires him to conform to certain formalities. If the formalities are not observed, that is, if the Magistrate passes no order in writing as required by sub section (1), does not call on the parties to put in written statements, and does not cause a copy of the order to be served in the prescribed manner, he acts without jurisdiction and the High Court can interfere in revision.—(197) A. N. 31 (N.).
17. Preliminary order must contain finding as to who is in possession on the date of the order.—In *Tamulabala* 16 Cr. 229 (M.) and *Mundimay* 9 Cr. 503 (M.), it was held that an order passed is illegal in the absence of a finding as to who is in possession on the date, the order is actually passed. In the former, the interval between the date when the Magistrate found the successful party in possession and the date of the order was one year, and in the latter, a month. These cases were distinguished in (1921) M. N. 808 by *Kamranzami Sisters* on the ground that in the case in question, the interval was only 5 days and there was nothing on the record to show that there was any likelihood of possession having changed in the interval. (See (1979) Pat. 27 a ruling under the Code of 1962.)

V. Parties to proceeding.

18. Tenant in possession of a portion of disputed land.—A tenant who is in possession of only a portion of

the land in dispute is not a necessary party to the proceeding.—23 Cr. 125 (Pat.) (30 C. 135 (F.) Fd.).

19. Disputes between landlords.—Where the disputes are not in actual physical possession but merely claim constructive possession through tenants in actual possession, and the real dispute is whether the parties are entitled to possession of the land, the dispute is not a necessary party to the proceeding.—23 Cr. 125 (Pat.) (30 C. 135 (F.) Fd.).

VI. Attachment.

20. Moveables.—A Magistrate has no jurisdiction to attach moveable property under the provisions of S. 145 Cr. P. C.—24 O. C. 167.
21. Attachment in the absence of proceeding.—Where no proceedings were as a matter of fact drawn up, but the Magistrate merely directed proceedings to be drawn up, an order directing the attachment of the land in dispute is without jurisdiction.—2 Pat. T. 724.
22. When proceedings are dropped.—Where the disputed property was attached under sub section (4) but the proceedings were subsequently dropped and the Magistrate recorded the order: "Proceedings stopped: File". Held, that a further order in respect of the order of attachment should have been passed.—23 Cr. 195 (C).

VII. Procedure.

23. Local Enquiries.—A Magistrate who has drawn up proceedings is precluded from deposing any one other than a Magistrate to hold any enquiry whatever. But a mere survey of the disputed land after enquiry from all the parties as to what land was in dispute, does not amount to a local enquiry but is a mere ministerial act and a Magistrate has jurisdiction to entrust the duty to a pleader commissioner or amin.—23 Cr. 152 (Pat.).
24. Transfer of proceedings under S. 145.—The words "any case" in S. 192 Cr. P. C. are wide enough to cover an enquiry under S. 145 Cr. P. C. Therefore a Subdivisional Magistrate who institutes proceedings under S. 145, Cr. P. C. has power to transfer the same to any Magistrate subordinate to him for enquiry and trial.—23 Cr. 203 (A.).
25. Power to cancel proceedings.—Where a District Magistrate upon information received is satisfied that there is no probability of any breach of the peace, he is competent to cancel an order made by his predecessor, under sub-sec. 1 of S. 145 of the Cr. P. C.—2 L. 364 (30 C. 112 Fd.).
26. Meaning of expression "hear the parties".—The expression "hear the parties" in clause 4 of S. 145 of the Criminal Procedure Code means hear the evidence of the parties and arguments of Counsel or Pleaders appearing on their behalf, or arguments addressed by themselves, and if the Magistrate refuses to hear arguments in a case under S. 145, he is not complying with the provisions of the law which are imperative.—5 Pat. J. 218.

VIII. Evidence and witness.

27. Limitation as to number of witnesses.—“Ordinarily it may be assumed that, in a proceeding under S. 145 of the Code of Criminal Procedure, the trial whereof is to be of the nature of a summons case, the Court has jurisdiction to curtail the number of unnecessary witnesses upon the ground that the examination of those witnesses will delay and possibly defeat the ends of justice.... It must also be conceded that even in a summons case the parties have an undoubted right to examine their witnesses and their right can only be curtailed by the Court upon the ground mentioned above.”—*fer Jwala Prasad J.*, in 2 Pat. T. 330.
28. Deposition of witnesses must be read over.—S. 360 Cr. P. C. applies to trials under Chapter XII Therefore in the case of proceedings under S. 145, the evidence must be read over to the witnesses. But a mere omission to do so by itself will not invalidate the trial.—23 Cr. 123 (Pat.)
29. Documentary evidence.—In a proceeding under S. 145, a Magistrate is entitled to rely on documentary evidence as to title to corroborate the oral evidence as to possession.—23 Cr. 197 (M)
30. Magistrate not bound to assist parties in producing evidence.—It is not obligatory on the Magistrate to assist parties to a proceeding under S. 145 to produce their witnesses and they cannot claim as a matter of right that processes should be issued by the Court, to enable them to bring forward their evidence.—23 Cr. 275 (Pat.) (32 C 1093 38 C. 34 Fd)
31. Note.—“The Legislature could hardly have contemplated an elaborate and protracted investigation, the result of which might in many instances be to defeat the very object in view, namely, an effective prevention of a breach of the peace. The whole object might obviously be defeated if the Court could be compelled to summon and re-summon witnesses at the choice of the parties.”—32 C. 1093.
32. Evidence must be recorded.—An order passed under Chapter XII without examining any of the witnesses of a party to the proceeding who are present in Court, is invalid.—23 Cr. 683 (C).

IX. Final order.

33. Nature of the final order.—An order under S. 145 Cr. P. C. no doubt ceases to have any force as soon as it is superseded by the order of a competent Civil Court, but until it is superseded, it is as final and binding as any order of the Civil Court itself could be.—24 O. C. 21.
34. Final order should clearly specify boundaries.—The final order should accurately describe the land, by specifying the boundaries thereof, in order to show clearly exactly what land is covered by the order.—22 Cr. 385 (C)
35. Final order must effectively deal with the evidence.—A general remark by the Magistrate that the oral evidence is not reliable, without referring to it and

without giving any reason, is not a disposal of the evidence upon the record and it amounts to a refusal to exercise jurisdiction.—2 Pat. T. 168

36. Final order based on local enquiry of which there is note.—A final order which has been made by the Trial Magistrate on the basis of a local enquiry of which we have no note or memorandum is an order based upon no evidence and must be set aside.—25 C. N. 1007.
37. Finding of likelihood of a breach of peace not necessary in final order.—S. 145 Cr. P. C. does not require a Magistrate to give in his final order a finding that there is a likelihood of a breach of the peace. After he has made an order in writing under subsection (1) of S. 145, the only matter which he has to determine is the question of the possession of the disputed property.—23 Cr. 424 (L)

X. Possession and Dispossession.

38. Documentary evidence of possession cannot be disregarded.—Where in a proceeding under S. 145 Cr. P. C. any proper appreciation of oral evidence regarding possession is impossible, in the absence of important documents touching the question of status, an order refusing an adjournment for the purpose of procuring and producing such documents is an arbitrary order constituting a denial of justice.—25 C. N. 602
39. When evidence of title should be admitted.—In a proceeding under S. 145 Cr. P. C. the Magistrate is not entitled to rely simply on this question of title. Where there is some evidence of title...
40. Mortgagee in possession.—In a proceeding under S. 145 Cr. P. C. a Magistrate has no power to disturb the possession of an usufructuary mortgagee at the instance of a depositor of the mortgage-money under S. 83 of the Transfer of Property Act.—22 Cr. 561 (Pat.)
41. Question of possession cannot be referred to arbitration.—A reference to arbitration is not contemplated in proceedings under S. 145 of the Code of Criminal Procedure. The section directs the Magistrate to receive evidence himself and on a consideration of such evidence to decide the question of an actual possession. If however, the parties have referred the dispute to arbitration and the award of the arbitrators has been accepted by both, the Magistrate would have ground for proceeding under sub section (5) of S. 145.—25 C. N. 719.
42. ...

absence of right or title would be to defeat the purpose of the section and to require the Magistrate to enter into questions which by the section itself are expressly excluded from his consideration. A dispossession otherwise than in due course of law is wrongful. It is not necessary that actual force

or violence should have been used to some person or persons before a dispossession is effected by a show of criminal force, sufficient to intimidate those in possession and to deter them from resistance, the latter are said to have been forcibly dispossessed—25 C. N. 601

43. Rent-decree as proof of possession.—It is doubtful whether a mere rent-decree obtained by a landlord will bind one who is not a party to it, so as to hold that possession was either determined by a Civil Court or was undisputed—23 Cr. 200 (Pat) : See 1 Pat. T. 44

44. Dispute between co-sharers.—Section 145 Cr. P. C. applies to a case where the dispute is between co-sharers each claiming to be in possession of the disputed land to the exclusion of the others. Subsection (6) to S. 145 does not render that section inapplicable to a case in which the parties are jointly entitled to the land in question—2 L. 372 (20 C. N. 518 17 C. N. 944 Fd.) But see 23 Cr. 379 (Pat)

45. (Note—The mere fact that the revenue records show that the holding is joint is not sufficient to stop the enquiry contemplated by S. 145 Cr. P. C.)

46. Questions of title how far relevant.—In proceedings under S. 145 Cr. P. C. a Magistrate is entitled to look into the question of title only to arrive at a satisfactory conclusion on the question of possession. He has no power to decide the question of title or look into it apart from the question of possession—1 Pat. T. 387. See 32 C. J. 54

47. Question of possession must be conclusively settled.—A dispute concerning possession of land, should be effectively and conclusively determined under S. 145 Cr. P. C.—1 Pat. T. 377.

48. Fresh disturbance after adjudication of possession under S. 145 Cr. P. C.—Where the lands in dispute and the parties are identical, it is the duty of the

disregarded, and any number of proceedings may be initiated by any disappointed party leading to no result whatever, a position which would surely be intolerable.—24 Cr. 97 (C).

49. Where oral evidence of possession adduced by either party is equally balanced.—Where, a Magistrate finds that the evidence on one side and the evidence on the other side is equally balanced and he is unable to conclude from such evidence which party is in possession, two courses are left to him. If he finds such evidence reliable, he is entitled to seek corroboration in the presumption as to possession arising from title, and to adjudicate in favour of that party on whose side there is such presumption. If he finds such evidence unreliable he ought to proceed under S. 146 Cr. P. C.—24 Cr. 141 (C)

50. S. 145 contemplates continuous possession.—An enquiry under S. 145 Cr. P. C. must be directed to the decision of the absolute continuity of possession of either party of the subject-matter of dispute. The element of continuity of possession is an ingredient which is necessary, at any rate, in cases where interruption is not due to seasonal variations, in proceedings under S. 145 of the Cr. P. C. So a dispute between the owner of a hat and the stallholders who claim actual possession of stalls only once a week, does not come within the purview of the section—24 Cr. 175 (C)

XI. Joint Property.

51. Dispute between Joint owners.—The principle—Where the dispute between joint owners of land raised no question of possession but whether one of them was at liberty to make use of the land, against the will of the other, in such a manner as to cause annoyance, a Magistrate has no jurisdiction to interfere under S. 145 Cr. P. C. and award exclusive possession of a portion to one of them.—3 C. 573 1 C. L. 352 : 24 Cr. 100 (M).

52. Dispute regarding shares.—Neither S. 145 nor S. 146 of the Cr. P. C. has any application to a case in which the property in dispute is held jointly by the parties, and the matter of the dispute is as to the respective shares of the parties in the property—22 Cr. 350 (C) (11 C. N. 512 F.)

53. (Note—A Magistrate's jurisdiction under S. 145 Cr. P. C. is ousted, as soon as he finds that the case

885=32 C. 249 : 11 C. N. 512) A Magistrate has no jurisdiction to take proceedings under S. 145 of the Code when a party has a good and valid claim to joint possession—23 Cr. 379 (Pat)

54. Different plots in possession of different persons.—Proceedings are not without jurisdiction because in the course of them, it is found that the claim of some of the parties relate only to particular plots of land out of the entire area in question particularly where at the time of institution of the proceedings, the materials before the Magistrate, do not enable him to draw up a preliminary order describing the plots said to to be in possession of different persons with any attempt at accuracy.—24 Cr. 235 (C) (30 C. 155 (F.B.) Fd)

XII. Revision.

55. Order cannot be interfered with by District Magistrate—

The High Court will interfere

57. (a) when the Magistrate fails to decide which party was in possession on the date of preliminary order but still makes an order declaring one of the parties

to be in possession.—23 Cr. 670 (M.). See 16 Cr. 239 (M.); 7 Cr. 450 (M.); 18 M. 41.

58. (b) where a perverse finding is arrived at after getting rid of the documentary evidence by incorrectly describing it as relating to legal title only and by brushing aside oral evidence by saying merely, that it is unnecessary to enter into it.—24 Cr. 100 (M.).

59. (c) where in the preliminary order, there is no finding regarding possession of the property in dispute, but merely general observations in regard to the ownership of the property.—24 Cr. 156 (M.)

60. When High Court can interfere and when not.—Where the proceedings are really within the purview of S. 145, the High Court cannot under S. 435 interfere in revision. But it can interfere where the proceedings merely purport to be under the section and disclose an exercise of powers not conferred by it (7 B. R. 475). The principle has been generally recognised that where there is initial want of jurisdiction, proceedings though they may purport to be made under S. 145, are not really proceedings under that section and the High Court can interfere under S. 439 Cr. P. C. But if proceedings are properly started, the High Court can interfere only under S. 107 of the Government of India Act, on the ground of serious irregularity amounting to improper exercise of jurisdiction or improper refusal to exercise it.—(24 Cr. 100 (M.); 24 Cr. 156 (M.); See 31 M. 82; 31 M. 318; 34 M. 138; 26 M. J. 208; 1 L. W. 939; 17 Cr. 217 (M.) 10 C. N. 181; 20 C. N. 71; 1 Pat. T. 291; 17 B. R. 382.).

61. Disposal of Property illegally attached under S.

sale proceeds deposited in the treasury, and the unsold lot stored away. The sale proceeds and

XIII. Miscellaneous

62. Information may include knowledge derived from different proceedings.—The word "information" in S. 145 does not refer to any particular way in which a Magistrate's attention should be drawn. It is wide enough to cover the knowledge of the Magistrate derived by reading the petition filed by the parties in another proceeding, which satisfies him that a breach of the peace is imminent.—1 Pat. T. 360.

63. Costs.—There is nothing in law to preclude a Magistrate from making an order for costs after passing a decision under s. 145, 146 or 147 Cr. P. C. but such order ought only to be made by the Magistrate who passed the decision, and within a reasonable time thereafter. Ordinarily an interval of three months is not a reasonable time (47 C. 974). In awarding costs in proceedings under S. 145 Cr. P. C. a Magistrate is restricted to the amount awarded as pleader's fees (if any) and costs of witnesses, an order about costs passed arbitrarily is without jurisdiction and must be set aside (23 Cr. 508 (Pat.); See 1 Pat. T. 369; 14 C. N. lxxiii; Cr. Rev. No 300 of 1922 (Pat.)).

64. (Note.—In 24 Cr. 80 (M.) Ayling J. held that the order for costs which was passed some six weeks after the possessory order was not necessarily bad and the delay in passing the order did not necessarily affect the jurisdiction of the Magistrate.)

65. S. 145 does not exclude application of 107 Cr. P. C.—A Magistrate has jurisdiction to put into operation the provisions of S. 107 Cr. P. C. although the apprehended breach of the peace may relate to a dispute about land. (23 Cr. 123 (Pat.); 39 C. 150 (F.B.); 23 Cr. 567 (N.); 5 N. 94). The general rule however is that proceedings under S. 107 Cr. P. C. are justified only in a case of undisputed possession, where there is a dispute about possession over land, proceedings under S. 145 should be substituted (23 Cr. 574 (Pat.)).

66. Succession (Property Protection) Act XIX of 1841.—has a larger scope than S. 145 Cr. P. C. and is a more appropriate remedy in cases involving disputes as to succession in large estates involving breaches of the peace.—23 Cr. 236 (Pat.).

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them

Power to attach subject of dispute.

he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute, may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a

receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Changes introduced.

- (1) "We have introduced a new clause (the proviso to sub-sec (1)) which, by an amendment of S. 146, will enable a District Magistrate to withdraw the attachment of property at any time when he is

the dispute property under attachment, until a competent Court has determined the rights of the parties thereto."

- (2) The proviso to sub sec (2) has been introduced "to meet the case of an overlapping appointment of a receiver by the Civil Court (Selected Committee of 1916) that this proviso is an useful addition to the existing law will be apparent on perusing the cases reported in 7 Bur. T. 292, 14 C. N. xci, 17 M. T. 392 : 20 M. T. 247 (See S. 146 (43)).

Notes.

1. Application of the section.—An order under S 146 Cr P C can only be passed when the Magistrate, upon a consideration of the evidence, is unable to come to a definite finding as to the possession of either party. In order to show that he was unable to decide the question of possession, he ought to discuss the evidence and to give reasons for his inability.—2 Pat T 16 : 2 Pat. T. 168. 23 Cr 277 (Pat) : 23 Cr. 684 (O) See 34 C 840. 11 A J 586 : See 24 Cr. 64 (M.). 49 C 544
2. The section does not apply to public paths.—Where in a proceeding under S. 145 Cr P C the land in dispute is a public path, and the Magistrate finds that neither party is in possession, he has no jurisdiction to attach the land under S. 146 Cr P. C—22 Cr 464 (C)
3. Possession to be given on the happening of certain contingency.—An order declaring a certain person to be in possession of the property in dispute on the

happening of a certain contingency cannot be passed under S. 146. Such an order can only be passed under S 145—2 Pat T 108.

4. Power to release property on disappearance of the likelihood of a breach of the peace.—When property is attached under S 146 Cr. P. C. the Magistrate has inherent power to release the property from

dies leaving the other party as his heir. In a case the judgment of a competent court is not a *sine qua non* before the property can be released.—1 L 451

Joint property.—Neither S. 145 nor S. 146 Cr P C has any application to a case in which the property in dispute is held jointly by the parties, and the matter of the dispute is as to the respective shares of the parties in the property.—22 Cr. 350 (C)

147 (1) Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first

Disputes concerning rights of use of immoveable property, etc

class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (2) (whether such right be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate, and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(f) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

Changes introduced.

The section has been largely recast. The most noticeable amendments are:—

(1) $\frac{m}{n} = \frac{a}{b}$

introduced amendments here to make it clear that the procedure is to be that laid down by S 145" (*Sel Com 1922*). The result is (1) the rulings in 2 C. N. 670 and 27 M. J. 587 in so far as they lay down that a formal proceeding is not necessary in a case under S 147, are now obsolete and 2 Weir 117 is confirmed.

(2) The scope of the words "land or water" is no longer a matter for speculation. The words "as explained in S 145" remove all doubts. The rulings in S 147 (8) - 37 C 578 and 35 R R 329 *in so far as* they lay down that the term "land" in S 147 does not necessarily include buildings have now been overruled.

(3) The nature of the orders which may be passed have been clearly laid down—(1) the Magistrate may either prohibit interference with the exercise of the alleged right or (2) he may prohibit the exercise of such right. [See 147 (53 56)]

Notes.

1. Distinction between ss. 145 and 147.—S. 145 Cr. P. C. does not apply to a dispute about an easement in respect of which action must be taken under section 147 Cr. P. C.—22 Cr. 768 (N)
2. Order cannot direct parties to appear before another Magistrate
 trate draw
 shall direct
 An order
 another Magistrate is illegal and voided the proceedings—2 Pat T. 186.
3. Limited right of way.—Under S 147, a Magistrate can pass an order which has the effect of giving to the successful party a right of way which is limited by the exclusion of vehicular traffic. A

right of way may naturally be of different kinds. One can well imagine rights of way which are confined to pedestrian traffic or one from which traffic of a particular kind is excluded.—2 Pat. T. 681.

4. Findings necessary for a valid order.—A Magistrate is not competent to pass an order under S. 147 of Cr. P. C. without coming to a clear finding under the proviso to that section, that the party in whose favour the order is made exercised the right in dispute either within three months next before the institution of the enquiry, or during the last season or occasion before its institution if the right is exercisable at particular season or occasions.—2 Pat. T. 364.

148. (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any

Local inquiry.

Local inquiry. Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this Chapter, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. *Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable.*

Changes introduced.

- (1) The amendments to S. 148 were merely made "to specify what costs may be awarded" "which the court may consider reasonable"—as an instance of the exercise of this discretion. See 9 C. N. 887 (148 (1)). "A Magistrate in awarding costs should hold an enquiry into expenditure actually

incurred by the successful party. (17 Cr. 348 (Pat.) See S. 146 (12).

- (2) The omission of the words "All costs so directed to be paid may be recovered as if they were fines" precludes the levy of such costs by distress under S. 386 *infra*.

Notes.

1. Survey of disputed land—no local enquiry.—"I can not hold that the mere survey of the land after inquiry from all the parties as to what land was in dispute, amounted to a "local enquiry" within the meaning of S. 148 Cr. P. C. It is a mere ministerial act."—Adami J. 23 Cr. 162 (Pat.).

of the Magistrate by cross examining him. The danger is intensified by the Magistrate holding the local enquiry *ex parte*—1 Pat. T. 569

3. Costs.—See Note No. 63 under S. 145 *supra*.
4. Can the Magistrate refuse to realize costs?—S. 148 does not give the Magistrate discretion to refuse to recover the costs. The successful party is entitled to insist that steps should be taken to recover the amount of costs awarded and the Magistrate has no option to refuse to take steps. The party entitled to it may apply for recovery at any time within six years from the date on which costs have been awarded, and a Magistrate is not entitled to refuse to recover on account of delay in making the application—24 Cr. 126 (Pat.)

never be substituted for evidence in the case. The party against whom the result of the local inspection is used, is greatly prejudiced and is put to an irreparable disadvantage in not being able to remove the wrong impression from the mind

S. 154.

Notes

1. Admission into evidence of statement not amounting to F. I.—Where a statement made to a Police Officer does not amount to the first information contemplated by S. 154 Cr. P. C. is tendered as evidence in a criminal case, the proper course for the Magistrate is to take a statement from the police officer that that particular statement was made to him—22 Cr. 10 (C)
2. First information by itself not sufficient to sustain conviction.—The first information report made by an accused person standing by itself, cannot sustain a conviction against the maker; and that, while

it is a valuable corroborative evidence of the testimony of the person who makes it, it cannot support a conviction when the maker himself is an accused person and cannot, therefore be examined as a witness. But as an admission not amounting to confession, it is admissible in evidence against the accused person.—22 Cr. 604 (L.).

3. What's not first information?—A statement made is not proved

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his

subordinate officers *not being below such rank as the Local Government may, by general or special order, prescribe in this behalf* to proceed, to the spot to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender :

Provided as follows :—

- (a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;
- Where local investigation dispensed with.
- (b) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.
- Where police-officer in charge sees no sufficient ground for investigation

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated.

Changes introduced.

- (1) The amendment as originally proposed by the Select Committee of 1916 was as follows : "not being below the rank of Sub Inspector." "We propose

As to the words "if any" introduced after the

recommendation of the Police Commission." This view was not accepted by the Joint Committee of

crimes.

- (3) The words "and in the case ... investigated"

police work in some provinces may be severely hampered by the first amendment."

- (2) The second amendment is one of drafting only.

S. 160.

Notes.

Verbal order to attend.—A verbal order sent through a messenger by a Police Patel asking a person to be

present before him to answer an accusation is not a lawful order.—8 B. II. 118.

161. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Local Government may, by general or special order, prescribe in this behalf,

Examination of witnesses by police.

acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him

by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Changes introduced.

A discretion is left to Government, by the words "or any police officer not below such rank as the Local Government may, by general or special order prescribe in this behalf, acting on the requisition of

such officer," to extend the powers under this section to officers below the rank of sub-Inspector — e g — Head constables.

162 (1) *No statement made by any person to a police-officer in the course of an investigation*

Statements to police not to be signed; use of such statements in evidence.

under this Chapter shall, if reduced into writing, signed by the person making it; nor shall any statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as herein provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that, when any witness is called for the prosecution in such inquiry or trial where such statement has been reduced into writing as aforesaid, the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof, in order that a part of such statement, if duly proved, may be used to contradict such witness in the manner, provided by section 145 of the Indian Evidence Act, 1872. When any part of such statement is used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Provided further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Indian Evidence Act, 1872.

Changes introduced.

"It seems clear that all that the amendment of 1898 intended to effect was to make it clear that the accused had no right to call for or see the record of any statements taken down by the police under S 161, unless the court thought that in the interests of justice, he should be allowed to do so; It did not purport to deal with, and has left untouched the further question, whether or not a statement made by a witness under S 161, as apart from the written record of the statement, might be used by the prosecution for the purpose of corroborating one of their witnesses under S 157 of the Evidence Act, and this is at all events, one of the principal difficulties with which to have to deal now (See Com. 1916)

The redraft of the section, we propose will make it clear that the statements taken down under S. 161 (and

not merely the written records of such statements) are not to be used in any way or for any purpose except as allowed by the proviso. Having regard to the fact that the making of such statements is compulsory under S 161, and to the way in which and the circumstances under which they are usually recorded, we do not think that they are of much corroborative value, where the witness merely repeats the same statement in Court, and that they ought not therefore to be allowed to be used for the purposes of corroboration under S 157 of the Evidence Act. If the really material facts of the prosecution is that a statement was made to the police, on a particular date, or at a particular place, this fact will of course still be provable in the ordinary course, and it will be open to the Courts or to a Jury to make any proper deduction

from this fact and the action which was taken on it. The amendment will also we think, make it

down is called by the prosecution the previous statement of the witness on the point may be proved by him; if he is not called by the prosecution

that unless the previous contradictory statement is proved in some way in accordance with law, it ought not to depreciate the witness' statement on oath. It will be observed that under one amendment if any part of the previous statement of the witness is used for the purposes of cross-examination by the accused, any other part of it may be used by the prosecution within the proper limits for re-examination. This is, we think, the only way in which the previous statement ought to be allowed to be used by the prosecution (*Sel. Com. 1910*). "We recognise the force of some of the criticisms directed against the section, but we do not think power should be given to contradict by means of police diaries a prosecution witness who has turned hostile, and still less should power be given in respect of a defence witness". (*Joint Com. 1922*).

Note.—It will be seen that the statement recorded under S. 162 may be used for the purposes of corroborating a witness. Its use for the purpose of contradiction is limited to the cases of witnesses for the prosecution only at the time of their cross-examination by the defence. It cannot be used to contradict a hostile prosecution witness. It can however be used to re-examine a prosecution witness.

Rulings rendered obsolete.—(1) The rulings in 19A 390 (F.B.), 32 B 111 (F.B.), 24 A 409 21 A 159; 15 A 25; (198) A. N. 22; Bat. 503 11 C 659; 7 C. P. 22 are, in so far as they hold that statements under S. 162 may be proved to contradict a witness called for the defence, overruled. The Legislature has adopted the view taken in 13 O. C. 7: (1918) 3 U. B. 84.

(2) The leading cases 35 M. 397 (F.B.) and 35 M. 247 (F.B.) 36 C. 281 and 39 B. 58 and other rulings in so far as they lay down that S. 162 Cr. P. C. does not override the general provisions of the Evidence Act as to oral evidence of such statements to corroborate the evidence of a witness, must be considered superseded.—See S. 162 (1).

Copies.—The proviso, which gives the Court the power to exclude any part of the statement of which a copy is furnished to the accused, formed the subject of a Select Committee report.

Notes.

1. Stage of the case when Court should refer to police diary at accused's request.—The proviso to S. 162 (1) Cr. P. C. makes it obligatory on the Court to refer to the statement made to the Police by the witness who is being examined, when requested to do so by the accused, and it is only after such statement has been referred to, that the Court may exercise its discretion in the matter of giving a copy to the accused. It is while the evidence of

of a witness by oral evidence of statements recorded under S. 161. The reader is referred to the notes under the heading "changes introduced" and the remarks of the Select Committee quoted therein.

in accordance with the rulings noted per contra in S. 162 (1).—See p. 276 of the main volume; also 7 C. P. 22.

Dying declarations

3. Proof of dying declarations. A dying declaration

made by the witness before the Police, till after the witness' evidence had been concluded.—22 Cr. 578 (L.).

2. Does S. 162 override the Evidence Act?—The section as amended by the Act of 1923, has been deliberately framed so as to exclude, any use of statements recorded under S. 161, except for the purpose of contradicting a prosecution witness and his re-examination on the points referred to in the cross-examination. In the circumstances, it can no longer be argued that the section does not override the provisions of S. 157 of the Evidence Act in respect of corroboration of the evidence

1887: 9 P. R. 1860: (72-62) L. B. 157: 2 Weir 359: Co n. 36 C 659: 16 Cr. 769: See 17 P. R. 1911.

4. Signs made by a dying declarant.—In 7 A 385 (F.B.) *Q. E. v. Abdullah* the question arose as to whether signs made by a person, conscious but unable to speak, shortly before his death, by way of use of his death, so under what circumstances *Oldfield*, opinion that they were relevant as constituting "verbal statements" within the meaning of S. 32. Justice *Mahmood* held that the word "verbal" could not mean more than "by means of a word or words". But the signs amounted to "conduct" as used in S. 8 and were admissible under that section; the questions were admissible either under Expt. 2 of S. 8 or under S. 9. See also 2 P. R. 1886. 9 P. R. 1909.

5. "Verbal" within which a dying declaration is evidence

other evidence to prove that the death was either caused or accelerated by those wounds or that it was the transaction which resulted in the death. *Held* that the declaration ought not to have been admitted in evidence.—25 B. 45.

6. Statements made by accused persons to the Police.—S. 162 Cr. P. C. provides against the admission of statements made by accused persons to the Police.

Rat. 935

164. (1) Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Local Government may, if he is not a police officer record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall before recording any such confession explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate."

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Changes introduced.

- (1) The Legislature by confining the power of recording confessions to First Class Magistrates and second class Magistrates specially empowered in that

behalf by the Local Government, has given effect to the Calcutta High Court Circular quoted at p. 286. "Where, at any place or station there are

present more Magistrates than one, confessions should in general be recorded by the Magistrate specially selected for the purpose by the District Magistrate, or failing such selection by the Magistrates senior in rank and class. "We think that statements should not be recorded under this section by Third Class Magistrates at all or by Second Class Magistrates unless specially empowered" (Joint Com. 1922).

(2) "We consider that a statutory obligation should

be laid on a Magistrate acting under the section to warn an accused person about to make a confession that the same may be used against him, and we think that the certificate prescribed by sub-section (3) should record the fact that the warning has been given" (Joint Com. 1922). This view accords with Madras G. O. No. 2883 J. of 17-12-'87 and Calcutta H. Gen. L. No. 1 of 30-1-'17 and 15 Cr. 613 (O) M. H. (Appx.) xi and 10 C. 775 are now obsolete

Notes.

1. No distinction between statement made by accused and a confession.—Under S. 164 Cr. P. C., no distinction can be drawn between a statement made by an accused person and a confession made by him, and any statement made by him should be recorded by the Magistrate as provided by the section and if it is not recorded, the Magistrate's evidence regarding that statement is inadmissible.—25 C. N. 789.

Recording of Confessions

2. When a confession should not be recorded.—Where the accused tells the Magistrate that he has been told to tell the truth by the saheb who has told him that on telling the truth he would be released,
3. Confession cannot be recorded by a Magistrate outside his district.—The jurisdiction and powers of a Magistrate are limited to the district in which

meaning of S. 164 Cr. P. C.—19 A. J. 355.

4. Confession not properly recorded cannot be cured by S. 533 Cr. P. C.—S. 164 of the Criminal Procedure Code makes it imperative for the Magistrate, before recording a confession made to him in the course of a Police investigation, to question the person making it as to whether it is made voluntarily. In the present case it appears that this was not done, and the question to be determined is, whether the failure to comply with the provisions of S. 164 in this respect renders the confession inadmissible. The omission to question the appellant before recording his confession as to whether he was making it voluntarily was a material omission which prejudiced him, and we are of opinion that the defect is a fatal one, not curable by S. 533, and that the confession must, therefore, be excluded.—2 L. 325; 3 L. B. 173; 3 L. B. 213 9 M. 224; 17 C. 862 (871); 2 C. N. 702 and 52 P. R. 1887 (Fd)
5. Duty to record memo of enquiry.—"We consider it to be most advisable that in all cases a Magistrate should record a memorandum of enquiry showing what steps he has taken to fully satisfy himself

that an accused person is confessing involuntarily."—*Cheis and Scott-Smith J.J.*, in 2 L. 129.

6. Confession not recorded in accordance with law.—Example.—The confession was recorded by the Magistrate as follows.—Q. (After due warning) Do you want to say anything? A.—I want to say what is true. I won't make false statement Q.—What do you want to say? Then follows the main confession. In the end the Magistrate recorded the following certificate—"The confession has been recorded when the accused has been in Court-room for about two hours while other cases were heard. It is very straight-forward. I am convinced that it is voluntary." The Magistrate was examined as a witness at the trial and stated: "I am satisfied that confession was a voluntary one and I gave him the usual warning."—Held that it was clear that this confession had not been recorded in accordance with law.—2 Pat. T. 129

7. —————

8. Informal record of confession—effect of.—A confession to the Committing Magistrate is not a statement recorded under S. 164 Cr. P. C. but a statement recorded under S. 274 Cr. P. C. which

is no reason why the confession of the accused should be rejected, merely on the ground of informality of procedure.—23 Cr. 617 (L).

9. —————

detection, is not bound to record in writing any admission made to him by persons who have taken part in a crime. In the absence of any written record in such circumstances, evidence may be given of a confession provided that it be not excluded by an express provision of law. It may be proved, and must be proved, if at all, like any other fact.—(1921) M. N. 779 (9 M. 224 (240) Fd; 21 R. 1003 (Per Shah J.) dissenting from).

Meaning of confession

10. **Meaning of Confession.**—The word "Confession" means an admission of a criminal circumstance which suggests the inference that the person making the statement has committed the crime. Any statement made by a person which would suggest an inference as to his guilt may be a confession within the meaning of section 24 of the Indian Evidence Act—22 B R. 1247 (14 B. 260 (263) (F B.) and 6 B 34 (37) Fd).
11. **What is the material part of a confession.**—A confession is after all only evidence in so far as it bears upon the crime into which the Court is at the time inquiring, and circumstances corroborating the confessions upon immaterial points are in themselves equally immaterial—22 B. R. 1274

Retracted confessions

12. **When a retracted confession should be acted on and when not**—In cases of retracted confessions the Court should consider whether the story is or is not consistent with such evidence in the case as it believes. If the confession bears the appearance of truth and is not inconsistent with the true evidence on the record, the Judge, or Magistrate should convict on the confession, whether it is withdrawn or not.—(93) A. N. 69) where a confession was made before a Magistrate under circumstances not liable to suspicion, and to all appearances fulfilled the requirements of the law, the fact that it is retracted in the Sessions Court does not negative the presumption of the genuineness of the confession. ((90) A. N. 173. 19 N

482). But where it was found that the police had mis-conducted themselves in the search of the houses of the prisoners who confessed and the only evidence in the case were the confessions, it was held that the convictions could not be sustained. (2 C. L 132) A person who was charged with murder made a confessional statement which was recorded under S 164 Cr. P. C. but he subsequently repudiated those statements at the Sessions. One of the accused, who became an approver, deposed against him and he was corroborated in certain most important particulars by some witnesses. Held that the accused was properly convicted.—(25 M. 143 : 22 B R. 1274)

13. **The Law as laid down in 3 Pat. T. 98.**—The points settled by this Ruling which discusses the law on retracted confessions may be summarised as follows:
- (1) The fact that a confession has been retracted would not necessarily deprive the confession of its voluntary character.—20 Cr 562 (Pat) : 20 Cr 721 (Pat.)
 - (2) The credibility of such confession in each case is a matter for the Court to decide, according to the circumstances of each case.—20 A 133
 - (3) Although a confession which has been retracted must always be open to some suspicion (22 C. 164) it is sufficient for a conviction if the Court is satisfied that it was voluntary made and is true (6 W R. 81 : 8 W. R. 40 : 12 W. R. 49 : 19 B 728 : 20 A 133 : 21 M. 83 : 23 B. 316 : 5 Pat. J. 430)
 - (4) A retracted confession which is the only evidence in the case connecting the accused with the offence may (without any corroborative evidence) form the basis of a conviction (2 Pat J. 80 : 29 A 434)

165. (1) *Whenever an officer in charge of police-station, or a police-officer making an investigation has reasonable grounds for believing that any Search by police-officer, thing necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.*

(2) *A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person ;*

(3) *If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched and, so far as possible, the thing for which search is to be made and such subordinate officer may thereupon search for such thing in such place.*

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 103 shall so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Changes introduced.

(1) S 165 as finally passed by the Legislature definitely enacts that the search should not be general one but it must be for articles clearly specified in writing. This accords with the rulings in 16 C N 1078 12 C N 1016 12 C N 973 41 C 261 33 C 304 15 C 109 33 M. J 127 13 A J. 979 and S. 165 (5)

Note —The Legislature has refused to accept the suggestion of the Joint Committee of 1922, which was as follows : ' Suggestions have been made that S 165 as re-drafted by the Bill goes too far and that it should only permit a search to be made for something specified. We think the utility

of the section would be largely impaired if effect were given to these suggestions; but we have provided a safeguard by requiring that an officer acting under subsection (1) or sub-section (3) shall record in writing his reasons for making a search or requiring a search to be made."

(2) All other amendments are intended to prevent as far as possible, arbitrary or irregular exercise of the power of search.

(3) Copies of records made under sub section (1) or (3) are now made available to the owner or occupier of the place searched.

166 (1) An officer in charge of a police-station or a police-officer not being below the rank of sub-inspector making an investigation may require an officer

When officer in charge of police station may require another to issue search-warrant in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provision of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall send also to the nearest Magistrate empowered to recognize of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (1) :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Changes introduced.

- (1) The addition of sub-clause (3) and (4) removes a deficiency in the provisions of this section. It provides for urgent cases in which, the time taken to move the officer of the police station concerned may result in the loss of all clues by enabling the offender to destroy the evidence in the case.

- (2) Copies.—Copies of lists prepared under S. 166 *supra* are now made available to the owner or occupier of the place searched.

167 (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Local Government shall authorise detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Changes introduced.

- (1) The drafting amendments introduced in subclause (1), make the subclause better suited for the purpose it is intended to serve. The omission of the words "under this chapter has the effect of making" to section applicable to investigation in general. "In S. 167 which confers the power to ask for a remand. We would confine the operation to investigating officers not below the rank of Sub-Inspector. We consider the Bill does not go far enough in the restriction of the Magistrates who

should be authorized to remand to police custody. We would confine the power to first class Magistrates and second class Magistrates." (Joint Com. 1922). This will prevent an unscrupulous police-officer from obtaining remands from inexperienced Magistrates, in order to put pressure on the so-called suspect for ulterior purposes, and may also prevent him from venting his spleen on persons who have incurred his displeasure.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of

Release of accused when evidence deficient.

suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Changes introduced.

The amendment is purely consequential and is necessary in view of the amendments introduced in ss. 157 and 161.

S. 172.

Notes.

1. Object of maintaining police diary.—The Police Diary maintained under S. 172 of the Cr. P. C., cannot be used by any Court as substantial evidence, but is intended to be used only for the purpose of assisting the Court in the appreciation of the evidence, and to clear up doubtful points arising in

the course of the conduct of the case. It cannot be used to corroborate the evidence of the Police officer who recorded entries in it, although it may be used to contradict him—2 Pat. T. 223 (44 G. 876 (P. C.). 19 A. 390 (F.B.)) : 23 Cr. 251 (L.).

173 (1) Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed, the officer in charge of the police-station shall—

Report of police-officer

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall on application be furnished to the accused before the commencement of the inquiry or trial ;

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Changes introduced.

The most noticeable changes introduced into the section are :—

- (1) The officer-in-charge will in future communicate to the informant the action taken by him.

(2) Copies of the final report are to be furnished to the accused on application before the commencement of the enquiry or trial.

Ruling rendered obsolete.—20 M. 189 (S. 173 (3)).

174 (1) The officer in charge of a police-station or some other police-officer specially empowered by the Local Government in that behalf, on receiving information that a person—

- Police to inquire and report on suicide, etc.
- (a) has committed suicide, or
 - (b) has been killed by another, or by an animal, or by machinery, or by an accident, or
 - (c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place, where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class and any Magistrate especially empowered in this behalf by the Local Government or the District Magistrate.

Changes introduced.

The power to hold inquests are now extended to all First Class Magistrates as such.

Notes.

1. False statements at the inquest—A person is only bound to answer questions truly if he has been summoned in writing to attend before the Police officer in a proceeding held under S. 174 Cr. P. C. It may seem anomalous that a man who comes forward without being summoned and volunteers information at a police enquiry under S. 174,

should not be bound to give true answers to questions, but such are the plain words of S 175 read with S 161. Therefore false statements made in the latter circumstances cannot form the basis of a conviction for perjury under S. 191 I. P. C.—23 Cr. 82 (L.)

S. 177.

Notes.

The ordinary law.—The ordinary rule as to jurisdiction is that it is the area within which the offence is committed and not the place where the offender

may be found that determines the Court which has jurisdiction to try the offence—41 M. J. 441.

S. 179.

Notes.

1. Cheating committed at A and loss caused at B.—Loss is not a necessary element of the offence of cheating. There must be an intention to cause wrongful loss or wrongful gain but it is not essential that loss should be caused. In the present case the allegation in the complaint is that deceit, inducement and delivery all took place at Delhi. The inducement is alleged to have been dishonest, but it would not be necessary in order to establish the offence of cheating to prove that the dishonest intention matured into actual loss. Therefore, loss at Karnal would not render S. 179 applicable—23 Cr. 447 (L.)

posit the same at Mirzapur. He was sent to two villages in the Allahabad District. There he collected about Rs. 1500 and misappropriated the amount. It was held that as the accused had to account at Mirzapur, the Courts at that place had jurisdiction to enquire into and try the offence—19 A. J. 69 (F.B.); See also 23 Cr. 173 (B); 19 A. 111; 35 A. 29; *Con* 7 P. R. 1910; 28 P. R. 1916; 23 Cr. 743 (L.); 38 M. 639 (641); 44 C. 912.

3. The place where the verified petition was recovered by the authorities, does not determine the jurisdiction—23 Cr. 619 (M.).

S. 180.

Notes.

Non-British subject retaining stolen property in Native State.—A Non-British subject retaining stolen property in a Native State is not amenable

to British Courts—23 Cr. 560 (L.) (9 A. 523; 22 P. R. 1888; 16 P. R. 1880 F.)

181 (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity

Being a thug or belonging to a gang of dacoits, escape from custody, etc

with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction

the person charged is.

- (2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of offence was received or retained by the accused person,

Criminal misappropriation and criminal breach of trust.

or the offence was committed.

- (3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be required into or tried by a Court within the local limits of whose jurisdiction such offence was committed

Theft.

or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(d) The offence of kidnapping or abduction may be inquired into or tried by a Court within

Kidnapping and abduction

local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed

ed or concealed or detained.

Changes introduced.

- (1) "The amendment to subclause (3) has the effect of enlarging the enumeration of offences so as to include the possession of stolen property. This

will also cover the case of extortion." (2d Cr. 1916) : See S. 181 (8).

- (2) The amendment renders the following ruling obsolete :—
6 C. 307 : 1 B. 50 : 10 B. 186 : 23 A. 372.

Notes.

Criminal Breach of Trust—Jurisdiction how to be determined.—It frequently happens that the misappropriation takes place not at the place where the money has to be paid or accounted for, but where it has been collected. The question in such cases is, —Can the case be enquired into or tried by the Court within whose jurisdiction the money was to have been paid or accounted for? There

he was bound to do, to his employers at Cawnpore. It is not that the case comes within S. 17

Lower Bengal or the price of them, if he did so, was that a loss of the value of those goods came to his employers in Cawnpore. It might be very difficult to prove where the actual offence of breach of trust was committed. The matter can be enquired into at Cawnpore, and the Magistrate at Cawnpore has jurisdiction in the case.

is one of an offence alleged to have been committed by him under S. 403 I. P. C. The contention on his behalf is that if he committed any offence, it was committed in Lower Bengal and not within the Magistrate's jurisdiction at Cawnpore. Of course, I express no opinion whatever as to whether the applicant committed an offence at all. That matter has yet to be decided. If however, he parted with goods of his employers in Lower Bengal, and did not remit the price of these goods, as he

disents from 44 C. 912. The Lahore High Court in a recent case 23 Cr. 743 (L) preferred to follow 7 P. R. 1910 and 28 P. R. 1916 which take a contrary view. It may now be safely asserted that the preponderance of judicial opinion is on the side of the leading case 19 A. 111.

S. 182.

Notes.

Scope of the section.—"I consider it incorrect to regard S. 182, Cr. P. C. as applicable only to cases where some place of trial cannot be laid down with absolute certainty. For example, the section applies to cases where the offence is a continuing one, so that if A steals a buffalo in District W and takes

it through District X into District Y, he may be tried for theft in any of the three Districts, though it is beyond doubt that District W would be the proper place of trial."—*Drake Brockman J. C.* 23 Cr. 211 (N)

S. 183.

Notes.

Theft committed during Railway journey.—Where a theft is committed in a train during the course of a journey, the offence can, under the provisions of S. 183 Cr. P. C. be enquired into and tried by any Court having jurisdiction over any part of the territory through which the train passed in the course of that journey. Accused a Railway Guard, committed a theft in a train running from Delhi to Bhatinda. He was convicted by a

Magistrate of the First Class exercising jurisdiction within the Ferozepur District. An appeal was preferred to the Sessions Judge and a doubt arose whether he was competent to hear the appeal. *Held*, that in as much as a portion of the line between Delhi and Bhatinda passed through the Ferozepore District, the Sessions Judge of Ferozepore had jurisdiction to hear the appeal.—24 Cr. 253 (L)

185. (1) *Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.*

(2) *When two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued.*

Changes introduced.

The principal changes in this section are the following:—

- (1) The two cases—*i.e.*, (1) a case of doubt as to which of the two courts subordinate to the same High Court and (2) a case of doubt as to which of the two courts subordinate to two different High Courts has jurisdiction, are *separately* provided for
- (2) The deciding factor as to which High Court is to settle the question was formerly “where the offender is,” the deciding factor now will be within the local limits of the appellate jurisdiction of

which High Court, where the proceedings first commenced.

Obsolete rulings—The rulings in 5 L. B. 17 and 41 C. 303 are obsolete in so far as they lay down that the former is deciding factor.

- (3) In case, the High Court having jurisdiction does not decide, the other High Court is given jurisdiction to finally determine where the offender is to be tried

Liability of British subjects for offences committed out of British India

188. When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, or

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found.

Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Local Government shall be required:

Provided also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

Changes introduced.

The words "notwithstanding anything in any of the preceding section of this chapter refer, for instance,

to the general rules laid down in ss. 177, 178, 180, 181 and 182.

Notes.

Meaning of "Native Indian subject of Her Majesty"—

The term "Native Indian subject of her Majesty" in S. 188 Cr. P. C. must be construed as follows—

A person who was born in the Gacka Baroda State and was not shown to have been born outside that state, is not a Native Indian subject of Her Majesty, although both the father and the son have occasionally lived in British

territory within the meaning of S. 188 Cr. P. C. But if he is a servant of the Queen because of his employment in the British Government, he is under S. S. 4 I. P. C. subject to punishment under the Indian Penal Code, for any offence committed within the dominions of any state in alliance with the British Government. Magistrate is found to try State—16 B. 178.

190 (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate, and any Cognizance of offences by Magistrates other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence ;

(b) upon a report in writing of such facts made by any police-officer.

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial

Changes introduced

The word "police report" in S. 190 (1) (b) stands overruled. The ruling in 11 A. J. 331 that a police report mentioned in S. 190 (b) Cr. P. C. is not limited to a report mentioned in S. 170 Cr. P. C. and the preceding sections must also be regarded as obsolete.

Rulings obsolete—11 A. J. 331 : (97-01) U. B. 156 (10) U. B. 1-q 2-9 N. 65.

Notes.

I. Police report

1. Police Chalan in the Punjab—A police Chalan is a police report of facts constituting an offence under cl. (b) and a Magistrate can take cognizance of an offence thereon.—8 P. R. 1901 : 22 P. R. 1900
2. Report under Railway Act—A report under S. 122 of the Railways Act 1890 is not a police report.—(97-01) U. B. 64.

3. Meaning of police report—The expression "police report" and "report of a police officer" as used in S. 4 (1) (h) *supra*, and S. 190 (1) (b) refer to reports by Police officers under Ch. XIV and more especially under S. 173 *supra*.—1 L. B. 18 : 1 L. B. 58. Con. 1 Pat. T. 446.
4. [Note.—Police report suo motu—Where, without reference from a Magistrate, and otherwise than under S. 173 *supra*, a police officer makes a report

to try certain persons for robbery.—An order of a District and Sessions Judge to a Magistrate subordinate to him to try certain persons sent to him in custody, on charges of robbery and abetment of robbery is *ultra vires* and no proceedings can be taken on that order inasmuch as none of the requirements of S. 190 Cr. P. C. for institution of prosecutions are fulfilled by that order.—23 Cr. 97 (S) (87 P. L. 1910 R.)

III. Miscellaneous

18. Magistrate cannot act unless there is an allegation of an offence as defined by S. 4 (O).—A District Magistrate upon receipt of a petition supported by an affidavit under S. 82 of the Indian Companies Act, examined the petitioner and purporting to exercise the powers conferred upon him by S. 190 Cr. P. C. issued warrants for arrest and

search. There was no allegation either in the petition or the affidavit that any offence had been committed. *Held*, that it was not competent for the Magistrate to proceed under S. 190 Cr. P. C. inasmuch as there was nothing to show that he had information, knowledge or suspicion that any offence has been committed.—2 Weir 46

19. Power under S. 190 not affected by Bombay District Municipal Act.—S. 82 of Bombay Act VI of 1873

20. All Magistrates authorised in the Punjab.—In the Punjab, all Magistrates of the First and Second Class are invested with power to take cognizance of offences upon complaint.—20 P. R. 1901.

S. 192.

Notes.

1. No power of retransfer.—When a Magistrate transfers a case for trial under the provisions of S. 192 Cr. P. C. he has no power to transfer it again.—23 Cr. 89 (A.)
2. Proceedings under S. 145 Cr. P. C.—The words "any case" in S. 192 Cr. P. C. are wide enough to cover an enquiry under S. 145 Cr. P. C. Therefore a Sub-divisional Magistrate who institutes proceed-

ings under S. 145 Cr. P. C. has power to transfer the same to any Magistrate subordinate to him for enquiry or trial.—23 Cr. 205 (A.)

3. Proceedings under S. 110 Cr. P. C.—Inasmuch as a proceeding under S. 110 of the Criminal Procedure Code is a case, the transfer of such a proceeding from the court of one Magistrate to another is authorised by S. 192 of the Code.—24 Cr. 31 (Pat.)

193 (I) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless

Cognizance of offences by Courts of Session. the accused has been committed to it by a Magistrate a Magistrate duly empowered in that behalf

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try, or, * * * as the Sessions Judge of the division, by general or special order, may make over to them for trial.

Changes introduced.

- (1) By deleting the words "or in the case of Assistant Sessions Judges," the Legislature has made the subordination of the Additional Sessions Judges to

--- not ent.
397
ity.

195. (I) No Court shall take cognizance—

- (a) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except Prosecution for contempt of lawful authority on the complaint in writing of the of public servants. public servant concerned, or of some other public servant to whom he is subordinate ;
- (b) of any offence punishable under any of the following sections of the same Code, namely,

sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and

Prosecution for certain offences against public justice 228, when such offence is alleged to have been committed in, or in

relation to, any proceeding in any Court, except on the complaint in writing of such Court of some other Court to which such Court is subordinate, or

(c) of any offence described in section 463 or punishable under section 471, section 475 or

Prosecution for certain offences relating to documents given in evidence, section 476 of the same Code, when such offence is alleged to have been

committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1) the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or, in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to [Criminal conspiracies to commit such offences and to] the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

Changes introduced.

(1) In S 195 the changes introduced are based on a question of principle. The Legislature has now definitely decided not to permit private litigants

possible to remedy the evils which are connected with this section, so long as private individuals are allowed to prosecute for offences connected with the administration of justice. In our opinion the only effective way of dealing with this Section is to allow prosecutions to be launched only by the Court, or in exceptional cases by the Local Government, who will no doubt before long be represented in such matters in many provinces by a Director of Public Prosecutions.

• • • • • "We see no reasons why either the Court or the Local Government in such cases where

it is of opinion that the interests of justice require that an enquiry should be made into any offence of this nature, should not file a complaint exactly in the same way as a private individual would do in other cases, and our proposals in connection with this section and the enlargement of S. 476 involve the adoption of this principle. In our view, S. 195 should bar the cognizance by any Court of offences of this nature except upon such complaint, while the procedure to be followed when either the Court or the Local Government desires to prosecute should be prescribed by S. 476.

is frequently utilised for the various purposes of blackmail. In the case of a complaint by a court or the Local Government, we do not think that it will be necessary to prescribe any limit of time.

"It will also in our opinion, be a distinct advantage to get rid altogether of the term "sanction" in connection with these prosecutions, a result which will be affected by the amendments we propose" (*Sel. Com* 1916) "We approve generally the amendment of S. 195 proposed by the Bill, but in subclauses (b) and (c) of sub-section (1) instead of providing for a complaint by the Local Government, or some officer duly authorised in this behalf, we prefer to have a complaint made by order of, or under authority from the Local Government as in S. 193 (*Joint Com* 1922).

The changes analysed.

- (1) It will be seen that sub sections (4) and (5) and (6) of which no necessity now exists, owing to the repeal of the provisions relating to the power to grant sanctions to litigants and private parties, have been omitted altogether.
- (2) Sub-section (7) has become subsection (3) of the section as amended. The subsection has been re-drafted bringing out the rule of subordination of Courts in bolder relief.

word means

- (5) Provision has been made for withdrawal of complaints made by public servants under sub S. (1) (a).
- (6) It will thus be seen, that the granting or revocation of sanctions have been done away with. A prosecution for offences against public justice or for contempt of lawful authority of public servants can only be had on the direct complaint of the Court or public servant concerned, or the Court or officer to which such Court or public servant is subordinate. In the case of contempt of authority, the litigant parties are naturally not allowed to interfere in any way. In the case of offences against public justice as provided for by sub-sections

(b) and (c), the litigant parties are permitted, under sub sec. (1) of S. 476 *infra*, to make an application praying for the intervention of the Court. The Court, may at its option, make a direct complaint to any Magistrate of the First Class having jurisdiction, but may not permit any outsider to make a complaint on its behalf—it will thus be seen that ss. 195 and 476 are complementary, the latter laying down the procedure to be followed in making complaints of the nature specified in S. 195.

- (7) deleted sub-sections (4), (5) and (6) have been remodelled and split up into two new sections 476A and 476B. Under sub S. 476A, the superior Court of appeal may complain *in motu*. Where

S. 476(1) by the litigant party, and an appeal may either make the complaint so refused or direct the Subordinate Court to withdraw and complaint it has made

The result of these changes.—(1) The rulings noted in S. 195 have

- (2) noted are obsolete in so far as they relate to grant, or revocation of sanction and cognate matters:

Calcutta.—3 B L. (A. C.) 9; 4 C. N. 347; 15 C. N. 159; 17 C. N. 937; 24 C. N. 102; 12 C. J. 619; 40 C. 531; 47 C. 741; 48 C. 388; 48 C. 807 (F.B.); 48 C. 1086; 25 C. N. 886; 25 C. N. 681; 23 Cr. 138; 23 Cr. 458; 23 Cr. 665; 24 Cr. 94; 24 Cr. 179.

Madras.—2 Weir 157; 2 Weir 166; 2 Weir 179; 7 M. 314; 17 M. 105; 24 M. 70; 44 M. 47; 44 M. 417; 18 M. J. 534; 26 M. J. 220; 26 M. J. 511; 9 M. L. 97; 23 Cr. 566 (M.L.); 23 Cr. 712; 24 Cr. 2; 24 Cr. 15; 24 Cr. 78.

Bombay.—22 B. 317; 34 B. 316; 37 B. 365; 44 B. 877; 45 B. 834 (F.B.); 12 B. R. 223; Rat. 45; Rat. 597; 23 Cr. 176; 23 Cr. 497; 24 Cr. 576; 24 Cr. 171.

Allahabad.—('93) A. N. 147; ('93) A. N. 145; 1 A J. 186; 6 A. J. 236; 19 A. J. 291; 19 A. J. 399; 24 A. 587; 34 A. 522; 35 A. 53; 43 A. 403; 24 Cr. 603; 24 Cr. 220; 24 Cr. 237.

Patna.—5 Pat. J. 23; 1 Pat. T. 521; 1 Pat. T. 621; 22 Cr. 756; 23 Cr. 331.

Punjab.—34 P. R. 1886; 25 P. R. 1889; 8 P. R. 1893; 16 P. R. 1898; 22 P. R. 1900; 8 P. L. 1920; 12 F. L. 1920; 1 L. 259; 2 L. 57; 2 L. 305; 22 Cr. 238; 22 Cr. 525; 22 Cr. 689; 22 Cr. 703; 23 Cr. 463; 23 Cr. 480; 23 Cr. 510; 23 Cr. 572; 23 Cr. 720; 24 Cr. 185.

Burma.—7 Bur. T. 205; (13) U. B. 166; (93 00) L. R. 83; 6 L. B. 50.

Oudh.—5 O. C. 240; 24 O. C. 165; 23 Cr. 574; 24 Cr. 217.

Sindh.—5 S. 237; 6 S. 81; 14 S. 69.

Nagpur.—21 Cr. 235 (N.); 23 Cr. 605 (N).

Notes.

I. Subordination of Court and Public servants

1. *See S. 195 (a) of Cr. P. C. in the Criminal Procedure Code.*
2. *see 14 A. 100*
2. Courts of Magistrate 2nd Class.—For the purposes of S. 195 (a) of Cr. P. C. the Court of a Magistrate 2nd Class is subordinate to the Court of a Magistrate 1st Class.
3. (Note).—But a Magistrate of the First Class upon whom special powers of appeal have been conferred by S. 467 (2) Cr. P. C. is not a Court to which an appeal ordinarily lies from the orders of a Magistrate exercising 2nd class powers.—23 Cr. 572 (L) (30 C. 394 and 3 N. 50 Fd.)
4. *See S. 195 (a) of Cr. P. C.*
5. Police servant also a Court.—Under Cl. (a) of sub-sec. 195 (a) of Cr. P. C. a Police Officer is not a Court.
6. Munsiff subordinate to senior Subordinate Judge in the Punjab.—For the purposes of S. 195 Cr. P. C. a Munsiff is subordinate only to the Senior Subordinate Judge and not to the District Judge. The latter has therefore no jurisdiction to grant sanction for a prosecution for offences committed in the Court of a Munsiff.—23 Cr. 723 (L) (2 L. 57 Fd.) : See however 16 P. R. 1898 : 122 P. L. 1920
7. Single Judge of Presidency Small Cause Court not Subordinate to Full Bench.—The Full Court of the Presidency Small Cause Court in Bombay has no appellate powers. S. 38 of the Act confers revisional jurisdiction only. In the circumstances, a single Judge of the Presidency Small Cause Court is not subordinate to the Full Court for the purposes of S. 195 Cr. P. C.—34 B. 316.
8. Subordinate Judge.—An appeal from the subordinate Judge ordinarily lies to the District Court within the meaning of S. 195, therefore the former Court is subordinate to the latter.—7 M. 314
9. Police Officer.—A Magistrate is not a Court.
10. Village Munsiff.—A village Munsiff is not subordinate to a Sub-Magistrate under S. 195 (a).—18 M. J. 534=4 M. T. 214.
- 10A. Is a Magistrate first class subordinate to the Additional Sessions Judge?—For the purposes

of S. 195, every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie; clearly the First Class Magistrate was subordinate to the Sessions Court. An appeal would lie ordinarily to the Sessions Court. S. 409 especially provides that an appeal to a Court of Session or Sessions Judge shall be heard by the sessions Judge or by an Additional Sessions Judge. Therefore it is difficult to see how it can be said that an appeal would not ordinarily lie and could not be heard by the Additional Sessions Judge.—Macleod C. J. in 44 B. 877.

II. Miscellaneous

11. Prosecution of pleaders.—The prosecution of a pleader defending an accused person, for abetment of giving false evidence, while the trial is pending and before the evidence of the witnesses who are said to have been instigated to give false evidence has been a precept by the Court, is inadmissible. If such a prosecution is to be started it ought to be started after the principal proceeding, in relation to which the offence is said to have been committed, has terminated.—24 Cr. 171 (B).
- 11A. Note.—A Court will not be justified in ordering the prosecution of a pleader for presenting a document on behalf of his client, merely because the document is false. The mere fact that the suspicious of the pleader ought to have been aroused by the sight of the document is not *prima facie* evidence that he knew or had reason to believe the document to be forged.—22 B. 317.
12. Is the Court bound to postpone orders till decision of the Case?—There is no reason why a Court, when any of the offences noted in S. 195 Cr. P. C. is committed before it in a Civil suit, should delay taking action until the suit is disposed of, which disposal may not occur until months or years later.—23 Cr. 712 (M) (32 M. 49 (F.B.)) It has been held that in Civil Cases, stay of prosecution for perjury should be granted pending decision of appeal. (Rat. 587; 12 C. J. 270).
13. Prosecution only when chance of conviction.—A prosecution ought to be launched, only when the Court has satisfied itself that there are very favourable chances of obtaining a conviction.—23 Cr. 176 (B).
14. Prosecutions for perjury.—The existence of a decree which has not been set aside is no bar to a prosecution for perjury (23 Cr. 138 (C)). But in ordering prosecution for perjury, it should be considered whether the false statement relates to a material issue in the case : (15 C. N. 169) An application for prosecution for perjury, should show precisely the statements alleged to be false and the place where and the occasion on which

the alleged false statements were made ("13 U.B. 166). As a rule, prosecution should not be ordered unless the statements were intentionally false (12 P. R. 1908). The false statement must be one which the Court is authorised or bound by law to receive in evidence before prosecution can be ordered. (35 A. 58). Where the trial Court and Appellate Court take different views of a piece of evidence, sanction to prosecute a witness for perjury in respect of that piece of evidence ought not to be granted (3 Pat. T. 60) Sanction to prosecute for giving false evidence is not justified where there is no documentary evidence and the question is one of oath against oath—19 A. J. 291.

15. Prosecution for false complaints.—There is nothing in the Code which compels a Magistrate in express terms to examine any or all witnesses whom the complainant wishes to adduce, before dismissing a complaint and granting sanction under S. 211 I. P. C. (12 B. R. 229). But where the complaint is dismissed on police report without taking any evidence complainant cannot be prosecuted under S. 211 I. P. C. (29 A. 587).
16. Meaning of "brought under its notice."—The words "brought under notice in the course of a judicial proceeding" are wide enough to cover an

offence which may have been committed in another forum and on some previous occasion. (6 A. J. 392). But where the matter does not come up before the authority ordering prosecution, in due course of law, it cannot be said to have been brought under notice in the course of a judicial proceeding"—(See 34 P. R. 1886).

17. District Judge acting under the District Municipalities Act acts as a Court within the meaning of S. 195—37 B. 365.
18. Execution proceedings.—Proceedings in execution of a decree are judicial proceedings.—12 C. J. 618; 45 B. 668.
19. Statements made under S. 164 Cr. P. C.—A statement made by a Magistrate in the course of a
20. Refusal to prosecute no bar to suit for defamation.—The mere fact that the Court has refused to take any notice of a defamatory statement made in the course of a judicial proceeding is no bar to the institution of a prosecution for defamation—48 C. 353.

S. 196.

Notes.

1. Sanction must be specific in details.—The sanction should be specifically directed to the particular sections of chapter VI respect of which proceedings are to be taken, and the order or authority should be preceded by and be the result of a deliberate determination that proceedings shall be taken in respect of a particular section or particular sections of the Chapter and no other. It would be opposed to the true intendment of S. 196 Cr. P. C. for the Local Government by its order to give its legal or other advisers a roving power to determine under what sections, proceedings should be taken.—23 Cr. 203 (31) (37 C. 467 Fd.)
2. Sanction signed on behalf of Chief Secretary is de-

fective.—Where the sanction instead of being signed by the Chief Secretary on behalf of the Government was signed by "A. Cassells for Chief Secretary" and Mr. Cassells who was at the time the Deputy Secretary, did not claim for himself any official position, *held*, that in those circumstances it must be held, that there was no legal proof that the Local Government has ordered or authorised the prosecution. No presumption arose as to Mr. Cassells' capacity to sign the letter, and he could not certify the order on behalf of Mr. Stephen son (Chief Secretary) whose own capacity was that of a delegate.—24 Cr. 111 (C).

196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code,

Prosecution for certain classes of criminal conspiracy.

- (1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of Section 196 apply, unless upon complaint made by order or under authority from the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf, or
- (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment

for a term of two years or upwards unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of the proceedings.

Provided that where the criminal conspiracy is one to which the provisions of *sub-section (4)* of section 193 apply no such consent shall be necessary

Changes introduced.

- (1) In the proviso for the figure and brackets "(3)", the figure and brackets "(4)" have been substituted. "We have introduced a new clause in the

Bill making a consequential amendment in S. 196A which has apparently been overlooked."—(Joint Com. 1922)

Notes.

Scope of the section—S. 196A of the Code of Criminal Procedure only renders sanction necessary where the prosecution is for criminal conspiracy punishable under S. 120 B, I. P. C. It does not

alter the former law that a prosecutor for abetment by way of conspiracy punishable under S. 109, Penal Code, requires no sanction—49 C. 573.

196B In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).

Changes introduced.

The reason for introduction of the new section

investigated by the police before complaints are made. Doubts have arisen as to whether investi-

to meet the difficulty which arises from the fact that cases under S. 196 and 196A cannot be properly

Com. 1922).

197. (1) When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government;

(2) Such Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate, or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Changes introduced

- (1) The following remarks of the Joint Committee of 1922 contain the *raison-d'être* of the substitution

of cl. (1) by a new clause:—"It has been pointed out to us that difficulties with regard to section

197 have recently come to light. There are certain public servants who are only removable from office by the Secretary of State and it is unreasonable that they should obtain no protection under this section. Further, in view of S. 4 (2) of the Code, the word "Judge" has to be interpreted

therefore proposed a re-draft of sub-sec. (1) of S. 197 to meet these difficulties. We have confined the operation of the section to public servants removable by a Local Government or some higher authority, and have provided that the sanction required for a prosecution will be the sanction of the authority who has power to remove. At the time however of emerging from the Legislative anvil in its final form, the section as re-drafted underwent an abridgment. The words "Except

with the previous sanction of the authority having power to order, or as the case may be, to sanction

ment," substituted. It will thus be seen that sanction to prosecute is needed now only in the case of a Judge, Magistrate or public servant, removable from office by the Local Government, Government of India, or Secretary of State

(2)

be delegated.

(3) The introduction of the word "Magistrate" in Sub-clause (2) is a consequential amendment.

Notes.

1. Mukhtear confined in court-room by Honorary Magistrate.—Ona B., a Mukhtear was sent for by an Honorary Magistrate. The Mukhtear attended the Court-room, but to his surprise he was kept under arrest by a constable under the orders of the Magistrate. On his asking as to the cause of his arrest, he was told that he did not appear before the Magistrate in a case in pursuance of a bond executed by him for his appearance. He pleaded that he never knew of any such bond being executed by him in the said case, nor did he remember of having been a witness therein. He was however

sanction under S. 197 Cr. P. C.—2 L. 305 (2d C. 352 Fd.) : see 27 M. 54.

3. Members of Panchayat in Madras.—A member of a village Panchayat sanctioned under the Madras

of such member of an offence under S. 161 v. 171 E., I. P. C.—23 Cr. 148 (M).

4. Forest Ranger in C. P.—A Forest Ranger in the Central Provinces is not a public servant not removable from his office without the sanction of

out the sanction required by S. 197. "A large number of authorities have been cited before us with reference to the point in question. To me it seems that the result of those authorities is that if a Judicial Officer or a public servant does anything in the exercise of the powers vested in him by law, and abuses such power, sanction under S. 197 Cr. P. C. is necessary. If, on the other hand, he does something which the law does not empower him to do, though he is occupying for the time being the position of a Judge or public servant, sanction would not be necessary." (*Sahraurday J.*) in 23 C. N. 956.

necessary under S. 197 Cr. P. C.—23 Cr. 391 (N)

5. Secretary of Municipal Committee.—Sanction is not necessary for the prosecution of the Secretary of a Municipal Committee for any wrong done of a Municipal Committee

6. Police Patel.—A Police Patel, hereditary or other

prosecution.—Rat. 147.

7. Procedure.

- (a) Need reasons he recorded?—An order of sanction under S. 197 Cr. P. C. is more of the nature of an executive than a judicial order, and a Magistrate is not bound to record reasons for such an order, but the order should refer to some distinct offence and not be so vague as to make it obvious that the Magistrate had not come to a decision of his own that reasonable grounds existed for the prosecution.—24 Cr. 116 (M) (16 M. 468 R)

2. Granting of sanction is an executive Act.—There is a wide distinction between the provisions of S. 197 and those of S. 195. The granting of sanction under S. 197 is clearly not a judicial but an executive act, and it is difficult to see how it can assume a different character if the sanction is granted by a Court. Courts exercise executive as well as judicial functions. An executive proceeding does not become a judicial proceeding merely because the court regards it as such. The High Court has therefore no authority to interfere with an order made by a subordinate Court granting or refusing

(b) Notice if necessary—No notice calling upon the accused to show cause is necessary before granting sanction under S. 197—*Ibid.* (27 M. 54 Fd.)

Power of Additional District Magistrate to grant sanction.

—The power to grant sanction under S. 197 is one of the powers conferred in Madras on all District Magistrates by G. O. dated 24th Jan'y. 1922. It is

one of the powers, therefore, which may be passed on by the Local Government under S. 10 (2) to the Additional District Magistrate. The powers which may be so passed on are not confined to those enumerated in Schedule III (V) of the Code.—24 Cr. 116 (3f).

193 No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Prosecution for breach of contract, defamation and offences against marriage

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf

Changes introduced.

- (1) "We think the proviso to S. 193, should include the case of a purdah woman, and the reference " * " to a minor should be confined to persons under the age of 18" (*Sel. Com* 1916)
- (2) Formerly a prosecution could be launched only by "a person aggrieved"—meaning thereby "a person injured" (1 Bur. S. 617). In 32 C. 425 it was held that an imputation of unchastity to a Hindu lady affected the reputation of the person in whose house, or under whose charge, she was

living at the time. (See S. 193 (4)) and it was therefore a person aggrieved within the meaning of this section. This view was not accepted in 1931 A. N. 207 and 39 C. 1060. The view is now

would be helpless.

Notes.

Official superior not a party aggrieved.—A complaint of an offence under S. 500 I. P. C. made not by the persons aggrieved but by his official superior

cannot be accepted inasmuch as such acceptance would defeat the object of S. 193 Cr. P. C.—23 Cr. 641 (O) (29 M. 43 Fd.)

199 No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed.

Prosecution for adultery or enticing a married woman.

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf.

Changes introduced.

The proviso to S. 199 has been redrafted on lines similar to that of S. 193—"The Legislature has not provided for the protection of the lunatic, the paralytic or the invalid husband and the word

"some other person" is added. The word "idiot" is changed to "lunatic". The word "sickness" is changed to "infirmity". The word "protection" is changed to "make a complaint". The word "word" is changed to "provision".

Provided as follows —

- (a) when the complaint is made in writing nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 ;
- (aa) *when the complaint is made in writing, nothing herein contained shall be deemed to require examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.*
- (b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing ; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing .
- (c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is to be transferred shall not be bound to re-examine the complainant.

Changes introduced.

- (1) The words " Subject to the provisions of S. 476 " have been omitted in view of the proviso (aa) which provides for complaints by Courts and public servants . We have redrafted the new proviso

of the words " and signed by a public servant acting or purporting to act " etc. " We would require the complaint by a public servant to be signed by him in order to attract the benefit of

- (2) The first Select Committee proposed the insertion

Notes.

1. Failure to examine the complainant is mere irregularity — Omission to examine the complainant is a mere irregularity and would not vitiate the proceedings (46 C 807 . 23 C N 481 : 1 Pat. T. 349 Ed) — 1 Pat. T. 446

this view : See also (97-01) U B 55 : 8 W. R. 12). The new clause (a) of the proviso to S. 202 as amended, should be noted

3. Reference to Schoolmaster's Memorandum on the subject

of the complainant into writing. These cases were not followed in 9 B L 146 . The case in 4 N. P. 88 however takes the same view as 7 B L 513. See however the proviso (a) to the Section.

4. Complaint by a person other than the one affected.— It is absurd to expect a Court to take any notice of a complaint of cheating except when it is put in by the person actually defrauded.—22 Cr. 672 (L)
5. Memorandum by Collector not a complaint.—A memorandum under the signature of the Collector cannot be accepted in the place of a complaint so as to justify the issue of a summons.—5 B H. (C.C.) 48.
6. Stamps unnecessary when offence cognisable.—No stamp is necessary to petitions of complaint made to Magistrates of cognisable offences.—Pat. 70.

so soon as he has prevailed upon the Magistrate to take cognizance of his complaint, be examined upon oath. The substance of that examination is by law required to be reduced to writing, and it is obvious that that writing must be and was intended to be distinct from the complaint " (the following rulings viz.—30 C. 923 : (1868) 4 M. H. 162 : 10 A. J. 79 and 1 Pat. T. 346 support

202. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

Provided that no such direction shall be made—

- (a) unless the complainant has been examined on oath under the provisions of section 260, or
- (b) where the complaint has been made by a Court under the provisions of this Code.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Changes introduced.

- (1) "We have made another small amendment in S. 202 (1) to cover cases which have been transferred to a Magistrate under S. 192, as well as cases of which he has taken cognizance himself—(See Com 1916)
- (2) clause (a) of the proviso makes it a condition precedent to action under Sub-Sec. (1) to duly examine the complainant under S. 200 (This gives effect to a series of rulings.—2 P. R. 1912 : 13 C. 334 : 27 C. 921 : Rat 368, also 30 C. 923 : 9 C. N. 199 : 4 C. N. 305 : 3 C. N. 17 : 4 C. L. 134. [S. 202 (2) Note])
- (3) The proviso has been so framed as to make it obligatory on Presidency Magistrates also to examine the complainant before proceeding under the section (S. 202(1)(a)) "We consider that Pres-

deny Magistrates should be required to examine the complainant and to record his statement in cases where the Court intends to postpone issue of process and order an enquiry. (Joint Com 1922)

- (4) The amendment to subclause (2) is one of drafting only.
- (5) The new clause (2A) makes the enquiry, if it is held by a Magistrate a judicial proceeding within Cl. (m) S. 4. The following rulings therefore in this view must be held to be clearly distinguishable:—20 Cr. 915 (P); 39 M. 750 (r.B.); 21 M. J. 795. See 4 C. N. 306 : 22 B. 936 : 23 M. 223 : 15 P. R. 1894. 32 A. 30. 7 A. J. 618 [See 202(3)]

Notes.

- 1. S. 202 is applicable only to complaints—There is no provision in the Code of Criminal Procedure empowering a Magistrate to hold what may be called a judicial or preliminary enquiry unless there is a complaint lodged before him under S. 190(1) (a) of the Code. S. 202 Cr. P. C. under which alone an enquiry can be made, relates exclusively to complaints. No such enquiry can be made, when cognizance is taken under clauses (b) and (c) of S. 190 Cr. P. C.—2 Pat. T. 220
- 2. Magistrate's option under S. 202 Cr. P. C.—Under S. 202 of the Criminal Procedure Code, a Magis-

thereafter directing local investigation is irregular and the whole proceeding against the accused is vitiated, if a material portion of the irregular proceedings has a share in the formation of his judgment.—23 Cr. 279 (A).

- 3. After proceeding under S. 202 Magistrate cannot direct Police to submit charge-sheet.—Where a Magistrate directed an enquiry by the Police under S. 202 Cr. P. C. and the Police after making a thorough enquiry, reported that the case was false and purely a civil dispute for which a civil suit was already pending in Court, held, that in the circumstances the Magistrate could proceed either under S. 203 or 204, but he could not make any order directing the submission of charge sheet.—23 Cr. 403 (Pat.).

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the result of any investigation or enquiry under section 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

Changes introduced.

- (1) The words "after considering the statement on oath (if any) of the complainant and the result of any investigation or enquiry under S. 202" make it incumbent on the Magistrate to consider the result

of the enquiry under S. 202, along with the statement of the complainant on oath before he can finally dismiss the complaint.—(See 203 (6:7; 8:9)).

Notes.

1. Power to dismiss a complaint again after further enquiry.—The complainant moved the Sessions Judge, who directed a further inquiry into the case which had been dismissed under S. 203 Cr. P. C.

by the Magistrate. The Magistrate after taking some evidence, again dismissed the complaint under S. 203 Cr. P. C.—*Held*, that he was competent to do so.—25 C. N. 312

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. (1) Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate (not being a Magistrate of the third class) empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Changes introduced.

The amendment that being a Magistrate of the third class, not re- g

Court. As a matter of practice, this affects the province of Madras only, where all Magistrates except the Teshildar were empowered.

Notes.

1. Two charges one of which only is cognizable by a court of session.—When an accused person is charged with two offences, one of which is triable only by a Court of Session, the Magistrate should adopt the procedure provided in Chapter XVIII Cr. P. C. *inter alia*, giving the accused an opportunity of cross-examining the witnesses for the prosecution.—22 Cr. 480 (C).
2. Procedure after conversion of warrant case to a Sessions Case.—Where, after hearing the evidence

in a warrant case in accordance with the procedure prescribed by the Cr. P. C. for the trial of such cases, the Magistrate is of opinion that a *prima facie* case is made out of an offence triable by a Court of

the trial as a warrant case.—1913, 403.

S. 209.

Notes.

1. The leading case of *In re Bai Parvati* 35 B. 163.—Where a Magistrate finds that there are no sufficient grounds for committing the accused person for trial—either because there is no evidence whatever, or because the evidence appears to him to be totally unworthy of credit it is his duty under S. 209 to discharge the accused since the grounds, relied on for commitment would, in his opinion be insufficient.
2. The power to discharge when to be exercised and when not.—A Magistrate, has under S. 209 Cr. P. C.

of Session—15 S. 1 (35 B. 163 F.) : 24 Cr. 293 (3). 42 M. 49 : 14 M. T. 200 (Per Bakewell J.) : 13 Cr. 373 (31) : See also 15 A. J. 232. 21 Cr. 61 (3).

3. (Note.—The Lahore High Court in 23 Cr. 61 (U) has taken a similar view :—“Where in the course of an enquiry held by a Magistrate into a case triable by a Court of Session, he finds that the evidence tendered by the prosecution is totally unworthy of credit, it is his duty under S. 209 Cr. P. C. to discharge the accused.” The case follows 10 P. R. 1909 : 37 A. 353. The following cases should also be noted :—1 Pat. T. 153 : (1907) 9 B. R. 225 : (1882) 5 A. 161 which is followed in (1895) Rat. 746 and 4 W. R. 16 : In 5 A. 161 the Magistrate was held to have been justified in discharging the accused because he entirely discredited the evidence of persons who claimed to be eye-witnesses.)

210. (1) When, upon such evidence being taken and such examination (if any) being made, the

When charge is to be framed.

Magistrate is satisfied that there are sufficient grounds

for committing the accused for trial, he shall frame a

charge under his hand, declaring with what offence the accused is charged.

(2) As soon as such charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

Changes introduced

The amendment is purely a matter of drafting “We would however propose a verbal amendment in

S. 210(2) to meet a suggestion of the Bengal Government.”—(Sel. Com. 1916).

Notes.

1. Can a Magistrate discharge after drawing up charge with a view to commit?—The drawing up of a charge must always follow the determination of a Magistrate to commit a case to the Court of Session, which determination duly expressed, the Magistrate becomes *functus officio* as to that matter. Where a Magistrate after drawing up a charge and directing the commitment of the accused, took further evidence and then discharged them. Held, that the order of discharge was illegal—(1881) Rat. 161.
2. Discretion to commit must not be exercised arbitrarily.—The law gives a discretion to Magistrates empowered to commit cases to Sessions Court

to decide whether a certain case calls for such committal, but the discretion being judicial, must be exercised with care and on some proper ground. If a Magistrate thinks that a case not exclusively triable by the Court of Sessions must be committed, he must state his grounds in the order of committal so as to enable the High Court to judge whether the committal is a sound exercise of discretionary power. But to add a charge of an offence exclusively triable by a Sessions Court for the mere purpose of committing it to that Court is an unsound and improper exercise of that power.—11 B. R. 18

S. 211.

Notes.

Refusal to summon absent witnesses vitiates the trial.—The accused filed a list of his witnesses before the Committing Magistrate and they were summoned

to attend the Sessions Court. Some of them failed however to attend. After the remaining defence witnesses had been examined and the

S. 213.

Notes.

Discharge of accused.—In a case triable only by a Court of Session, if the enquiring Magistrate after bearing the defence witnesses comes to the conclusion that their evidence rebuts that produced

for the prosecution or renders it so incredible or unreliable that a conviction will not follow, he may act upon his opinion and may pass an order of discharge under S. 213 Cr. P. C.—44 A. 57.

214 [Repealed by the Criminal Law Amendment Act 1923],

215 A commitment once made under section 213 * * by a competent Magistrate, * * or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

Changes introduced

The omission of the words "or by a Court of Session under S. 477" is consequential to the repeal of S. 477 and its expunction from the Code. The

words "or section 214" were deleted by Act XII of 1923.

Notes.

Joint committal of persons charged under S. 457 and S. 411 respectively illegal.—Where two persons charged under S. 457 I. P. C. with house breaking by night and a third person under S. 411 I. P. C.

with receiving part of the stolen property were jointly committed for trial before the Court of Sessions, held, that as the offences were distinct, the commitment should be annulled —(83) A. N. 159.

219 (1) The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206 may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall be given to the accused free of cost.

Changes introduced.

(1) The substitution of the words "the Committing"

suggestion of the Calcutta High Court that powers under S. 219 should only be exercised for trial." —(Joint Com. 1922)

(2) The words "if the accused so require" being deleted.

(Sel. Com. 1916). "We have given effect to the"

Com. 1916).

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

Charge to state offence

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge

by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

(6) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Language of charge

(7) If the accused *having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence*, the fact, date and place of the previous conviction shall be stated in the charge. If such statement *has been omitted*, the Court may add it at any time before sentence is passed

Previous conviction when to be set out.

Illustrations.

(a) A is charged with the murder of B: This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the General Exceptions of the same Code: and that it did not fall within any of the five Exceptions to section 300; or that, if it did fall within Exception I, one or other of the three provisos to that Exception applied to it.

(b) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting: This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the General Exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark: The charge, may state that A committed murder, or cheating, or theft, or extortion or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code, but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Indian Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant; The charge should be in those words.

changes introduced

- (1) The words "or to punishment of a different kind" which were introduced into sub S (7) by the Select Committee of 1922. The amendment meets the case in *Weir 267* in which it was laid down that liability to whipping as an additional punishment

under S. 3 of Act VI of 1864 and the liability to enhanced punishment under S. 75 I. P. C. were distinct liabilities and either or both liabilities must be set out in the charge.

Notes.

1. Failure of a specific charge.—Where a person is charged with a specific offence, and it is found during the course of the trial that that charge is not made out, it is not within the Magistrate's competence to alter the charge where the accused would be taken by surprise and would not have

accused may be procured (21 P. R. 1902). Where

2. Charge must be accurately formulated.—It is the bounden duty of the Court to give the accused notice of the accusation formulated against him, by drawing up a charge clearly stating what it is that he is accused of doing. An accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him, and

sion (13 P. R. 1874; 19 P. R. 1879). Where the omission was due to the accused having given a

(23 P. R. 1879).

4. Proof of previous conviction.—If the accused denies that he was previously convicted, a certified extract from the records of the Court in which he was convicted, should be put in evidence and it should be proved that the accused and the person named therein are one and the same person. ((81) A. N. 144; 15 W. R. 52; 5 Q. N. 670; 2 *Weir* 266).

5. Previous conviction for the purpose of imposing

provided by S. 40 I. P. C. should be imposed but nevertheless, desires to obtain information as to the antecedents of the accused, with a view to determine the duration of the sentence to be imposed on him, previous conviction may, if denied, be proved in the ordinary manner ('83) 2 *Weir* 265. The mere fact that the Magistrate has, in passing the sentence, been influenced by a previous conviction of which the accused has not been formally charged, will not render the sentence illegal ('83) 2 *Weir* 264).

evidence that was given, and the line of defence set up by him into consideration, in order to see whether he has in fact been prejudiced.—3 Pat. T. 332 (11 C. 103; 6 B. 11 76 and 41 C. 743 Fd.) See also 44 C. 338

3. Previous conviction not known to the Magistrate at the time of conviction.—It has been held that where the previous convictions of the accused persons were not proved through the negligence of the prosecution and not on account of any neglect on the part of the Magistrate, the chief Court was not competent to exercise its power of revision and direct a new trial in order that the formal proof of the previous convictions of the

S. 222.

Notes.

What the charge in cases of embezzlement by an agent should specify.—Where, the accused person is charged with embezzlement of a gross sum of money, no part of which it was his duty to spend on behalf of his principal, it is sufficient to charge him for criminal breach of trust for the gross sum received by him, without specifying any particular item of any particular date in respect of the constituent parts of the gross sum. But where the

an alleged balance or net profit which the agent is supposed to have earned, and to say that in respect of that net profit he is guilty of misappropriation of every rupee which he cannot produce or explain. The prosecution must be prepared to prove what amount the accused lawfully received and lawfully expended and what is the total sum and how that total sum is made up, which he has either unlawfully expended, or failed to account for in such a way as to leave no doubt that he has been engaged in criminal misappropriation.—42 A. 322.

S. 225.

Notes.

C. 1. In the case of a charge, the charge is to be framed in the form of a charge.

537 of the Code an irregularity of this kind is immaterial unless the accused was in fact misled by the error and it has occasioned a failure of justice—23 Cr. 320 (S) (41 C. 66 : 19 C. N. 972 Fd.).

S. 226.

Notes.

Stage at which the charge is to be amended.—It is on the facts disclosed by the Magisterial enquiry, and on those facts alone, that any action under S. 226 Cr. P. C. can be taken. This being so, it seems to me that, so long as the facts appearing in the Magisterial enquiry warrant the framing of the charge omitted by the committing Magis-

trate the Sessions Court has power to add the charge so omitted. It also seems to me that it is not quite correct to say that the Sessions Court is not a Court of original jurisdiction. It has original jurisdiction, which it can exercise on the commitment made by a Magistrate.—24 Cr. 177 (L) (9 S. 37 Fd. : 20 P. R. 1909 and 22 C. 22 Not Fd.)

S. 233.

Notes.

1. Lumping together of several charges where justified.—Accused was tried at one trial for the murder of his wife and three children, the acts done by him were connected both by continuity of action and purpose, and the four persons were murdered within a short period of time. *Held* that there was no legal bar to the trial of the accused on the four charges of murder at one trial. *Held*, also that although, the learned Judge had lumped all the charges together in a manner which was contrary to the provisions of S. 233 Cr. P. C., the irregularity did not vitiate the trial and was covered by the provisions of S. 537 of the Code.—8 O. J. 10

2. Joint trial of cross-complaints.—It is illegal to try together two cross-complaints arising out of the same transaction, even with the consent or at the suggestion of the accused. The trial was held to have been conducted in a manner prohibited in positive terms by law and the conviction was set aside.—13 Bur. T. 245 (8 C. N. 180 : 25 M. 61 (P. C.) Fd.)

3. Note.—The whole case law on this point was exhaustively reviewed by *Jwala Prasad J.* in the case of *Dhaka Singh v. E. 1 Pat. T. 498*. It was

held that while it is true that a trial is irregular and improper, but that would not entitle the accused to have the whole trial set aside, unless it was clearly shown that the procedure adopted had prejudiced him in his defence. It may be noted that the earlier cases—8 W. R. 47 and 12 W. R. 75 which support this view were not followed in 6 C. 96, 13 C.L. 275 (278) and 14 C. 353. The case in 20 C. 537 which reviewed these cases was

and *Handley J.J.* but a later case 8 C. N. 514 (Per *Ghose and Stephen J.J.*) held that the Privy Council ruling did not apply to separate trials of counter cases held simultaneously.

4. Simultaneous trial of different cases with the aid of some assessors.—Where the cases against 5 different accused charged with the same offence committed under similar circumstances were tried in the following manner—the cases were split up into two cases and in those two cases the five accused appeared in the dock simultaneously; as there were a number of witnesses in common, each witness was first examined in the first case, and then if necessary again in the second. A carbon copy was made of the deposition of each witness, as directed by the Judge and typed by the clerk and handed over to the Police Prosecutor who, from the "proof" questioned the same witness again in detail. There were separate and complete records in each case as well as separate judgments. *Held* (1) the simultaneous hearing of two cases by one set of assessors was more than a mere irregularity (2) that the five accused being substantially tried together in two simultaneous trials, the grave irregularity in trial fell within

violence to the provisions of the Code to hold that the accused were tried jointly together. They were studiously kept apart and separate from each other. The fact that they were tried simult-

ly were tried and "joint" cases and in certain circumstances might be irre-

the rule laid down in 23 M. 61 (P. C.) that disobedience to an express provision as to the mode of trial (S. 233) was more than a mere irregularity and S. 537 was inapplicable to the case—11 L. B. 73 (3 P. R. 1906 Fd.).

5. Joint trial of receivers of stolen property.—Where stolen property is recovered from the possession of several persons at different times, there should be a separate trial under S. 411 I. P. C. of each of such persons. The joint trial of such persons is illegal and the illegality is not curable by the application of S. 537 Cr. P. C.—19 A. J. 815 (See 2 Pat. T. 47: 33 C. 1256).
6. Theft and dishonest retention.—The theft of certain articles by one person and the dishonest possession of them by another knowing them to be stolen form one transaction, even though the receipt is

simultaneous with the theft. The joint trial of such persons, therefore, is not bad in law under the provisions of S. 239 Cr. P. C.—23 Cr. 414 (A) (6 B. R. 517 Fd.).

(Note—The Legislature has put the matter beyond doubt, by amending S. 239).

7. Cases of perjury.—The joint trial of several persons for perjury under S. 193 I. P. C. is illegal.—23 Cr. 439 (L). (39 P. R. 1888: 6 M. 252: 5 A. 17 Fd.).
8. Several dacoities committed on the same night.—Where the accused has committed three or four dacoities on the same night, the charge should allege each dacoity separately, and the omission to so charge is not a mere irregularity, even if the dacoities are so connected as to form only one transaction.—26 A. 195: See 7 P. R. 1905: 8 P. R. 1905.

234 (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences whether in respect of the same person or not he may be charged with, and tried at one trial for, any

Three offences of same kind within year may be charged together.

number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law.

Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of Code, and that an offence punishable under any section of the Indian Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Changes introduced.

- (1) The words "whether in respect of the same person or not" affirm the view taken in a long current of decisions that S. 234 is not limited to cases where the offences have been committed against the same person. The rulings in 2 Weir 299 and 11 C. N. 1128 to the contrary are now therefore obsolete.
- (2) "Instead of the illustration proposed by this clause, which we do not like, we have inserted words in S. 234 (1) which at all events make it clear that an accused person may be charged as one trial with three offences of the same kind though committed against different persons." (See Com 1916)

- (3) "We have also added a provision to S. 234 (2) which we think is required. S. 379 and 380 Indian Penal Code refer to theft and theft in a particular manner, where such an attempt is penalised by law, is of the same kind as the actual offence" (*Ibid*).

Notes.

1. Charges in respect of two different newspaper articles.—The accused was charged under S. 124 A of the Penal Code in respect of one newspaper article and separately charged under Ss. 124 A and 123 A in respect of another article. *Held*, that he could

be tried at one trial on both the sets of charges.—10 B. R. 819.

2. An offence and fabricating false evidence to conceal the offence.—An accused person cannot be charged either with giving or fabricating false evidence

- with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged.—23 A 705
- 3 Joint trial of two accused for distinct offences.—S. 234 Cr. P. C. only applies to the trial of a single person for separate offences of the same kind, and not to cases in which more persons than one are tried jointly.—(1919) 3 U. B. 187.
 4. S. 234 not limited to offences committed against the same person.—S. 234 Cr. P. C. is not limited to cases where the offences have been committed
 - against the same person but also applies where the complainants are different persons.—11 L. B. 45 (43 C. 13 and 41 C. 66 Fd.) : 23 Cr. 719 (M) (F) 25 M. T. 379 (387) : 3 Pat. J. 124 : 38 A 457 and dissents from 33 C. 292).
 5. (Note.—The joint trial of two persons for offences under S. 241 I. P. C. for passing counterfeit coins on three different occasions on the same day to three different persons does not contravene the provisions of either S. 234 or 239 Cr. P. C.—(1927) M. N. 476.

S. 235.

Notes.

1. Charges under S. 408 and 477A.—Where a person is charged, under S. 408 I. P. C. with criminal breach of trust committed in one year in respect of a lump sum of money, the Court is competent by virtue of the provisions of Ss. 234 and 235 Cr. P. C. to try with this charge, three charges for an offence under S. 477A Penal Code, if committed within the period of one year and forming part of the same transaction as the offence under S. 408.—22 Cr. 230 (Pat)
2. More than one distinct offence included in the same charge.—A charge which relates to more than one distinct offence, is a bad charge under the law. But where in a trial the distinct offences included in the charge were committed by the same person

of base metal as silver on the complaint and coming to know that his fraud had been discovered, stole the bars from the complainant's possession at night, held, that as the cheating was completed once the base metal was given to S in exchange for his money and the necessity for stealing the metal only arose when S had discovered that he had been cheated, the offences could not be re-

C. at one trial was irregular.—20 A. J. 344.

5. Series of occurrences—amounting to more than three offences.—There is nothing in S. 235 or S. 239 Cr. P. C. to warrant the rule that in no circumstances can more than three offences be combined even if more than three offences have been committed by the same person.

235 Cr. P. C.—1 A. J. 392

6. Grievous hurt in the course of robbery—only one offence.—A person committing grievous hurt in the course of robbery has committed only one offence and can be sentenced under S. 394 I. P. C. only and not separately under S. 392 and 326 I. P. C.—(172-92) L. B. 478.

7. (Note.—Where however the ulterior object of the offence was a different offence—the rule does not apply. Thus, where the ulterior object of the theft was to levy blackmail, the accused may be charged and convicted for both the offences.—(193-03) L. B. 226

3. Gang of dacoits taking part in several dacoities.—

A gang of dacoits having been present during the whole time, it was immaterial whether all the members of the gang took an active part in each dacoity and if as many as five of them took an active part in any one dacoity. All the dacoities were committed by the same gang in pursuance of the same object. Thus clearly all the offences were committed in the same transaction within the meaning of S. 235 Cr. P. C. and 239 Cr. P. C.—24 Cr. 153 (A).

4. Cheating and subsequent theft to hush up evidence of cheating.—Where the accused passed off bars

S. 236.

Notes.

1. Joinder of charges under S. 411 and 414 I. P. C.—Under charges of offences under S. 411 I. P. C. charges of offences under S. 414 I. P. C. is

bad. If however, the charges are framed in the alternative under S. 236 of the Code of Criminal Procedure, there would be no defect in the trial.

But having framed defective charges the Magistrate cannot remedy the error at the conclusion of the

offences has been committed by the petitioner. Where the evidence led by the evidence can possibly lead but to one result and one result only, S. 236 has no application—(1921) Pat 96 (21 Cr. 44 R.): 3 Pat. T. 127.

2. S. 236 controls S. 237 Cr. P. C.—S. 236 which must control S. 237, only applies when from the evidence led by the prosecution, it is doubtful which of the

3. Alternative charge cannot be made when accused not bound by law to tell the truth in one case.—A person cannot be charged in the alternative, under S. 236, Cr. P. C. for having made two contradictory statements, one in the petition and the other in his deposition, inasmuch as the petitioner is not bound by law to state the truth in the petition.—2 Weir 169.

237. (1) If, in the case mentioned in section 236, the accused is charged with one offence, and it

When a person is charged with one offence he can be convicted of another.

appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the

offence which he is shown to have committed, although he was not charged with it.

* * * * *

Changes introduced.

The amendments in the section are consequential on the change introduced into Ss. 234 and 238 Cr. P. C.

Notes.

1. S. 403 (1) in relation to S. 237 Cr. P. C.—Where the accused was tried under S. 231 I. P. C. in respect of

of the principal offence of murder but also with the abetment thereof and therefore under S. 237 Cr. P. C. he could be convicted of the offence of abetment though he was not charged separately with it—11 P. W. 1921.

3. Conviction under S. 380 without altering charge under S. 411 is illegal.—S. 237 Cr. P. C. does not imply that a person charged under S. 411 of the

not charged with it—23 Cr. 305 (S)

4. General rule as to alternative finding in cases of perjury.—Where a person is convicted of giving false evidence, solely on the ground that his deposition in Sessions Court differed from the one given by him before the Magistrate, held, that if this circumstances justified a conviction at all, the finding should have been an alternative one.—Rat. 26.

2. No separate charge of abetment necessary for conviction.—Where two persons K and N were both charged with murder, but it was found that N committed the actual murder and he did so at the bidding of K whose actual presence at the scene of murder was not established, the Sessions Judge convicted N under S. 302 I. P. C. and K of abetment of murder. Held, that on the facts found K could have been charged not only with the commission

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor

When offence proved included in offence charged.

offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted

of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce to it a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(3) Nothing in this section shall be deemed to authorise a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Changes introduced.

Cl. (2) of S. 237 has been grafted on S. 233 as Cl. (2A).

Notes.

1. Conviction under S. 147 changed to one under S. 323 by appellate Court.—Where more than five persons have been convicted under S. 147 I. P. C., and on appeal, only four are found guilty, and the rest acquitted, the appellate Court has power to alter the conviction from one under S. 147 I. P. C. to one under S. 323 I. P. C.—20 A. J. 213.
2. (Note.—In 12 Cr. 62 (C) *Holmwood and Sharfuddin*

view. In the last case *Odgers J.* held as follows:—“I think there is no doubt that criminal force being an element of the offence of 145 (sic), it must be taken to be capable of carrying a conviction under S. 352.”)

3. Conviction for minor offence triable by Jury at trial held with the aid of assessors.—S. 233 of the Criminal Procedure Code empowers a Court trying an accused person for an offence with the aid of assessors to convict him for a minor offence triable by Jury—45 B. 619.

What persons may be charged jointly.

239 The following persons may be charged and tried together, namely :—

- (a) persons accused of the same offence committed in the course of the same transaction ;
 - (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;
 - (c) persons accused of more than one offence of the same kind within the meaning of section 234 committed by them jointly within the period of twelve months ;
 - (d) persons accused of different offences committed in the course of the same transaction ;
 - (e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining or assisting in the disposal or concealment of property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence ;
 - (f) persons accused of offences under ss. 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence ; and
 - (g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ;
- and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

Changes introduced.

“We consider that the redraft of S. 239 proposed is a great improvement on the existing section. We

have discussed the various criticisms which have been levelled against the clause and have not seen

sion shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient

Conviction on admission of truth of accusation. Cause why he should not be convicted, the Magistrate may convict him accordingly.

Changes introduced.

The word "may" is substituted for "shall" and is intended to meet cases such as S. 213, in which it was held that it was not within the option of the Magistrate to refuse to accept a plea of guilty as

not genuine. "We accept this amendment, which is, we notice, only reverting to the wording of the 1872 Code." (Sel. Com. 1916).

244. (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take such evidence as he produces in his defence.

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks, fit on the application of the complainant or accused issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Changes introduced.

(1) The expression "if the Magistrate does not commit the accused etc." in Cl. (1) is consequential upon the discretion of given to Courts under S. 243 as amended, either to commit the accused on admission or not.

(2) The word "may" in cl. (2) was interpreted in certain decisions—e.g., 15 W. R. 87 and 4 M. H. (appx) xxix as giving the Magistrate a discretion to refuse to re-summon absent witnesses. This view was challenged in 30 C. 121 and 6 C. N. 548.

"The difficulty intended to be dealt with by the clause (cl. (2)) rests upon the words "process to compel the attendance" as seems clear from the Calcutta decisions. We think that the only alteration really required is to substitute for the words referred to above the simpler expression "a summons to any witness directing him to attend etc." This we think, will make S. 90 clearly applicable which is, in our opinion, all that is required."—(Sel. Com. 1916).

Notes.

1. "The necessity of giving them an opportunity of pro-

necessity of giving them an opportunity of pro-

clear indication to the contrary.—2 Pat. T. 482 See 41 M. 727 : 11 C. 61 : 3 L. B. 62 (F.B.). 4 Pat. W. 40 : 3 Pat. J. 632.

2. Magistrate's discretion to limit the number of witnesses to be examined by the defence.—Even in a summons case, the parties have an undoubted right to examine their witnesses and their right can only be curtailed by the court, on the ground, that the examination of all the witnesses proposed to be examined, will delay and possibly defeat the ends of justice. This is clear from S. 244 (1) Cr. P. C.—2 Pat. T. 330.

245. (1) If the Magistrate upon taking the evidence referred to in S. 214 and such further evidence

if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of S. 349 or S. 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Changes introduced.

The words "where the Magistrate does not proceed in accordance with the provisions of S. 349" are intended to cover those cases which call for severer punishment than it is in the power of the trying

Magistrate to inflict. The words "S. 562" constitute an innovation. S. 562 is a new re-enacted is applicable to Sessions Cases.

Notes.

1. Is Examination of accused compulsory in summons cases?—The words "if he thinks fit" do not, in my opinion control or modify the provisions of S. 342. On a consideration of the provisions of this chapter (chapter XX), I am unable to hold that Magistrates are relieved in the trial of summons cases from the obligation of questioning

the accused generally, under S. 342, to enable him to explain the evidence against him, after the witnesses for the prosecution are examined.—(SAA)

S. 246.

Notes.

Meaning of the words "finding not limited by complaint or summons."—"We do not think that S. 246 can be held to mean that the accused in a summons case, can be convicted of an offence alleged to have

been committed on a date to which no reference had been made in the complaint or summons."—*Newbould and Suhrawardy J.J.*—In 22 Cr. 559 (O).

S. 247.

Notes.

1. S. 403 in relation to S. 247.—S. 403 is imperative and bars a second trial of the accused when he was once acquitted of the same charge. The Code does not make any distinction between acquittals after trials and acquittals under Ss. 247, 345 and 494 of the Code.—2 Pat. T. 170
2. Absence of complainant on date of judgment.—In a summons case under S. 352 I. P. C. the defence witnesses were examined, and the case was closed for judgment to be delivered on the next day. On that day both the complainant and accused were present, but as the judgment was not ready the case was adjourned to the next day. On the latter day the complainant was absent and the Magistrate passed the following order: "The case was fixed for order today. Complainant absented

himself but the accused was present. The accused is, therefore, acquitted under S. 247 Cr. P. C." Held, that the order acquitting the accused was erroneous. The case did not fall within the provisions of S. 247 Cr. P. C. because the hearing of the case had already been concluded and all that the Magistrate had to do was to deliver his judgment.—24 Cr. 205 (N) (46 C. 897 Fd.); *Con* 18 C. N. 584.

3. (Note—Where the complainant has done all that is necessary for him to establish his case, the com-

S. 248.

Notes.

1. Effect of composition of an offence.—A petition of compromise was filed on the 16th June re certain

compoundable offences. The Magistrate recorded the following order:—Case compromised, Petition

owed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

Changes introduced

The section has been almost entirely recast. The most noticeable changes are —

(1) The omission of the words "as defined in this Code in cl (1) is the first noticeable change. The word complaint has been defined in S 4 (h) as "the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person, whether known or unknown has committed an offence." This omission is important and should make the section applicable to cases where an allegation is made without an express request to take action. (For such cases—See 20 C. 481; 17 C N 940 16 Cr. 460 (31); 1 B 175; 14 B R 1165 26 A 183). The conflict of rulings with regard to cases of information or complaint to village Magistrates has been met by this amendment (S. 250 (5). The words "upon complaint or upon information given to a police officer or to a Magistrate" meet the case in 21 Cr 43 (8) in which the application of the section, so far as police-officers are concerned was held to be confined to the information given to and entered by them in the cognizable register under S. 134 Cr. P C

(2) As to the words "or may, if such person as aforesaid," they were added for the following reasons: Subsection (1) as redrafted does not provide for the case where the complainant is absent at the time judgment is delivered, and we think that power should be given in such a case to summon him to appear and show cause." (Joint Com. 1922.) For such a case see 7 S 123.

(3) The words "false and either frivolous or vexatious" appear for the following reason: "We do not think that the procedure of the S. 250 should be

(3) "We would increase the limit of compensation from Rs. 50 to Rs 100. We think that this increase is amply justified by present-day conditions" (Sel. Com. 1916). "We think that there is some anomaly in enabling a Magistrate who cannot impose a fine of more than Rs. 50 to award compensation upto Rs 100, and we have therefore proposed to reduce the amount of compensation, which third class Magistrates can award, to Rs 50. —(Joint Com. 1922).

(4) The sub-clause (2A) by enabling a Magistrate to order imprisonment in default in the very order

Rulings rendered obsolete:—All the rulings noted in in S. 250 (73).

(5) Subsection (1) has been re-enacted as follows:—

(6) Sub sec. (4) has been redrafted for the following reason: "We have redrafted the proposed addition to sub sec. (4) to make the intention clearer (Joint Com. 1922). The amendment which we propose at the end of subsection (4) is to provide for cases in which though there cannot be an appeal, the acquittal or discharge of the person to whom compensation has been awarded, may be set aside in revision. The period of one month which we have allowed, should be ample to admit of application being made to the superior Court— (Sel. Com. 1916).

(7) As to the deletion of sub S (2) the Joint Committee of 1922 made the following observations: "In view of S 547, we do not see any necessity to provide in the new sub S (2-A) that compensation should be recoverable as if it were a fine."

Notes.

I. General Notes.

1. When and how the order of compensation is to be made.—It will be noticed that under S. 250 as it was framed in the Code of 1898, the language used in sub S (1) was "by his order of discharge or acquittal, direct the person etc. ... to pay to the accused etc." and in the section as re-enacted by the Amending Act of 1923, the phraseology is "by his order of discharge or acquittal, if the per-

son upon whose complaint etc. ... call upon him forthwith to show cause why etc. There was no doubt a provision in the Code of 1898 making it

were meant to form part and parcel of one conglomerate whole, viz.—the final order in the trial (see 22 Cr. 527 (L)). In fact he could not hold a separate

filed. The injury has not healed yet. Complain-

illegal, as the Magistrate's order on the 16th recording that the case was compromised, amounted to an acceptance of the petition of the parties. He then became *functus officio* and ceased to have any jurisdiction over the matter. The compromise absolved not only the accused present but also all the accused as the entire offence was compounded.

—2 Pat T. 584 (1 Pat T. 52 Fd.) : Con. 41 M 323 : 41 A. 483.

2. (Note—The last part of the ruling—viz that the compromise absolved the absent accused also, is now longer good law in view of the amendment to sub-clause (b) of S. 345. See S. 345 *infra*.)
3. Effect of withdrawal of complaint against some accused only.—The withdrawal of complaint against one accused of the accused does not amount

Frivolous Accusations in Summons and Warrant Cases.

250. (1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each of such accused when there are more than one, or if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period

allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

Changes introduced

The section has been almost entirely recast. The most noticeable changes are:—

- (1) The omission of the words "as defined in this Code in cl (1) is the first noticeable change. The word complaint has been defined in S. 4 (b) as "the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person, whether known or unknown has committed an offence." This omission is important and should make the section applicable to cases where an allegation is made without an express request to take action (For such cases—See 20 C. 481; 17 C. N. 980; 16 Cr. 466 (M); 1 B. 175; 14 B. R. 1166; 26 A. 183). The conflict of rulings with regard to cases of information or complaint to village Magistrates has been met by this amendment (S. 250 (5)). The words "upon complaint or upon information given to a police officer or to a Magistrate" meet the case in 21 Cr. 49 (S) in which the application of the section, so far as police-officers are concerned was held to be confined to the information given to and entered by them in the cognizable register under S. 154 Cr. P. C.
- (2) As to the words "or may, if such person as aforesaid," they were added for the following reasons: Sub-section (1) as redrafted does not provide for the case where the complainant is absent at the time judgment is delivered, and we think that power should be given in such a case to summon him to appear and show cause." (Joint Com. 1922.) For such a case see 7 S. 123.
- (3) The words "false and either frivolous or vexatious" appear for the following reason: "We do not think that the procedure of the S. 250 should be

amendment see S. 250 (1 Note)

- (3) "We would increase the limit of compensation from Rs. 0 to Rs. 100. We think that this increase is amply justified by present-day conditions" (Sd. Com. 1916). "We think that there is some anomaly in enabling a Magistrate who cannot impose a fine of more than Rs. 50 to award compensation upto Rs. 100, and we have therefore proposed to reduce the amount of compensation, which third class Magistrates can award, to Rs. 50.—(Joint Com. 1922).

- (4) The sub-clause (2A) by enabling a Magistrate to order imprisonment in default in the very order directing payment of compensation, has overruled all the rulings noted in 250 (73) laying down that no such order can be made without at first making an attempt to realise the amount by distress etc.

Rulings rendered obsolete:—All the rulings noted in in S. 250 (73).

- (5) Sub-section (1) has been re-enacted as follows:—

- (6) Sub-sec. (4) has been redrafted for the following reason: "We have redrafted the proposed addition to sub-sec. (4) to make the intention clearer (Joint Com. 1922). The amendment which we propose at the end of sub-section (4) is to provide for cases in which it may be necessary to make a fine."

(Sd. Com. 1916).

- (7) As to the deletion of sub S. (2) the Joint Committee of 1922 made the following observations: "In view of S. 517, we do not see any necessity to provide in the new sub S. (2 A) that compensation should be recoverable as if it were a fine."

Notes.

I. General Notes.

1. When and how the order of compensation is to be made.—It will be noticed that under S. 250 as it was framed in the Code of 1898, the language used in sub S. (1) was "by his order of discharge or acquittal, direct the person etc. ... to pay to the accused etc." and in the section as re-enacted by the Amending Act of 1923, the phraseology is "by his order of discharge or acquittal, if the per-

son upon whom complaint etc. call upon him forthwith to show cause why etc. There was no doubt a provision in the Code of 1898 making it incumbent on the Magistrate to record and consider any objection which the complainant or the informant might urge, but the three—the judgment, the showing cause and the order for compensation—were meant to form part and parcel of one transaction whole, viz.—the final order in the trial (see 22 Cr. 527 (D)). In fact he could not hold a separate

filed. The injury has not healed yet. Complainant must again appear on the 30th June 1920, when I shall pass final order, etc." On the 30th the Magistrate directed summons to issue on the accused upon the ground that the complainant did not want to compromise. *Held*, that the order was illegal, as the Magistrate's order on the 16th recording that the case was compromised, amounted to an acceptance of the petition of the parties. He then became *functus officio* and ceased to have any jurisdiction over the matter. The compromise absolved not only the accused present but also all the accused as the entire offence was compounded.

—2 Pat. T. 584 (1 Pat T. 32 Fd.) : Con. 41 M. 323 : 41 A. 483.

2. (Note—The last part of the ruling —is that the compromise absolved the absent accused also, but now longer good law in view of the amendment to sub-clause (b) of S. 345. See S. 345 *infra*.)
3. Effect of withdrawal of complaint against some accused only.—The withdrawal of complaint against one or some of the accused does not amount to a withdrawal against the others—9 O J 51 (Pg 43 A. 483 and 41 M. 323 and dissenting from 1 Pat. T. 32 and 7 C. N. 176)

Frivolous Accusations in Summons and Warrant Cases.

250. (1) If, in any case instituted upon complaint or upon information given to a police-officer or

False, frivolous or vexatious accusations.

to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate,

and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, or is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each of such accused when there are more than one, or if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period

that public officer or departments should be exempted from the liability to make compensation for vexatious and frivolous complaints (2 Weir 317) where proceedings are instituted on the information of a public servant, and an officer subordinate to him gives evidence in a case, an order directing the latter to pay compensation to the accused is not proper.—(2 Weir 318)

14. Case instituted on report of police constable.—Where a case has been reported by a police constable, and the accused is acquitted, *held*, that the Court is not competent to order the police constable to pay compensation to the accused.—(83) A. N. 257.
15. Amin.—Where a amin who was ordered by the Assistant Collector to attach and sell some property, reported that he had been obstructed, and the

the Assistant
the obstructe
no compen-
c, since there
was no complaint within the meaning of S. 4 Cr. P. C.—(88) A. N. 216.

(Note—The change of law).

IV. Miscellaneous.

16. Order under S. 250 Cr. P. C. no bar to prosecution under S. 211 I. P. C.—A charge may be at the same time frivolous and false. The award of compensation for a frivolous and vexatious complaint does not bar proceedings against the complainant under S. 211 I. P. C.—(1867) 2 Weir 311 ; (1875) 2 Weir 311.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summons to give evidence before himself such of them as he thinks necessary.

Changes introduced.

The amendments to the section are similar to the one introduced in S. 243 *supra*.

Notes.

Meaning of "hearing the complainant."—The expression used in S. 252 is "hear the complainant". The taking of evidence is separately referred to.

We have been shown no authority for holding that "hearing" a complainant involves his examination on oath.—42 J. J. 108.

S. 253.

Notes.

1. *Provision of law...*

2. Dismissal for default illegal.—A Magistrate has no jurisdiction to discharge an accused person under S. 253 Cr. P. C., for the non-appearance of the complainant on the date of hearing where the offence complained of is a warrant case.—(91) A. N. 110.

S. 255.

Notes.

Further evidence after plea of guilty.—Where, after the framing of a charge, the accused pleads guilty, it is open to the Magistrate in his discretion to take

further evidence, and it is also open to the Crown to suggest that this be done.—25 C. N. 212.

255A. *In a case where a previous conviction is charged under the provisions of S. 251, sub-sec (7) and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under S. 255, sub-sec. (2), or S. 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.*

Changes introduced.

"We think that this addition is necessary after S. 255, to provide for a case where previous conviction is also charged. Definite provision is made for this in the case of trial before a Court of Session (S. 310) but it does not seem to have been suggested

though a procedure for the proof of previous convictions is necessary in a Sessions Court to prevent the Jury or Assessors, from being prejudiced by anything they may hear as to the accused's previous record, yet in warrant-cases the same considerations do not apply. On the whole however, we think the new section may serve a useful purpose and we have retained it."—(Joint Com. 1922).

256. (1) *If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state at the commencement of the next hearing of the case as, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.*

(2) *If the accused puts in any written statement, the Magistrate shall file it with the record.*

Changes introduced.

(1) The amendment "at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith" is intended to clear up an obscure point of law. There may be on the one hand, cases in which it is not giving an accused person reasonable opportunity, to ask him, immediately after the charge is framed, to cross examine witnesses. (See (1911) 2 M. N. 192 · 16 A. 785 (M)—S 256(9)), and on the other hand, it may be necessary to forestall, in certain cases the obstructive tactics of the accused (See 21 M. J. 283—S. 256 (28)). It may happen that upto the time of a

it is suggested that the accused should have a right to postpone his decision as to cross examination of the prosecution witnesses, till the commencement of the next hearing of the case. On the one hand it has been suggested that the provision is likely to be grossly abused for the purposes of the defence, and that the introduction of the words "if the Magistrate thinks fit" is an inadequate safeguard. We think that the amendment proposed by the clause is a reasonable compromise between these divergent views and we therefore propose no change. (Joint Com 1922).

(2) It is worthy of notice that it was a much debated point as to whether the word "shall" left any discretion in the Magistrate to allow the accused time to consider whether he would cross examine any prosecution witness or not. The doubt is now removed and discretion is given in clear and explicit terms

The criticism of the amendment introduced by this clause goes to two extremes. On the one hand,

Notes.

The right to have prosecution witnesses recalled after charge.—S. 256 Cr. P. C. gives the accused an

absolute right to recall prosecution witnesses for cross examination, at the expense of the prosecution.

and it is not open to the Magistrate to order the accused to pay costs for recalling those witnesses—(22 C. 112 (L) 5 Pat J 94) It has been held that even where an accused person presented, after the close of the evidence of some prosecution witnesses, a petition for admission of a letter alleged to have been written by some of the prosecution witnesses, which would show that the evidence given by the prosecution witnesses was unreliable, and also prayed for permission to re-call those prosecution witnesses to be examined about the letter, held that the Magistrate ought to have allowed the accused to recall those witnesses and examine them.—(8 M T 367)

not open to a Magistrate after commencing the trial of a case as a warrant case, to change the procedure in the midst of the trial and conclude it by the procedure prescribed for summons cases—2 Pat. T. 482

Right of accused to be examined both before and after charge—Where a warrant case the accused is examined only before the charge is framed, and not also after the prosecution witnesses have been recalled for further cross-examination under S. 256 Cr P C, the procedure cannot be regarded as a mere error, omission or irregularity such, as is contemplated in S. 537 (a) of that Code; because the same would not be a ground for setting aside the trial.

the procedure laid down in in that chapter It is

S. 257.

Notes.

Magistrate's discretion to refuse to summon witnesses—An application to summon the prosecution witnesses for cross examination can be disallowed only if it

deposited by the accused in Court" But once having allowed the witnesses to be summoned a Magistrate cannot say, on the witnesses being for any reason not examined on the first date, that they shall not be summoned for the next date except on payment of their expenses by the accused (22 Cr 711 (L)) If after the witnesses having been summoned, they are not in attendance

to summon the prosecution witnesses for cross-examination and if the application is refused without the requirements of the section having been sufficiently complied with, the accused is prejudiced by no opportunity of cross-examining the witnesses being given to him.—(22 Cr. 572 (Pat))

(L)) or that if the witness is summoned he would, at the most, merely support the accused in his statement—(22 Cr. 501 (L)).

Prosecution witnesses summoned as defence witnesses.—Prosecution witnesses summoned as defence witnesses under S. 257 Cr. P. C do not change their character, and may be cross examined by the accused—(1922) M. N. 120: 1 C. N. 19: 28 C 594).

ing the ends of justice and I will not issue process unless expenses for the attendance of witnesses are

258 (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of S. 349 or S. 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Conviction

Changes introduced.

The amendment is on a line with that to S. 245. See Notes under that section

Notes.

Can accused be convicted on account of false defence?—Before an accused person can be convicted, it is

necessary that the Court should be satisfied beyond doubt that the charge framed against him has been

255A. *In a case where a previous conviction is charged under the provisions of S. 221, sub-sec (i) and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may after he has convicted the said accused under S. 255, sub-sec. (2), or S. 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.*

Procedure in case of previous convictions.

Changes introduced.

"We think that this addition is necessary after S. 255, to provide for a case where previous conviction is also charged. Definite provision is made for this in the case of trial before a Court of Session (S. 310) but it does not seem to have been provided for by this Code in the case of a Magistrate" (*Sol. Com. 1916*) "It was suggested to us that the new S. 255 A is unnecessary on the ground that

though a procedure for the proof of previous convictions is necessary in a Sessions Court to prevent the Jury or Assessors, from being prejudiced by anything they may hear as to the accused's previous record, yet in warrant-cases the same considerations do not apply. On the whole however, we think the new section may serve a useful purpose and we have retained it."—(*Joint Com. 1922*)

256 (1) *If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.*

Defence.

(2) *If the accused puts in any written statement, the Magistrate shall file it with the record*

Changes introduced.

(1) The amendment "at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith" is intended to clear up an obscure point of law. There may be on the one hand, cases in which it is not giving an accused person reasonable opportunity, to ask him, immediately

it is suggested that the accused should have a right to postpone his decision as to cross-examination of the prosecution witnesses, till the commencement of the next hearing of the case. On the other hand it has been suggested that the provision is likely to be grossly abused for the purposes of the defence, and that the introduction of the words "if the Magistrate thinks fit" is an inadequate safeguard. We think that the amendment proposed by the clause is a reasonable compromise between these divergent views and we therefore propose no change. (*Joint Com. 1922*)

tactics of the accused. (See 21 M. J. 253—S. 256 (28)) It may happen that upto the time of a charge being framed, the accused is not professionally represented, and it seems reasonable in such a case, that he should be given until the next hearing opportunity to engage a pleader and decide what witnesses he will cross-examine (*Sol. Com. 1916*). The criticism of the amendment introduced by this clause goes to two extremes. On the one hand,

(2) It is worthy of notice that it was a much debated point as to whether the word "shall" left any discretion in the Magistrate to allow the accused time to consider whether he would cross-examine any prosecution witness or not. The doubt is now removed and discretion is given in clear and explicit terms

Notes.

The right to have prosecution witnesses recalled after charge.—S. 256 Cr. P. C. gives the accused an

absolute right to recall prosecution witnesses for cross-examination, at the expense of the prosecution,

and it is not open to the Magistrate to order the accused to pay costs for recalling those witnesses.—(22 C 112 (L) : 5 Pat J 94.) It has been held that even where an accused person presented,

not open to a Magistrate after commencing the trial of a case as a warrant-case, to change the procedure in the midst of the trial and conclude it by the procedure prescribed for summons cases.—2 Pat T. 482

prosecution witnesses to be examined about the letter, held that the Magistrate ought to have allowed the accused to recall those witnesses and examine them.—(8 M. T. 367)

Right of accused to be examined both before and after charge—Where a warrant-case the accused is examined only before the charge is framed, and not also after the prosecution witnesses have been recalled for further cross-examination under S. 236 Cr P C, the procedure cannot be regarded as a mere error, omission or irregularity such, as is contemplated in S. 537 (a) of that Code; because the accused is entitled to an opportunity of stating his case both before and after the charge is framed. The examination of a witness cannot be regarded as completed, until the last stage, at which the law authorises its continuance, has been passed.—24 Cr 124 (M) (6 Pat J. 644 and 41 C. 743 Relied on.)

S. 257.

Notes.

Magistrate's discretion to refuse to summon witnesses.—

An application to summon the prosecution witnesses for cross-examination can be disallowed only if it is frivolous or vexatious and its object is to defeat the ends of justice (5 Pat J 94). Under S. 237 Cr. P. C a Magistrate has discretion to refuse, on the grounds recorded in writing, an application to summon the prosecution witnesses for cross-examination and if the application is refused without the requirements of the section having been sufficiently complied with, the accused is prejudiced by no opportunity of cross-examining the witnesses being given to him.—(22 Cr. 572 (Pat.).

Stage at which the discretion allowed by S. 257 can be exercised—When a list of defence witnesses is put in and come up before the Magistrate for

deposited by the accused in Court." But once having allowed the witnesses to be summoned a Magistrate cannot say, on the witnesses being for any reason not examined on the first date, that they shall not be summoned for the next date except on payment of their expenses by the accused (22 Cr. 711 (L)). If after the witnesses having been summoned, they are not in attendance or have not been served with summons, the Magistrate is bound to resummon them and cannot refuse to do so on the ground that their evidence would be superfluous or unnecessary (22 Cr. 497 (L)) or that if the witness is summoned he would, at the most, merely support the accused in his statement.—(22 Cr. 501 (L))

Prosecution witnesses summoned as defence witnesses—Prosecution witnesses summoned as defence witnesses under S. 237 Cr. P. C do not change their character, and may be cross examined by the accused.—(1922) M. N. 129 : 1 C. N. 19 : 28 C. 594).

258. (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.
- (2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of S. 349 or S. 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Acquittal.

Conviction

Changes introduced.

The amendment is on a line with that to S. 241. See Notes under that section

Notes.

Can accused be convicted on account of false defence?—Before an accused person can be convicted, it is

necessary that the Court should be satisfied beyond doubt that the charge framed was

established. It is altogether wrong for a Court, although it does not believe the case for the prosecution, to convict the accused because he has set up a false defence. If the prosecution case is

false on the whole, the accused is entitled to an acquittal, whether his defence is true or false.—23 C. N. 834

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, or is *ret a cognizable offence* the Magistrate may, in his discretion, notwithstanding anything herebefore contained, at any time before the charge has been framed, discharge the accused.

Changes introduced.

The words "or is not a cognizable offence" enlarge the scope of the section. For instance, the offence of forgery under ss 463, 464 or 468 is non cognizable and cannot be lawfully compounded. Under the law as it stood before the amendment, the Magistrate would be powerless to discharge the accused, even if the complainant deliberately absents himself. Under the law as now amended, his discre-

tion is unfettered. The amendment proposed by the Bill would give the Magistrate discretion to discharge the accused, when the complainant was absent in any case instituted upon complaint. We are inclined to think that this went too far, and we think it is sufficient to extend the application of the section to cases of non-cognizable offences".—(Joint Com. 1922).

Notes.

Where the charge has been framed case must be decided on merits although complainant absent.—No section of the Cr. P. C. allows a Court to pass an order of acquittal after a charge has been framed, except upon a finding, on the merits, of not guilty.

Where a charge has been framed, it is the duty of Trial Court to proceed with the trial in the absence of the complainant, and to convict or acquit on the merits.—3 U. P. (L) 39.

S. 260.

Notes.

1. Cases of importance ought not to be tried summarily.—An important case of a public nuisance under S. 290 I P. C., ought not to be tried summarily specially, where the accused applies for a regular trial and the judgment in the case, might have a far-reaching effect.—23 B. R. 984

3. The record should be brief but not obscure.—The record in summary cases should be brief but not obscure, and it is desirable that a Magistrate should set out in the column reserved for the purpose in the record, so much of the reasons as to satisfy an accused person that the necessary ingredients of the offence of which he is convicted have been duly considered. (21 A. 189) The order must state what offence has been committed and the reasons for considering the offence proved. A mere statement that "there was a quarrel about a well between parties who were much incensed against one another" does not satisfy the requirements of the law. ((82) A. N. 242; 7 P. R. 1887)

accused person is prejudiced by a conversion of the regular to the summary procedure in the midst of the trial.—24 Cr. 167(C); See 22 Cr. 145 (L).

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences.—

(a) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292,

XLV of 1860,

293, 291, 323, 334, 336, 341, 352, 426, 447, and 504.

- (b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine.
- (c) abetment of any of the foregoing offences;
- (d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

Changes introduced.

"We agree to the inclusion under S. 261 (a) of offences under S. 504 as proposed by the Bill. We propose to add at the end of S. 261 (b) the words "with or

without fine" which are clearly desirable."—
(Joint Com. 1922)

S. 262.

Notes.

The procedure—accused entitled to recall prosecution witnesses in warrant cases.—In summary trials under Chapter XXII of the Code of Criminal Procedure, the procedure prescribed for warrant cases should be followed in warrant cases and in

such a case, the accused is entitled to have process issued for compelling the attendance of the prosecution witnesses for cross examination.—22 Cr. 271 (C).

S. 263.

Notes.

1. Magistrate cannot destroy memorandum of evidence even in non-appellable cases.—Where a Magistrate in the trial of summons case, records a memorandum containing the substance of the examination of each witness, such memorandum becomes part of the record of the case, and the Magistrate has no authority to destroy it; the fact that a non-appellable sentence is passed upon the accused, is no justification for destroying the memorandum.—48 C 280.
2. The record must contain sufficient materials to support the conviction.—The record in a summary

last sentence was sufficient to condemn the whole judgment. A man could not be convicted on his appearance and manner of speech. An ugly stammering nervous man might be innocent while a good looking plausible man might be a scoundrel.—23 Cr. 161 (L)

4. Examination of the accused necessary even in summary trials.—Neither Ss 263 and 264, nor

examination of the accused simply because the trial is summary. The plea of the accused under clause (g) of S. 263 cannot possibly take the place of the examination of the accused, for the former naturally occurs at the initial stage of the case, and the latter after the termination of the prosecution evidence and before the accused is called on to enter into his defence.—*Judicial Prasad J.* in 3 Pat. T. 268.

5. Examination of the accused in the trial of a summary case.

allows the Presidency Magistrate to supplement

"... of the accused in the trial of a summary case."

must give the reasons, though briefly, for justifying the conviction. Convictions are reversible by the superior court and the Superior Court will always insist on having materials before it, so that it may be in a position to say whether the conviction is proper or not (3 Pat. T. 499); See 2 P. R. 1874 : 7 P. R. 1887 : 5 P. R. 1889 : 6 C. 579 : 21 A. 189 : 18 B. 97. The particulars required by S. 263 should be specified in different columns, of the register and should not be lumped together in one column.—(23 Cr. 161 (L)). where no reasons whatever are given in support of the conviction, there is no compliance with the provisions of 263 Cr. P. C. (24 O. C. 293 : 16 O. C. 357).

3. Conviction based mainly on the appearance of the accused is illegal.—Where the Magistrate in convicting the accused remarked as follows: "His appearance and speech are such that I have no doubt that he committed the offence." Held that this

Provided that, where any accused person is charged with an offence punishable with death, the jury shall consist of not less than seven persons and it practicable of nine persons.

Changes introduced.

- (1) The new proviso raises the number of jurors to a minimum of seven persons and a maximum of nine in cases of trials for murder or other offences

punishable with death. The proviso has been added by the Criminal Law Amendment Act 1923 (XII of 1923).

275. (1) *In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans and, in the case of an Indian British subject, of Indians,*

(2) *In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans.*

Changes introduced.

- (1) The extensive amendments to this section are consequential upon the amendments introduced into chapter XXXIII by the Criminal Law Amendment Act XII of 1923. The whole chapter has been recast upon the basis of the recommendations made

by the Committee appointed to consider the now famous Racial Distinctions Bill. The principle followed is apparently that a man is entitled to be tried by his peer

276 The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct :

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing.

Existing practice maintained ;

in such Court in respect to the choosing jurors shall be followed ;

secondly, in case of a deficiency of persons summoned, the number of jurors required may,

persons not summoned when eligible ;

with the leave of the Court, be chosen from such other persons as may be present ;

thirdly, in a trial before any High Court in the town which is the usual place of sitting of such trials before special jurors.

High Court—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs, the jurors shall be chosen from the special jury list hereinafter prescribed ; and

fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list presented in section 325.

Changes introduced.

By the substitution of the words "in a trial before any High Court in the town which is the usual place of sitting of such High Court" for the term "in the presidency-towns," such provincial High

Courts as the High Courts of Allahabad, Patna, Lahore and Rangoon, are placed on an equal footing with the three Presidency High Courts.

284. When the trial is to be held with the aid of assessors, *not less than three and, if practicable, four shall be chosen*, from the person summoned to act as such.

Assessors how chosen.

Changes introduced

(1) It will be seen that the number of assessors have been raised from two to four with a minimum of three.

Notes.

Reasonable objection to selection of Assessors ought to be allowed.—There is no express provision for objecting to the selection of an assessor as in the case of jurors under S. 278 Cr. P. C. But there is no reason why an objection of presumed or actual partiality should not be allowed, particularly when

it is urged at the time of the selection of the assessor. As observed by *Jacobs J.* in 23 W. R. 33

284A. (1) *In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or, where there are several European British subjects accused or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.*

(2) *In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, all the assessors shall if practicable and if such European or American before the first assessor is chosen so requires, be persons who are Europeans or Americans.*

Changes introduced.

New S. 284A is consequential upon the extensive amendments carried out in Chapter XXXIII *infra* (Procedure relating to trial of European British Sub-

jects). The principle that a man should be tried by his peer is apparently followed.

285A. *In any case in which an European or American is accused jointly with a person not being an European or American, or an Indian British subject is accused jointly with a person not being an Indian and such European, Indian British subject or American is*

Trial of European or Indian British subject or European or American jointly accused with others

committed for trial before a Court of Session, he and such other person may be tried together, but if he requires to be tried in accordance with the provisions of S. 275 or S. 284A and is so tried, and the other person accused requires to be tried separately, such other person shall be tried separately in accordance with the provisions of this chapter.

Changes introduced.

See the Note under S. 284A *Supra*.

S. 287.

Notes.

Statement of the prisoner before committing Magistrate admitting previous conviction.—Where the statement of the accused as recorded by the committing Magistrate, contained an admission as to their previous conviction and the Session's Judge allowed the same to be read out to the assessors at the close of the prosecution evidence—held, that the portion relating to the previous conviction could be read under S. 287, only when the accused has been

proved or even to be made known during the trial of the accused for the main offence is that the fact of the previous conviction may prejudice the accused by creating an adverse opinion in the mind of the Judge, Jury or the assessors. Upon this principle the reading of the charge, the previous statement

The learned Judge having contravened the aforesaid principle, the trial was held to be vitiated—5 Pat. J. 700.

for not permitting the previous conviction to be

288. The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII

Evidence given at preliminary inquiry admissible.

may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the

Indian Evidence Act, 1872.

Changes introduced.

The words "duly recorded in the presence of the accused under Ch. XVIII" have been substituted for

Magistrate can only be treated as evidence for all purposes "subject to the provisions of the Indian Evidence Act." "We considered the suggestion

(Com. 1022).

was proposed in S. 288 that a commitment improvement, but we would lay down that the evidence of a witness before the Committing

Notes:

1. Statements admitted under S. 288 are "substantive evidence"—Statements made to the Committing Magistrate are not admissible merely for the limited purpose of contradicting a witness in the Court of Session as under S. 135 Evidence Act. S. 288 Cr. P. C. goes further and makes such statements "evidence in the case" i.e., substantive evidence

of the facts therein deposed. (See 28 A. 683; 24 M. 414). But before such evidence is substituted under S. 288 Cr. P. C. it is necessary that there should be some reason why it should be preferred. That is a matter of prudence and not of law. (27 C. 295)—46 B. 97.

2. Attention of witness concerned must be drawn to

the passages in question.—It is now settled law that statements should not be put in under S 288 Cr. P. C. without the attention of the witness being drawn to the portion of the statement which it is desired to use.—3 Pat T 398

3. Statements made before Monegar.—Statement of prosecution witness made and signed before the *monegar* cannot be used as substantive evidence of this witnesses against the accused, as it is not a statement recorded on oath in the presence of the accused by a Magistrate empowered to take down evidence. The only use of such a statement would

be to corroborate or contradict statements made on oath at the trial under S. 155 of the Evidence Act.—42 M. J. 278 (26 M. 191 Fd.).

4. Statement should not be admitted without cross-examination by defence.—The Sessions Court has absolute discretion to allow the statement of witness made before the Committing Magistrate to be transferred to its own record under S 288 Cr. P. C. but it should not allow the statement to be read out to the witness before the defence has had an opportunity of cross-examining him.—3 L. 144

S. 289.

Notes.

1. Duty of Judge, when he is of opinion that there is no evidence against the accused.—Under S. 289 (2), it is not sufficient for the Judge, merely to say to the Jury that the evidence is weak or has very little weight or it does not amount to anything. If it is his intention to invite the Jury to acquit, it is his duty to go further and say that there is no evidence against the accused and to direct the Jury to return a verdict of not guilty.—32 C. J. 89

(Note—In this case, the Jury on account of misdirection actually convicted the accused).

2. Examination of the accused at the Sessions Trial compulsory.—The words "if any" are used in S 289 of the Code, and in spite of these words the relaxation of the rule contained in S. 342 is not allowed in trials by Sessions Courts.—(9 B. R. 356: 9 B. R. 730: 17 B. R. 892: (1903) A. N. 1: 9 M. 224 (85) 2 Weir 405: 19 C. N. 1043: (1917) 3 U. B. 18= 11 Bur T. 134: See also 41 C. 743: Cr. Ref. No 17 of 1919 (Pat.) 10 B. R. 201)

3. (Note—This point has been elaborately discussed by *Jwala Prasad J.* in the case of *Raghu Bhumi* 5 Pat. J. 430. "S 289 in itself does not make any provision for the examination of the accused person. Its object is to simply lay down the stage at which "the accused shall be asked whether he means to adduce evidence" namely, after the examination of the witnesses for the prosecution and the examination, if any of the accused person which the Court in its discretion may hold under the first part of S. 342. This is with a view to enable the Court to apply the procedure laid down

in subsequent clauses (2) (3) and (4) of S. 289, depending upon the answer of the accused that he does or does not mean to adduce evidence. The calling upon the accused to state "whether he means to adduce evidence" is different from and happens to be much earlier in point of time and stage than the calling upon him "to enter on his defence". The latter stage arises only under clause (4) when the Court considers that there is

mined the accused person several times or has not examined him at all under the first part of S. 342. The examination if any, referred to in clause (1) of S. 289 is under this part of the S. 342, and it does not relieve the court from its duty of examining the accused, before he is called upon to enter upon his defence as defined in S. 290.")

4. Further Note—The opinion of *Jackson and Ainslie JJ* in 15 W. R. 16 to the contrary was given under the Codes of 1861 and 1869. The comparatively recent case of *Khudiram Bose* 9 C. J. 55 which also takes a directly opposite view, must be regarded as of doubtful authority in view of the observations of Sir Lawrence Jenkins C. J. in 19 C. N. 923 and of *Beacheroff J* in 19 C. N. 1043. The law as enunciated by *Jwala Prasad J.* is now the settled law. See the very recent case of *Gangadhar Goala* decided on March 14, 1921, by *Tennon and Ghosh JJ* in 25 C. N. 609.

Prosecutor's right of reply.

292. The prosecutor shall be entitled to reply—

- (a) if the accused or any of the accused adduces any oral evidence; or
- (b) with the permission of the Court, on a point of law; or
- (c) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that, in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced.

Changes introduced.

The amendments have settled the point that an accused person does not lose his right of reply by

- (1) proving a previous statement of a prosecution witness for the purpose of contradicting him during his cross examination, under S. 298,
- or (2) by proving any document which has already been placed on the record by the prosecution. This change is in accordance with the views expressed by *Sanderson C. J.* in 41 C. 426, *Geidt J.* in 31 C. 1050 and *Beaman J.* in 11 B. R. 177.

Notes.

The ruling in 1 S. 91—8 Cr. 215 to the effect that the filing of the deposition of a prosecution witness recently given by him on behalf of the prosecution in another connected case is not

Rulings rendered obsolete—4 L. B. 5; Rat. 038

"We have provided that when the accused adduces oral evidence the prosecution shall have a right of reply, but when the accused produces documentary evidence only, which is proved by the prosecution witnesses only or which does not require proof, then the prosecution shall sum up and the defence shall have the right of reply (*Joint Com.* 1922).

S. 297-298.

Notes.

1. Inadmissible confession should not be put to the Jury.—Where the confession made by the accused was made under inducement and was therefore inadmissible in evidence, it was held, that the Judge misdirected the Jury in placing it before them—45 B. 1086

2. How to charge the Jury with regard to the evidence.—To take the witnesses one by one in the order of their examination and to place their disconnected statements before the Jury is not, in general, very helpful. More assistance will be derived by the Jury from a careful collocation of the evidence as it bears on the several allegations of the respective parties.—25 C. N. 623

3. Abuse of points of law should not be put before the Jury.—To read the Jury, the exposition of the law of England re the use of military force to be found in paragraphs 100 to 103 of the 2nd Edition of Mayne's commentaries, could only serve to confuse the Jury and to distract their attention from the facts with which they have to deal—25 C. N. 623

4. Where there is no proper charge to the Jury.—In a Jury trial the record of the heads of the charge to the Jury began thus—"Matters of law laid down for the guidance of the Jury, the definition of hurt and grievous hurt and the applicability of the sections concerning right of private defence. Then followed a statement of the case for the prosecution and of the case for the defence. The charge then concluded: "You will have to consider whether the absurdities, contradictions and

adducing evidence within the meaning of S. 292 Cr. P. C., has been confirmed by the amendments made by the Act of 1923.

deposed to by the Police witness and brought on the record, but the Judge remarked in the margin of the evidence that this portion will not be placed

by the Judge to refer to it in the actual charge to the Jury. The statement was inadmissible and the omission of the Judge to point out its inadmissibility in his charge was a misdirection in law which vitiated the trial.—3 Pat. T. 101; 3 Pat. T. 52

6. (2) Where a statement to the Police which was no, the first information was proved as such, and was allowed to go as such to the Jury, and the Judge did not tell the Jury that it was not evidence at all, and that except in so far as its contents may have been brought out in evidence for purposes of corroboration or contradiction, they should discard it entirely from their minds, held, that there was misdirection which necessitated a retrial.—23 Cr. 406 (Pat.).

7. Mere reference to pleader's arguments not sufficient.—In dealing with the statement the discre-

advanced for the defence. A mere reference to the arguments of the pleaders is insufficient.—34 C. J. 512

5. Omission to warn Jury with regard to inadmissible evidence.—(1) Where a statement in the nature of a confession made to the Police by the accused was

8. Omission to point out that the murdered man was suffering from disease.—The fact that the deceased was suffering from a disease which accelerated his death and also the fact that the injuries described

in the medical evidence are in themselves not apparently sufficient to cause immediate death should have been pointed out to the jury. By omitting to do so, the Judge misdirected the jury and that misdirection has in effect caused a carriage of justice.—34 C. J. 515.

9. Warning the Jury against attaching too much importance to small discrepancies.—“I am of opinion that in giving the warning to the Jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points the witness made different statements, the Judge Judge used a wise discretion.”—*Kemp J in Q. v. Bustee Khan*, 1 W. R. 17.
10. (Note.—Where the Judge in his charge said “If you are satisfied that there was no object in prov-

in which the minor discrepancies should be looked into.—1 Pat. T. 703.

11. “When the Judge said ‘There was no object in prov-

be but one charge both on the facts and on the

noting the discrepancies and pointing out generally the way in which it either favourably or unfavourably affects the prisoner. It is irregular to comment merely on certain portion of the evidence, and to omit to point out what discrepancies and improbabilities are to be found in the evidence.—(2 Weir 384). It is not however necessary to go into the minutest details (40 C. 367). A Judge presiding at a trial by Jury must always be careful that he does not usurp the functions of the advocate, and that the evidence in the case is presented to the Jury in as dispassionate and impartial a manner as is expected of the presiding officer.—25 C. N. 682

12. Misdirection on law vitiates the trial.—Where the Judge pointed out to the Jury that there was no evidence that the appellants caused grievous hurt and yet directed them that they might convict

the accused
hurt
there
the actual person or persons who at the time of committing robbery or dacoity, might cause grievous hurt to any person or might attempt to cause death or grievous hurt.—22 M. J. 186.

13. The Judge and not the Jury is to decide whether the confession is voluntary.—The question whether a confession was voluntarily made or not, has to be decided by the Judge himself for the purpose of admitting it in or excluding it from the evidence in the case. He ought not, in any circumstances to throw on the Jury the duty of saying whether a confession was voluntarily made or not. If the Judge finds that it was voluntarily made and was not caused by any threat or inducement, he may admit in evidence. Once it is so admitted, it is for the Jury to say whether it is true or not.—11 B. R. 332.
14. Duty of Judge with regard to evidence of accomplices.—In the leading case of *Elahi Buz B L* (Sup.) 439=5 W. R. 80, Sir Barnes Peacock C. J. laid down the rule that the evidence of accomplices should not be left to the Jury without pointing out to them the danger of trusting to such evidence, when it is not corroborated by other evidence. The omission to do so is an error of law, and a good ground for setting aside the conviction, whereas the Appellate Court thinks that the prisoner has been prejudiced by such omission. It is the duty of a Judge to caution a Jury not to accept an approver's evidence unless it is corroborated; and it is a misdirection not to do so. (See *Karoo*, 6 W. R. 44; *Khotub*, 5 W. R. 17. *Arumuga*, 12 M. 196; *O'Hara* 17 Q. 642; *Ram bin Babaji*, Cr. R. 24 of 1896; *Dhondi*, Rat. 848. *Imam*, 3 B. H. 57). In the case of *Nauab Jan* 8 W. R. 19, the omission of the Judge to advise the Jury not to convict upon the uncorroborated testimony of an approver, was held to amount to misdirection. “The Judge should tell the Jury not only that it is unusual to convict on the uncorroborated evidence of an accomplice but also that it is unusual and contrary to practice to do so (6 B. H. 57). In a trial by Jury the Sessions Judge should state not only that the evidence of an accomplice requires corroboration, but that the corroboration should relate to the identity of each accused. *Dhondi* Rat 848.

303. (1) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall unless he proceeds in accordance with the provisions of S. 562 pass sentence on him accordance to law.

Changes introduced.

The addition of the words " unless he proceeds in accordance with the provisions of S 562," is necessary in view of the much enlarged scope of S. 562, as re-enacted. The exercise of the powers under

that section is no longer confined to Magistrates but extends also to Sessions Judges as appellate courts and the High Court.

307. (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of

Procedure where Sessions Judge disagrees with verdict,

the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the

case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the evidence and after giving due weight to the opinions of the Sessions Judge and the Jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

Changes introduced.

(1) The words " any accused person " have been substituted for the words " the accused."

(2) The words " and in such case * one of conviction " were added by the first Select Committee (of 1916) for the following reasons: " We think however, that a further amendment is required in S. 307, to provide for the case of a person who is also charged with a previous conviction under S 210

propose therefore to insert at the end of S. 307(1) a provision for the trial of the further charge under S. 310.

Notes.

1. Duty of the referring Judge to record the opinions of the Jury.—On a reference under S 307 of the Code of Criminal Procedure, this Court has to pass its order acquitting or convicting the accused " after considering the entire evidence and after giving due weight to the opinion of the Sessions Judge and Jury." It was pointed out by Mr. Justice Davies in the case of *Emperor v. Chellan*, (29 M 91) that the Legislature, in directing that this Court should duly weigh the opinions of the Jury gives an implied authority for the taking of such opinions. And the Sessions Judge would have done well, before referring the case to the High Court, to have recorded the opinions of the Jury. We also agree with the judgment of Sir Subramania Ayyar, officiating Chief Justice and Mr. Justice

Boddam that the circumstances that no such reasons have been ascertained, does not warrant

referred to.) The above-mentioned cases also

(b) *In the case of a trial held with the aid of assessors, the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction.*

Changes introduced.

(1) The section has been redrafted with a view to bring out more clearly that no reference to previous conviction is to be made in any shape or form, before the prisoner has either been convicted or declared guilty by the Jury. The redraft incorporates in a succinct form the dicta in a long series of decisions (cited in S 310 (2-3)).

(2) A discretion is given to the Sessions Judge in cases tried with the aid of assessors to refuse to proceed under S. 310. (This overrules Cr. R. 17 of 25-6 '93-310 (16)).

Notes.

Principle of this section ought to be observed by Magistrate.—Though this section does not in terms apply to trials before Magistrates still clauses (b)

and (c) indicate in general terms the preciseness with which charges relating to previous convictions should be tried.—11 Bur. R. 33.

312 *The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors list :*

Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed.

Changes introduced.

The change does away with the limit fixed in the former Code—417-400. Any numbers of jurors can now

be put on the special list.

315 (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each session in the town which is the usual place of sitting of each High Court as many of those who are liable to serve on special or common juries respectively as the Clerk of the

Number of jurors to be summoned in presidency towns.

Crown considers necessary.

(2) No person shall be summoned more than once in six months unless the number cannot be made up without him.

(3) If, during the continuance of any session, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be

Supplementary summons.

summoned for such sessions.

Changes introduced.

(1) The provisions of this section are now extended to High Courts outside the three Presidency towns.

(2) The Clerk of the Crown may now summon as many as he considers necessary, i.e., at his discretion,

more or less than the 27 special jurors and 54 common jurors formerly permitted by law. This is a salutary change and obviates unnecessary harassment to the public.

316 Whenever a High Court has given notice of its intention to hold sitting at any place outside the town which is the usual place of sitting of such High Court for exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direc

Summoning jurors outside the presidency towns.

which may be given by the High Court, summon a sufficient number of Jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Changes introduced.

The provisions of S. 316 are now extended to High Courts outside the Presidency-towns.

326 (1) The Sessions Judge shall ordinarily, seven days at least before the day which he may

District Magistrate to summon jurors and assessors.

from time to time fix for holding the sessions, send a letter to the District Magistrate requesting a him to summon as many persons named in the said revised list or the

said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial, and including, where any accused person is an European or an American, as many Europeans or Americans as may be required for the purpose of choosing jurors or assessors for the trial.

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

(3) Where the accused requires and is entitled to be tried the under provisions of S. 275, there shall be chosen by lot, in the manner prescribed by or under S. 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may, be, has been obtained :

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under S. 320.

(4) Where, under the proviso to sub-sec (3), the Court proposes to summon as a juror any person in His Majesty's Army, the provisions of S. 317 shall apply in like manner as they apply for the purpose of the summoning of military jurors for a trial under S. 316.

Changed introduced.

The changes are consequential upon the transformation made of the provisions relating to the trial of European British and American subjects. (See

the new chapter XXXIII *infra*). For similar changes.—See ss. 274, 275, 284A and 285A *supra*

S. 333.

Notes.

Acquittal without framing a charge.—An acquittal without a charge against an accused is justified (1) in summons-cases by the operation of S. 248 Cr. P. C., (2) under S. 343, when there has been a composition, and (3) under S. 333, when the Advo.

cate General withdraws from the case and where the Court considers it proper, even though a charge has not been framed, to acquit the accused. The last is a rare contingency.—24 Cr. 120 : (Peshawar)

S. 336. [Repealed]

Notes.

Note—Repealed by Act XII of 1921.

337. (1) In the case of any offence triable exclusively by the High Court or Court of Session, or any

Tender of pardon to accomplice.

offence punishable with imprisonment which may extend to ten years, or any offence punishable under S. 211 of the

Indian Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections 216A, 369, 401, 435 and 477A, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within this knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

(1A) Every Magistrate who tenders a pardon under sub-sec (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record :

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost ;

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-sec. (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be.

(3) Such person, unless he is already on bail shall be detained in custody until the termination of the trial.

Changed introduced.

- (1) The provisions of the section have now been extended to offences punishable with imprisonment which may extend to ten years or any offence under any of the following sections of the I. P. Code.—viz.—ss. 211, 216A, 369, 401, 435 and 477A.

Rulings rendered obsolete. Sec S. 337—339 (3) . (3A) : (35).

Note.—“After considerable discussion of the provisions of S. 337 and examination of the large body of opinions on this clause, we have unanimously come to the following decisions :

- (a) instead of including all offences punishable with imprisonment for a term which may extend to seven years (as recommended by the Select Committee 1916), we have made the limit ten years and have added as special cases, sections 211, 216A, 369, 401, 435 and 477A of the Indian Penal Code.

- (2) The Magistrates who should be allowed to tender a pardon should, in your opinion, be Magistrates

and overrules 5 A. J. 901

- (3) “The power to tender a pardon should be exercisable during the investigation as well as after Magisterial enquiry has begun”.—Sel. Com. 1922.

(4)

the words "other than a Presidency Magistrate" We see no reason why Presidency Magistrates should not record the reasons for tendering a pardon. (*Sel. Com. 1922*).

- 5) For the words "the case" in sub sec. (2) the words "the Court of the Magistrate taking cognizance of the offence and in the subsequent trial if any" have been substituted. "We do not agree with the committee of 1916 that it should not be necessary to produce, as a witness in the Sessions Court, an accused person who has accepted a pardon"—*Sel. Com. 1922*. (The amendment adopts the decision noted in 337 (f)) and renders the following rulings obsolete:
- (6) The new sub sec. (2A) has been introduced for the following reasons. "We think all cases in which

there is an approver should be committed for trial, and we have deleted the provision which enabled cases to be transferred to S. 30 Magistrates."—*Sel. Com. 1922* (This adopts the view in 10 C. N. 847).

- (7) As to sub sec. (4) which has been omitted altogether, the following reasons were given by the Joint Committee: "We have deleted the words 'other than a Presidency Magistrate.' We see no reasons why Presidency Magistrates should not record their reasons for tendering a pardon." The provision as to record of reasons has been made in sub sec. (1A). All cases having been made triable only by the Court of Session and the High Court, the words "he shall not try the case himself" appearing in sub sec. (4) are unnecessary.

Notes.

1. Application of the section.—S. 337 of the Criminal Procedure Code applies where there is a *bonafide* enquiry into what it is believed at the time, may prove to be an offence triable by the Court of Session.—22 Cr. 676 (L)

(Note—If the subsequent proceedings show that the offence was of a less serious nature, the section still applies, if a case under the lesser section materialises and there is a commitment to the Sessions.—*ibid*)

2. Keeping faith with approvers.—In making a full and true disclosure, an approver may often disclose facts against himself, which may from the basis of his prosecution on a charge different from the one under enquiry. In such a case, if the statement proceeds from him under the impression that "he had delivered himself from the consequences of the disclosure" by obtaining a pardon, and if the statement is inseparable from a full and true narrative of the crime which he is bound under the law to make, it would be illegal and wholly unfair to prosecute him for the offence so disclosed. (*See Russell on Crimes 4th Ed Vol III p. 597*). As *Straight J.* has remarked in 11 A. 79 ('86) 1: "though approvers may be infamous persons, they are nevertheless entitled to have faith kept with them by the Courts."—*See* 19 A. J. 717.

3. Pardon may be tendered even after framing a charge.—There is nothing in S. 337 Cr. P. C. which prevents a pardon being tendered during the hearing of the case to one of the persons being tried even after a charge has been framed against him.—22 Cr. 235 (L).

4. If the prosecution do not desire to proceed against the principal offender the accused may be discharged.—If the prosecution do not desire to proceed further with the case against the principal offender, the Magistrate has power to discharge the approver from custody. Sub sec (3) of S. 337 Cr. P. C. implies that there is a trial in progress and its object is to secure the evidence of the approver for such trial. If there is no such trial, and no

likelihood of such a trial, then *cessante ratione lex ipsa cessat*.—46 B. 120

6. Admissibility of retracted statement of approver.—A retracted statement of an approver is admissible

ment cannot be relied on against the prisoner.—*See* 10 M. 295; 13 M. 352; 21 A. 175; 12 L. W. 355.

6. Pardon tendered at a time when there is no enquiry is not valid.—A pardon tendered under S. 337 Cr. P. C. at a time when no enquiry is being conducted into the case, is not a valid pardon and a statement made by the person to whom such pardon is tendered is not admissible in evidence, and cannot form the basis of an alternative charge for perjury.—46 B. 61

I. Evidence of Accomplices.

7. Can evidence of an accomplice standing by itself suffice for a conviction?—Under S. 133 Act I of 1872 (Evidence Act) an accomplice is a competent witness against an accused person. But this general rule of law is considerably modified by the well-known illustration (b) to S. 114 of the Act which says that the evidence of an accomplice is an unworthy of belief unless corroborated in material particulars. It is however recognised that this is a rule of general and usual practice, the application of which is for the discretion of the Judge by whom the case is tried, and not an inflexible rule of law. As S. 114 enacts a rule of presumption and read with S. 4 of the Act, it indicates that it is not a hard and fast presumption, incapable of rebuttal a *presumptio juris et de jure*. (*E. v. Shrinivas*—(1903) 7 B. R. 969). But it is only where there are special grounds applicable to a particular case for rebutting this presumption that a conviction can be sustained on the uncorroborated evidence of an accomplice. *Nya Na* (1903) U. B. (Ev.) 1 : (07) 9 Cr. 360 (363). *See* 4 M. II. (Appx) 7 : W. R. 11 : 10 W. R. 63 : 19

W. R. 48 : 2 Shome 13 (Eklamath Patre). "The law as expressed in ss. 141 ill. (1) and 153 of the Evidence Act is in no respect different from the law of England, but simply reproduces a rule of practice—viz.—that a conviction based on the uncorroborated testimony of an accomplice is not illegal, that it is not unlawful. But experience teaches us that it is not safe to rely upon the evidence of an accomplice unless it is corroborated, and hence it is the practice of the Judges, both in England and in India, when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated; and when trying a case with a jury to warn it that such a course is unsafe" see (1883) Q. r. *Imdad*, S. A. 120 : (1884) Q. r. *Kallu*, 7 A. 160. (1885) Q. r. *Ram Saran*, S. A. 306. As has been pointed out in the case of *Kunja Menon*, 1 M. J. 397 that although a conviction based on the uncorroborated testimony of an accomplice is legal, having regard to human conduct, it ought not to be believed unless corroborated as to some material facts which go to prove that the prisoner was connected with the crime charged. "The evidence of the accomplice requires to be accepted with a great deal of caution and scrutiny, because among other things, he is likely to swear falsely in order to shift the guilt from himself" (7 B. R. 969). The law may be summed up in the words of *Edge C. J.* and *Straight J.* as follows : "As a general rule, it would be most unsafe to convict an accused person on the uncorroborated evidence of an accomplice. But such evidence must like the evidence of any other witnesses, be considered and weighed by the Judge, who in doing so, should not overlook the position in which the accomplice at the time of giving his evidence may stand, and the motives which he may have for stating what is false. If the Judge after making due allowance for those considerations and the probabilities of the story comes to the conclusion that the evidence of the accomplice although uncorroborated is true, it is his duty to act upon the strength of his conviction." (1837) *Gobardhan*, 9 A. 528. see (1878) *Reg. v. Ram Sami Padayachi*, 1 M. 394. *Goda Raut*, 5 W. R. 111. In *Reg. v. Ram Sami Padayachi*, 1 M. 394.

7 B. R. 969 (04) 6 B. R. 481. Rat. 844 *Dwaraka* 5 W. R. 18. 9 W. 28 : *Luchmee* 19 W. R. 43. 20 W. R. 19. 24 W. R. 55. 23 C. 361. 2 C. N. 53. 10 C. N. 962. 1 M. 163. 9 M. T. 400. 9 M. T. 507. 19 P. R. 1911. 19 P. W. 1912. 20 P. R. 1880. (*Imir Shah*) (also early cases such as 21 P. R. 1866 (*Gunda Singh*)). 31 P. R. 1886. (*Nihal Singh*). 23 P. R. 1867 (*Gharoo*). 1 P. R. 1868 (*Etar Singh*). 12 O. C. 418.

8. Meaning of the words "may be taken into consideration" in S. 30 of the Evidence Act.—"The section does not provide, as has been repeatedly pointed out by this Court, that such confession is evidence, still less does it say that it shall be the foundation of a case against the person implicated. The Legislature very guardedly says that it may be taken

into consideration" and I think the obvious intention of the Legislature in so saying was that, when, as against any such person, there is evidence tending to his conviction, the truth or completeness of this evidence being the matter in question, the circumstance of such person being implicated by the confession of one of those who are being jointly tried with him, should be taken into consideration as bearing on the truth or sufficiency of such evidence" (*Jackson J.* in 24 W. R. 42) "While admissions, a word which embraces confessions are by S. 21 relevant and may be proved as against the persons making them, all that S. 30 provides is that the Court may take them into consideration as against other persons. The distinction of language is significant, and it appears to me that its true effect is, that the Court can only treat a confession as lending assurance to other evidence against a co-accused. Thus, to illustrate my meaning, in the view I take, a conviction on the confession of a co-accused alone would be bad in law. This reading of the section appears to me to gain confirmation from the language of S. 5." (Per Sir Lawrence Jenkins C. J. in 38 C. 539).—See also 73 M. 46. 23 Cr. 129 (N); *Con. C. 431* (F. B.); 38 B. 156. 29 A. 431.

II. The meaning of corroboration.

9. In the leading case of (1874) *Malaya* 11 B. H. (C. C.) 196 it was laid down that the evidence requisite for the corroboration of the testimony of an accomplice, must proceed from an independent and reliable source. Indeed, the corroboration of the evidence of an accomplice when required, should be such corroboration in material particulars as would induce a prudent man, on a consideration of all the circumstances, to believe that the evidence is true. (1875) 7 B. R. 969. 24 C. 379.

ence as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices (See 1 B. 475. 1 (06) Rat. 610. 2 B. R. 610; *Con. C. P. 1*). The principle is that tainted evidence is not improved by being corroborated by other tainted evidence. (5 W. R. 14. 25 W. R. 3; see 10 W. R. 104. 23 Cr. 153 (1). The confirmation usually required of an accomplice witness must be not merely as to the circumstances of the crime, but as to the identity of each person. (1896) Rat. 840).

10. The Law as expounded by Kotwal A. J. C.—The law in this country regarding corroboration of an accomplice's evidence does not differ from the English Law. The latest English ruling on the point in which the previous case law has been reviewed is *Reg. v. Bristow* (1916) 2 K. R. 650 in which the judgment of the Court of the Appeal was delivered by Lord Reading C. regards the nature and extent of the cor

required, the proposition laid down in *Reg v. Mullins* (1848) 3 Cox C. C. 526 (531) by *Maule J.* that "confirmation does not mean that there should be independent evidence of that which the accomplice relates or his testimony would be unnecessary" was accepted as law. It was observed that if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony. It was further held that corroboration must be by some evidence other than that of an accomplice and therefore one accomplice's evidence is not corroboration of the testimony of another accomplice. At page 667 it was held that: "Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some particular not only the evidence that the crime has been committed, but also that the prisoner committed it." The nature of the corroboration will vary according to the particular circumstances of the offence charged. It would be in a high degree dangerous to attempt to for-

mulate the kind of evidence which would be regarded as corroboration except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed but that it was committed by the accused. The corroboration need not be direct evidence that the accused committed the crime, it is sufficient if it is merely circumstantial evidence of his connection with the crime—were the law otherwise many crimes which are usually committed between accomplices in secret, such as incest, offences with female or the present case, could never be brought to justice." —*Per Kotiah A. J. C.* in 23 Cr. 391 (N)

11. Can confession of one accused corroborate the confession of another?—The law may be stated to be as follows:—

- (a) The confession of an accused person cannot be accepted as evidence against a co-accused who has not confessed—38 B. 156; 22 Cr. 90 (L).
- (b) The confession of an accused person is corroborated by the confession of a co-accused, that is to say, the confessions of two persons being tried together do corroborate each other—22 Cr. 200 (L).

339. (1) Where a pardon has been tendered under S. 337 or S. 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such

Commitment of person to whom pardon has been tendered.

tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or any other offence of which he appears to have been guilty in connection with the same matter.

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

Changed introduced.

- (1) "We are also of opinion that an approver should be tried separately."
- (2) "We are also of opinion that an approver should be tried separately."

Com. 1916).

The law before the amendment was very accurately and

succinctly stated in the following decision of the Lower Burma Chief Court (8 L. B. 447): "If an approver fails to make a full and true disclosure, it is not open to the Magistrate or Judge trying the case in which the approver is giving evidence, to decide whether the pardon has been forfeited. At the termination of the trial, in which the pardon was given to the approver, he must be discharged by the Court. Then, if so advised, the Crown may re-arrest and proceed against him for the offence in respect of which he was given a conditional pardon."

The Crown is now precluded from starting the prosecution, unless the Public Prosecutor certifies that the approver is liable to prosecution. In this view, the leading cases.—30 B 611 (F.B.), 77 A 331 and 37 C. 843 must be regarded as obsolete in so far as this particular point is concerned. 1 L 218, 22 Cr. 128 (L) and 176 P. L. 1905 are obsolete.

The provision for separate trial of the approver is in accordance with the decisions in 14 W. R. 10 :

27 C. 137 : 7 C. L. 66 : 13 C. L. 326 : 14 A. 502 : 31 M. 272 : see also 337-9 (83).

accused

Notes.

1. Change in the Law.—Under the Code of 1872, the Judge, could himself, withdraw the pardon and order the commitment of the approver. In 8 C. 560, 10 C.L. 369, the phrase "before judgment has been passed" was the subject of a difference of opinion between Mitter and Maclean JJ. As to the law under the Code of 1898—sec. 337-9(74) and the law as amended by Act XVIII of 1923—See above

2. Damage suit against the approver.—A Civil Court is not precluded from entertaining a suit against an approver, based on statements upon which the Sessions Judge had not thought it safe to convict the accused. The confession and sworn evidence of an approver in a criminal trial for dacoity, are admissible in evidence against him in a suit for damages brought against him for having instigated the dacoity.—13 C. N. 501.

3. Opinion of the Court as to forfeiture is not conclusive.—The opinion of the Court where the approver has given evidence is not conclusive as to the approver having fulfilled the conditions of his pardon, especially as the order in made, in practice, without allowing any opportunity for the approver to show cause, whether the condition is fulfilled or not, is a question for the trying Court to determine.—6 P. R. 1899.

Note.—The change of law as effected by Act XVIII of 1923 should be noted.]

4. Breach of condition must be established.—A

5. Approver whose pardon has been withdrawn—by the committing Magistrate can be committed for trial along with the other accused.—5 P. R. 1899.

6. When statement made by approver cannot be

against him, as the pardon had been withdrawn and he had not been examined as a witness in the Sessions Court.—4 P. R. 1903: But see 41 P. R. 1905 (FB) [Kensington and Reid JJ. Diss.]

7. Statement made on the basis of illegal pardon is inadmissible.—In a case, where an Assistant Commissioner, acting in his executive capacity

further statements he might have made after realising that the tender of pardon had been finally withdrawn, could be used in evidence against him.—10 P. R. 1895

8. Section 339(2) excludes S. 24 of the Evidence Act.—

S. 339 Sub sec. (2) Cr. P. C. can be treated as relevant in spite of the provisions of S. 24 of the Indian Evidence Act.—Shah J. (ibid)

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1 P. R. 1908:

339A. (1) The Court trying under section 339 a person who has accepted a tender of pardon Procedure in trial of person under section 339. shall—

- (a) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under S. 271, sub-sec. (1), and
- (b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

required, the proposition laid down in *Reg v.*

were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony. It was further held that corroboration must be by some evidence other than that of an accomplice and therefore one accomplices evidence is not corroboration of the testimony of another accomplice. At page 667 it was held that: "Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some particular not only the evidence that the crime has been committed, but also that the prisoner committed it. * * * The nature of the corroboration will vary according to the particular circumstances of the offence charged. It would be in a high degree dangerous to attempt to for-

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tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condi-

tion on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or any other offence of which he appears to have been guilty in connection with the same matter.

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

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The Crown is now precluded from starting the prosecution, unless the Public Prosecutor certifies that the approver is liable to prosecution. In this view, the leading cases—30 B 611 (F.B.), 37 A 331 and 37 C 845 must be regarded as obsolete in so far as this particular point is concerned. 1 L 218, 22 Cr. 123 (L) and 176 P. L. 1905 are obsolete.

The provision for separate trial of the approver is in accordance with the decisions in 14 W. R. 10 :

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Note.—The change of law as effected by Act XVIII of 1923 should be noted.]

4. Breach of condition must be established.—A pardon cannot be forfeited unless the prosecution succeeds in proving the breach of the condition. Trifling discrepancies elicited in cross examination do not justify the forfeiture of the pardon. It must be affirmatively proved that the approver has wilfully concealed material facts or has given false evidence.—34 P. R. 1902. See 1 P. R. 1998. 15 P. R. 1895.

5. Approver whose pardon has been withdrawn.—by the committing Magistrate can be committed for trial along with the other accused.—5 P. R. 1899.

6. When statement made by approver cannot be used as evidence against him.—When, the pardon was withdrawn by the Magistrate, on the approver retracting the statement made by him, and he was committed to take his trial along with the other accused, the incriminating statement made by the approver was held to be inadmissible against him, as the pardon had been withdrawn and he had not been examined as a witness in the Sessions Court.—4 P. R. 1903. But see 41 P. R. 1905 (FB) [Kennington and Reid JJ. Diss.]

7. Statement made on the basis of illegal pardon is inadmissible.—In a case, where an Assistant Commissioner, acting in his executive capacity and professing to act under S 337, made an offer of pardon to a person in police custody, held, that all statements made by the latter, while under the impression that the offer of pardon was valid, are inadmissible in evidence against him, though all further statements he might have made after realising that the tender of pardon had been finally withdrawn, could be used in evidence against him.—10 P. R. 1895.

8. Section 337A of the Code of Criminal Procedure, 1923.

22 B. A. 124. Note per contra—"I do not think that the confessional part of the statements which can be given in evidence against the accused under S 339 sub sec (2) Cr P C. can be treated as relevant in spite of the provisions of S. 24 of the Indian Evidence Act"—SANK J (ibid)

339A. (1) The Court trying under section 339 a person who has accepted a tender of pardon Procedure in trial of person under section 339 shall—

(a) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under S 271, sub-sec (1), and

(b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

Changed introduced.

"The Bill contains no indication as to when this plea is to be raised and what is to be the effect of it, and difficulties of procedure may obviously arise with reference to Ss. 255, 271(2) and 272. We therefore, propose a new section to be added after S. 330, which lays down that when a person to whom a pardon is tendered is being tried under that section, he shall at the commencement of the proceedings be asked whether he raises the

plea that he has complied with the conditions on which the pardon was granted, and if he does so plead, the court shall record a finding on the point, and if it finds that the conditions have been complied with, shall acquit the accused. The provision we have inserted as a new clause 86A in the Bill" (*Joint Com. 1922*). This accords with the rulings in 7 M. T. 121 : 32 M. 173 : 30 B. 611 : 3 O. C. 245.

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

340 (1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under S. 552, may offer himself as a witness in such proceedings.

Changed introduced.

(1) In S. 340, the most important change introduced is that no doubt is left as to the right of a person against whom proceedings such as those under Ch. VIII, X, XI, XII, XXXVI or S. 552, are instituted, to be defended by a pleader (See in this connection 340 (2)).

(2) Cl. (2) gives the defendant in proceeding under Ch. X, XI, XII, XXXVI or S. 552, the right if he so chooses, to be examined as a witness. As to proceedings under Ch. XXXVI, the Legislature has merely enacted what was already recognised by the Courts. (See S. 488 (3)).

Notes.

Counsel for accused, also a prosecution witness.—The mere fact that counsel for an accused person has been cited as a witness for the prosecution in the case, would not debar him from appearing and conducting the defence of the accused, and would

therefore, not render the rule as to the exclusion of witnesses from Court room until they have been examined, applicable to him.—44 M. 916. As to duties of a pleader. See 49 C. 732.

S. 342.

Notes.

1. Object of S. 342.—The purpose of the examination of an accused person under S. 342 of the Criminal Procedure Code is to enable him to explain any circumstances appearing against him; it is a provision for the benefit of the accused, and to

enable him to obtain the full benefit of the section, he must be examined after the cross-examination and re-examination of the prosecution witnesses is over. Failure to examine an accused person at that stage is not merely an irregularity but an

illegality which vitiates the trial.—6 Pat. J. 644 : 27 C. N. 99 : 24 Cr. 248 (C).

(Note.—When an accused person is examined under S. 342 Cr. P. C., the answers given by him may be taken into consideration at the trial and proper inferences drawn therefrom.—6 Pat. J. 241.

2. Presidency Magistrates bound to examine accused under S. 342.—A Presidency Magistrate trying an accused person for an offence punishable under S. 352 of the Penal Code is bound, before convicting, to examine the accused person in the manner prescribed by S. 342 Cr. P. C., and an omission to do so, is an illegality which vitiates the proceedings.—45 B. 672.

2. Examination before close of prosecution evidence is illegal.—The examination of an accused person before all the witnesses for the prosecution have been examined is illegal, as it contravenes the provisions of S. 342 of the Criminal Procedure Code, and the illegality is sufficient to vitiate the trial.—2 Pat. T. 741 : 22 Cr. 306 (Pat.) 49 C. 1075.

3. (Note.—The examination of a witness for the prosecution after recording the statement of accused is an error, but if the case has been decided on the merits, the error in no way affects the result, so as to vitiate the trial.—24 Cr. 67 (A)

4. Written statement cannot take the place of oral examination.—A written statement of defence cannot, I think, be allowed to take the place of an examination of the accused person. (193) A. N. 1 Ed.—1 L. 27. 2 Pat. T. 455 3 Pat. T. 322 : 5 Pat. J. 430 : 14 L. W. 418 : But see.—1 Pat. T. 60

5. Summons cases.—The provisions of S. 312 Cr. P. C. as to, pleable to summons cases. These provisions are mandatory, and the omission to examine an accused person after the witnesses for the prosecution have been examined is an error.

6. Failure to comply with ss. 342 and 364 vitiates the trial.—A failure to comply with the provisions of ss. 342 and 364 Cr. P. C. vitiates a trial. It is essential that the questions and answers put to the accused should be recorded at the time, that they should be read over to him in a language which he understands and that he should be given an opportunity of correcting and adding to them, as required by S. 364 Cr. P. C.—6 Pat. J. 147 : 2 Pat. T. 455 see 6 Pat. J. 430 24 Cr. 248 (C).

7. Accused must be examined at the sessions.—In the course of the preliminary enquiry, when examined before the framing of the charge the accused stated "I am not guilty. I will make a statement later." In the trial Court, there was no further examination of the accused, under the provisions of S. 250 and S. 342 of the Cr. P. C. Held, that the irregularity vitiated the trial.—25 C. N. 609

8. Summary trials.—Neither of the ss. 263 and 264 nor any other provision in the chapter for summary

trials does away expressly with the requirements of ss. 342 and 364 of the Code relating to the examination of the accused. The Magistrate is not absolved from the responsibility of recording the examination of the accused simply because the trial is summary.—3 Pat. T. 347.

9.

and explained to the accused. These safeguards appear to have been deemed sufficient to protect the interests of the prosecution, or the accused in the case. The trial, does not commence *de novo*, so that if the accused has already been called upon to enter on his defence, there is no further obligation upon the Magistrate to examine the accused under S. 342 of the Code.—3 Pat. T. 91.

10. Points on which questions ought to be put.—The

only questions put by the Sessions Judge to the accused were whether his statements in the lower Court were correct, whether he wished to add anything, and whether he was going to examine defence witnesses in the Committing Magistrate's Court the only question put to him before the charge, was the stereotyped one, "you have heard the witnesses, what do you say?" And the accused answered "I shall state in the Sessions Court." Again after the charge was read to him, he was only asked if he had any witnesses. In the Sessions Court a document, which was termed "accused's written statement" but was not signed by him, and signed only by accused's valid, was allowed to be placed on record. Held that the omission of a Sessions Judge to comply with the mandatory provisions of S. 342 vitiated the trial and that a written statement filed by an

11. Sufficiency of examination.—It is impossible to lay down any very definite hard and fast rule as to the sufficiency of an examination made under S. 342. Where an accused is undefended, the Tribunal may well point out to him the elements of the evidence against him, which seems in his own interest to demand his explanations, but where an accused is defended by a legal practitioner, it would be undearable to expect a Tribunal to enter upon a lengthy examination of an accused person, which might easily develop into a recounting of the history of the whole case or into, what would be far worse, some sort of cross-examination.—3 Pat. T. 649.

12. Cross-examination of accused.—It is not competent to the Court under S. 342 to cross-examine the accused. Where questions were put to the accused apparently with the object of trapping him into some sort of admission, after he had replied from his confession, Held, that those questions were improper and should not have been put.—2 L. 129.

13. S. 342 (4) does not prevent accused from an affidavit.—S. 312 (4) does not preclude

accused from making an affidavit in support of his application for answer of a case against him. The rule that no oath shall be administered to an accused person, refers to the statements made by him in answer to questions put to him by the Court in accordance with sub-sec. (1)—3 L. 46.

14. (Note—An accused person is liable to punishment for false statements contained in his affidavit as they are not made in answer to questions put by the Court.—1 S. 124.

15. Statements of accused are privileged.—Statements of a defamatory character made by an accused

person in the course of the statement which he is invited to make under S. 342 are privileged.—5 M. T. 256.

16. Confession by an accused in the course of examination.—

S. 344.

Notes.

1. Remands should not exceed 15 days at a time.—An accused person should not be remanded to custody for periods exceeding 15 days at a time. In 3 U. P. (L) 78 the Court enjoined on Magistrates the necessity of strictly observing the provisions of S. 344 in future. For the latest case on remands See 49 C 182.

an order of compensation cannot be passed against

an accused person who could not attend court on account of illness.—20 A. J. 280 (6 P. R. 1906 Fd.)

3. Costs against absent complainant in a Police case.—Where a Magistrate takes cognizance of an offence on a Police report, the complainant is merely a

the complainant to pay the expenses incurred by the accused is not justified, as the adjournment was not caused through any fault of his.—24 B. R. 380.

345 (1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may be compounded by the person mentioned in the third column of that table :—

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	208	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	332, 335, 338	The person assaulted or to whom criminal force is used
Unlawful compulsory labour,	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	423, 427	The person to whom, the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House trespass	448	

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Criminal breach of contract of service	490, 491, 492	The person with whom the offender has contracted
Adultery.. ..	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	493	
Defamation	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table :—

Offence	Sections of the Indian Penal Code applicable	Persons by whom offence may be compounded
Voluntarily causing hurt by dangerous weapons or means	321	The person to whom hurt is caused.
Voluntarily causing grievous hurt	323	
Voluntarily causing grievous hurt on grave and sudden provocation.	333	
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others	339	Ditto.
Wrongfully confining a person for three days or more	343	The person confined.
Wrongfully confining a person in secret	346	
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used
Disonest misappropriation of property	403	The owner of the property misappropriated
Cheating.. ..	417	The person cheated
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect	418	
Cheating by personation	419	Ditto
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Mischief by injury to work of irrigation by wrongfully diverting water when the <i>only</i> loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark	482	The person to whom loss or injury is caused by such use
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	485	Ditto
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	500	The woman whom it is intended to insult or whose privacy is intruded upon.

(3) When any offence is compoundable under this section, the abettment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is *under the age of eighteen years or is an idiot or a lunatic*, any person competent to contract on his behalf may *with the permission of the Court* compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(5A) A High Court acting in the exercise of its powers of revision under section 439 may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused *with whom the offence has been compounded*

(7) No offence shall be compounded except as provided by this section.

Changed introduced.

(1) The word "specified" which has been substituted for the word "described" is the more apposite word

(2) The scope of sub sec. (2) has been enlarged almost beyond recognition. The Committee of 1916 were of opinion that it would be a mistake to include among the offences compoundable with the

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(3) "We have substituted the words "under the age of 18 years" for the word "a minor."

(4) "We have further provide by a new sub-section

that a High Court acting in the exercise of its powers of revision may allow offences to be compounded" (Joint Com 1922). This amendment has the effect of rendering the following rulings cited at 345 (41), obsolete : 43 C. 1143 : 18 C. N. 1212 : 29 M. J. 521 : 35 P. R. 1918 : 37 A. 127 : 21 Cr. 447 (A) : 23 Cr 80 (Pat) and confirming the following : 32 A. 153. 13 O. C. 161 : 17 O. C. 92 : 252 P. L. 1904

(5) The words "with whom the offence has been compounded" make it clear that the Court is authorised to acquit only the particular accused person who has effected a compromise and not the rest. This accords with 41 M. 323 and 21 Cr. 437(P). It overrules 7 C. N. 176 : 20 Cr. 824 (Pat) : 1 Pat. T. 32.

Notes.

1. Effect of filing a compromise petition.—Where the parties to a criminal proceeding file a written compromise in Court under S. 345 of the Code of Criminal Procedure, such compromise amounts to an acquittal of the accused, and no further proceedings can be taken against him at the instance of the complainant in respect of the subject-matter of the compromise.—33 C. J. 226
2. Effect of compromise with some only of the accused.—The compounding of the offence against one or some of the accused persons, has not the effect of compounding the case against the remaining accused, and the latter are not entitled to acquittal on the ground that the case as a whole has been compounded.—43 A 483 (41 M. 323 Fd. 7 C. N. 176 : 1 Pat. T. 32. Not Fd.)—Con 23 Cr. 432 (Pat.).
3. The ruling in 3 Pat. T. 458 which follows 43 C 1143 : 18 C. N. 1212 and 20 M. J. 621 is obsolete in view of the amendment introduced by Act XVIII of 1923
4. Principle on which Courts should act in permitting compromise.—It is the duty of the Magistrate to decide in each case whether he will or will not allow a compromise and the responsibility rests entirely

with him. Every case must be decided on its own merits. Where the case is not of a very serious nature, and a conviction must have the effect of perpetuating bad blood between the parties, and the parties come to terms at a very early stage and before the prosecution evidence is recorded, a compromise ought to be allowed.—7 P. W. 1922.

5. Compromise in adultery case.—The only person who can compound a case under S. 498 of the Penal Code is the husband of the woman.—23 Cr. 690 (L).
6. (Note—An agent prosecuting under the powers

acquittal based on such a composition is not justified.—24 Cr 120 (Pesh.)

7. Compoundable offences.—An offence under S. 225 I P C was non-compoundable under the Code of 1882 ('93 OJ) L B 240). An offence under S. 232 I P C is compoundable irrespective of the Court's permission.—('86) A N 107).

S. 346.

Notes.

Case cannot be returned.—A superior Magistrate cannot simply return a case to the subordinate Magistrate from whom it comes, but must refer it to some

other Magistrate or dispose of it himself.—23 Cr. 710 (M) (Rat. 499 (Falira) . Rat. 554 (Purshotam) Fd.)

347. (1) If any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed

that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall commit the accused under the provisions herein before contained

sions herein before contained

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 316.

Changes introduced.

The deletion of the words "stop further proceedings" clear up a much debated point. There is a conflict of decisions as to whether the accused was entitled, as of right to further cross examine prosecution witnesses after the Magistrate had made up his mind to commit. (See 16 C J 45, 12 C. N 1014,

23 M. J. 304, 6 L. B. 129 (F. B.), 12 B. R. 201 : 20 A 264 20 A 177 which answer the question in the affirmative, and 7 M. T. 83, 36 C. 48 which take the opposite view). The latter rulings 7 M. T. 83 and 36 C. 48 are therefore obsolete.

348 (1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused

of any offence punishable under either of those Chapters with imprisonment for a term of three years or

Trial of persons previously convicted of offences against coinage, stamp-law or property.

upwards, shall if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused be committed to the Court of Session or High Court, as the case may be, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

Provided that if any Magistrate in the district has been invested with powers under Section 30, the case may be transferred to him instead of being committed to the Court of Session.

(2) When any person is committed to the Court of Session or High Court under sub-sec. (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under S. 209.

Changes introduced.

- (1) The changes introduced into S. 349 bring it into line with S. 209 (1) *Supra*. The words "sufficient grounds," as interpreted in the leading case 27 B 84, mean "sufficient evidence to put the accused on his trial" (See Note on the point at p. 402 *supra*). The law as it formerly stood, compelled the Magistrate to follow one of the two courses, (1) He could commit for trial, or (2) He could himself try if he could pass an adequate sentence. He can now follow a third course. He

shall not be empowered to pass sentence in a case which he is not competent to try.

- (3) The words "when any person is similarly committed" make a necessary provision for those contingencies in which an habitual offender may be jointly sent up with a first offender.

In case of previous convictions.—Where the accused having had two previous convictions, was committed to the Court of Session on a charge of theft of property.

2) As to the words "is competent to try the case" the

349. (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under S. 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Changes introduced.

The new sub clause (1A) makes it incumbent on the Magistrate, to refer the case of all the accused, although, he might be of opinion that some of them only deserved an enhanced punishment. The

ruulings in 2 Weir 428 and 2 Weir 429, in so far as they lay down that the Magistrate is no so bound are now obsolete.

350. (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and recommence the inquiry or trial:

Provided as follows —

- (a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;
- (b) the High Court, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346, or in which proceedings have been submitted to a superior Magistrate under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of sub-sec. (1)

Changes introduced.

Sub clause (3) gives legislative sanction to the view taken in 30 C. 78, 35 C. 457, 21 C. 827, 13 C. N. 420, 32 M. 218, 40 A. 307, 30 A. 315, 20 Cr. 41 (N), (16) U.B. II 109, 9 L. B. 92, 12 Bur. T. 55 that the expression "ceases to have jurisdiction" applies to cases withdrawn under S. 528 Cr. P. C. The

ruulings per contra—(97-'01) U.B. I 87; ('89) A. N. 130, 12 A. 66, 14 A. 316, 15 C. P. 66; 17 C. P. 159; 1 N. 187, 12 N. 146, 6 O. C. 192; 1 P. R. 1884; 1 L. B. 237, 12 C. N. 140, 13 W. R. 40; 14 W. R. 3, 23 W. R. 59, 24 W. R. 52 are therefore obsolete (See 350 (3)).

Notes.

1. Evidence Act, 1872, s. 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

2. S. 350 applies to summons and summary cases.— If a case is transferred from one Magistrate's Court to another, the accused has a right not only in warrant cases but also in the case of a summary

trial and trial of summons cases, to demand that the witnesses or any of them shall be re-summoned and reheard. The time for the demand to be made by the accused is when the second Magistrate commences proceedings.—3 L. 115.

3. Where the witness recedes from his statement in the first Court.—"In a case where the witness is re-summoned, and retracts his former statements, I do not think it admissible to treat the former statement as evidence in the case."—*Chorris J.* (1884) 11 Q.B. 115. "If the witness died in the meant

of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused be committed to the Court of Session or High Court, as the case may be, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

Provided that if any Magistrate in the district has been invested with powers under Section 30, the case may be transferred to him instead of being committed to the Court of Session.

(2) When any person is committed to the Court of Session or High Court under sub-sec. (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under S. 209.

Changes introduced.

(1) The changes introduced into S. 348 bring it into a

courses, (1) He could commit for trial, or (2) He could himself try if he could pass an adequate

case which he is not competent to try.

(3) The words "when any person * * similarly committed" make a necessary provision for the contingencies in which an habitual offender may be jointly sent up with a first offender.

In case of previous convictions.—Where the accused has had two previous convictions, was com-

2) As to the words "is competent to try the case" the

might have adequately punished for the offence—
(182) A. N. 194.

349 (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion,

Procedure when Magistrate cannot pass sentence sufficiently severe.

after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under S. 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law:

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Changes introduced.

The new sub clause (1A) makes it incumbent on the Magistrate, to refer the case of all the accused, although, he might be of opinion that some of them only deserved an enhanced punishment. The

ruled in 2 Weir 428 and 2 Weir 429, in so far as they lay down that the Magistrate is not so bound are now obsolete.

350 (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial ceases to exercise jurisdiction therein, and is succeeded by another Magistrate

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial

Provided as follows —

(a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

(b) the High Court, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 316, or in which proceedings have been submitted to a superior Magistrate under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of sub-sec (1)

Changes introduced.

Sub clause (3) gives legislative sanction to the view taken in 39 C. 78, 35 C. 457, 21 C. 827, 13 C. N. 429, 32 M. 218, 40 A. 307, 36 A. 315, 20 Cr. 41 (N), (10) U.B. 11 108, 9 L. B. 92, 12 Bur. T. 55 that the expression "ceases to have jurisdiction" applies to cases withdrawn under S 528 Cr. P. C. The

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Notes.

1. Evidence heard by only one member of the Bench.— All Criminal cases should be decided by Magistrates, who have heard the whole of the evidence: S. 350 does not apply to cases tried by Benches of Magistrates.— 2 L. 237 (3 C. 754; 12 C. 558; 13 C. L. 212; 20 C. 870; 23 C. 194; 18 M. 394; 39 M. 304; (14) 3 U.B. 118; 41 A. 116; 15 A. J. 237 Ed.)
2. S. 350 applies to summons and summary cases.— If a case is transferred from one Magistrate's Court to another, the accused has a right not only in warrant cases but also in the case of a summary

- trials and trials of summons cases, to demand that the witnesses or any of them shall be re-summoned and re-heard. The demand for the demand made by the accused commences from the time when the second Magistrate commences his proceedings.
3. Where the witness first Court.— "In a summons case, and I do not think it statement as evidence" (Halter) — "If

the deposition recorded by the former Magistrate could not be treated by succeeding the Magistrate as evidence.)—*ibid*

4. Exhibition of previous statements in *de novo* trial without actual examination *de novo*. Where the succeeding Magistrate decided, on his own initiative, to hold the trial *de novo*, but exhibited the witnesses' depositions in the previous trial, without actually examining them *de novo*. Held, that the Magistrate's procedure deprived the accused and himself of any advantage which the *de novo* proceedings would have secured. The irregularity vitiated the trial, and the consent of the accused could not cure it.—43 M. J. 659 (*Reg v. Berhard*, 10 Cox C. C. 618 R.)
5. Does S. 350 apply to warrant cases before a charge is framed?—In Madras, according to the decisions in 32 M. 220 (F.B.), 38 M. 585 (F.B.) and 43 M. 511, a proceeding before a Magistrate before a charge is framed, is an enquiry and not a trial, S. 350 (1) (a) Cr. P. C. can be applied to proceedings in a warrant case before charge has been framed.—24 Cr. 192 (M).

6. When the accused fails to demand a new trial—Where the accused does not ask for a trial *de novo* on

7. Meaning of *de novo* trial—Where a *de novo* trial is

ask such further questions as may be deemed necessary. The accused has a perfect right under S. 350 to demand that all of the prosecution witnesses should be resummoned and re-heard i.e., that their evidence should be recorded a new, not merely that their former statement should be read out to them.—16 P. W. 1919.

350A No order or judgment of a Bench of Magistrates shall be invalid by reasons only of a change

Changes in constitution of Benches.

having occurred in the constitution of the Bench in any case

in which the Bench by which such order or judgment is passed

is duly constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.

Changes introduced.

The new section gives effect to the law as laid down by the High Courts. Briefly it provides that a judgment of a Bench shall be valid, when the Bench is duly constituted at the time of passing the judgment and the judgment is passed by Magistrates all of whom have heard the proceedings throughout. (*Joint Com. 1922.*)

(See Note No. 5 under S. 15).

Note—The law as enacted is based on the following rulings among others—3 C. 754, 12 C. 558, 13 C. L. 212, 20 C. 870, 23 C. 194, 18 M. 394, 38 M. 304, 41 A. 116, 15 A. J. 277, (18) 3 U. B. 118. For the latest case see 2 L. 237 (S. 350 (1) *above*).

S. 351.

Notes.

Proceeding against witness after the close of the trial
—Where after the close of a trial, the Tryng Magistrate directs the Police to institute criminal proceedings against a witness and upon receipt of the

Police report himself tries the case, he takes cognizance under S. 190 (b) and not under S. 190 (c) or S. 351 Cr. P. C.—23 B. R. 842.

S. 353.

Notes.

Power of Sessions Judge to direct the attendance of

gives the power as chapter XXIII which relates to the trials before the High Court and Courts of Session is included in S. 353. (14 B. R. 236 and 17 C. N. 1248 *Relied on*)—45 M. 350

S. 355.

Notes.

Memorandum of evidence must be signed.—Where a warrant case is tried summarily, the procedure to be followed is that prescribed for the trial of warrant cases, and therefore, the memorandum of the substance of the evidence of each witness must, as provided by S. 355 (2), be signed by the

Magistrate. Non-compliance with the requirements of S. 355 vitiates the trial.—3 Pat. T. 322.

Evidence need not be read over.—S. 360 which requires the evidence to be read over to the witnesses, does not apply to S. 355—1 P. 159

355. (1) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is similar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each of witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Changes introduced.

The amendment enables the Court in cases in which the evidence is given in a language which is neither the language of the Court nor English, to record

the evidence in such language. This is an useful innovation.

S. 360.

Notes.

1. S. 360 applies to proceedings under chapter XII.—S. 360 Cr. P. C. applies trials under chapter XII and the word "accused" in that section does

include persons against whom an order under S. 143 Cr. P. C. has been drawn up. The new section over the depositions to the witnesses in a case.

under S. 145 Cr. P. C. does not, however, invalidate the trial.—23 Cr 125 (Pat).

2. When the evidence is to be read out.—S 360 Cr. P. C. requires that the evidence of each witness shall be read over to him as it is completed and this procedure should be strictly followed. It is a sufficient compliance with the provisions of the section to read out each sentence of the statement of a witness as it is being recorded.—3 U. P. (L) 78.

3. Provisions of S. 360 mandatory.—The proviso contained in S. 360 of the Criminal Procedure Code is mandatory, so that the evidence given by a witness must be read over to him in the presence of the accused or his pleader. Where this is not done, the witness cannot be prosecuted for perjury in respect of any false statement made by him.—Pat T. 380.

362 (1) In every case tried by a Presidency Magistrate in which an appeal lies, such Magistrate

Record of evidence in Presidency Magistrates' Courts

shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record

(2) Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer

(2A) In every case referred to in sub-sec. (1), the Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record.

(3) Sentence passed under S 35 on the same occasion shall, for the purposes of this section, be considered as one sentence unless they are sentences of imprisonment ordered to run concurrently.

(4) In cases other than those specified in sub-sec (1), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge.

Changes introduced.

The changes in sub-sec. (1) were introduced for the following reasons. "We think that the opening words of S 362 (1) requires amendment. As the

impose before he begins trying the case. We do not see how this difficulty can be got rid of, but

think that the sub-section should read better as follows: "In every case, tried by a Presidency Magistrate in which appeal lies, such Magistrate shall either take down the evidence of the witnesses with his own hand etc." (Compare S. 261 supra) As to this point, the remarks of the Joint Committee of 1922 are interesting. "We are inclined to agree with those critics, who point out that the redraft proposed by sub clause (1) in sub sec. (1) of S. 362 does not get rid of the difficulty that a Magistrate has to make up his mind as to the sentence he will

- (2) "In order to meet difficulties that have arisen, we have introduced a sub-section laying down that the Presidency Magistrates in cases subject to appeal, shall make a memorandum of the substance of the examination of the accused." (Joint Com. 1922.).

- (3) "In order to meet difficulties that have arisen, we have introduced a sub-section laying down that the Presidency Magistrates in cases subject to appeal, shall make a memorandum of the substance of the examination of the accused." (Joint Com. 1922.).

insertion in sub clause (4) (1) of S. 362 (6)).

Notes.

Parties entitled to copies of deposition.—A party to a criminal proceeding is entitled to copies of the Presidency Magistrate's notes of deposition. Where the Magistrate had refused to furnish such copies

to a party, the High Court under S. 45 of the Specific Relief Act Ordered the records of the case to be brought up before the Registrar and allowed liberty to the party to take copies.—15 C. N. 770.

364. (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter * * * * *

Examination of accused how recorded.

or the Chief Court of Lower Burma, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English. and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge or such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused under section 263 or section 362, sub-sec. 2A.

Changes introduced.

The change is consequential upon the insertion of the new clause (2A) in S. 362.—See Notes under S. 362.

Notes.

1. Failure to comply with the provisions of S. 342 and 364—vitiates the trial—6 Pat. J. 147.
2. S. 364 applies to summary trials—3 Pat. T. 347
3. When S. 364 is applicable S. 362, sub-sec. 2A, does not apply.

the excluding provisions of S. 81 of the Evidence Act—45 M. 230.

4. Cross-examination of the accused.—When the examination of an accused is not such as a contemplated by the Criminal Procedure Code, but is really a cross-examination it should be left out of consideration—24 Cr. 81 (Pat.).

364, the object being to take such records out of

365. Every High Court established by Royal Charter, * * * * * and the Chief Court of Lower Burma, shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the evidence shall

Record of evidence in High Court.

be taken down in accordance with such rule.

Changed introduced.

The substitution of the word "shall" for "may"—makes the framing of rules a matter of necessity.

The other changes in the section are merely drafting amendments. * We do not think it necessary

that the Judges of the Court should take down |
the evidence themselves but we are of opinion |

that there should certainly be some record (*Joint Com. 1922*).

367. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it, and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

(3) When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) If the accused in convicted of an offence punishable with death, and the court sentences him to any punishment other than death the Court shall in its judgment state the reason why sentence of death was not passed.

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

(6) For the purposes of this section, an order under section 118 or section 123, sub-sec. (3), shall be deemed to be a judgment.

Changes introduced.

- (1) By providing for dictation of judgments the Legislature has facilitated work, 4 C. J. 411 in which such dictation was held to contravene the provisions of this section is now therefore obsolete.
- (2) The new sub section (6) makes it incumbent on Magistrates to record judgments in security cases. "We think it desirable to lay down that orders

under ss. 118 and 123 (3) should be deemed to be judgments for the purposes of the section.

- (3) "We do not see any necessity to limit the privilege of dictating judgments in the manner provided by the Bill, and we have therefore, redrafted this clause." (*Joint Com. 1922*).

Notes.

1. The judgment was written by the Court.

the accused, and at a later date wrote and prefixed to that judgment a full written judgment dealing with the various points raised, the charges of witnesses and the reasons he had for believing or disbeliev-

ing those witnesses, held that the irregularity was cured by s. 537 Cr. P. C.—45 M. 913

2. Magistrate incapacitated after writing but before delivery.—The Magistrate who tried the case was severely hurt in a motor accident after he had done every judgment. sent it to the Court. Held, that completely covered by S. 537, and the misapprehension

"*qui facit per alium facit per se*" applied (Cr Rev. No. 239 of 1921 (A) Fd. (89) A N 181 Dist)—24 Cr 173 (A)

3. Requirements of S 367 Cr P. C.—All that S 367 requires is that the point for determination should be stated, the decision thereon, and the reasons for the decision. It cannot be assumed that because the Magistrate has not referred to the oral evidence, but has drawn inferences from documents and from probabilities, therefore he has not considered the evidence. If he has given strong and legal reasons for his conclusion the judgment is not defective.—34 Cr 181 (A)

4. Examples of deficient judgments

- (a) "The appeal is dismissed summarily"—2 Pat T. 10 (1 Pat W 673 4 Pat W 512 2 Pat J 695 3 Pat J 359 Fd.)

- (b) "On going through the records I find it clearly proved that the complainant was assaulted at her house. Even supposing that the accused had some bonafide claim of right to the house (which was not made out to the satisfaction of the lower court), there does not appear any justification for the assault committed on a person in possession of the house for the time being. The appeal is rejected"—2 Pat T. 223

- (c) "I agree with the lower court that the opposite side is in cultivating possession of the same"—2 Pat. T. 616

Rules governing judgments of appellate Courts

7. "An Appellate Court is not required to write a long and elaborate judgment, but it is clearly its duty, not only to examine the evidence, but also to write a judgment affording a clear indication that the appeal has been properly tried, and that the points urged by the appellant have been duly considered and decided. An Appellate Court, which writes a judgment which the High Court is unable to follow without reference to the judgment of the Trial Court, obviously fails in the discharge of the duty imposed on it by the law"—*Shadi Lal C J* in 2 L 308

8. A judgment of an Appellate Court which contains neither the facts of the case nor the points for determination or the discussion of those points, is not a judgment in accordance with law.—2 Pat. T. 223 2 at T 10. 2 Pat T. 616.

9. The Appellate Court should exercise an independent judgment in reviewing the evidence as well as in determining points of law and procedure.—(90) A N 143

10. Perfunctory judgment in bad livelihood cases.—Where a District Magistrate disposed of an appeal against an order under S 110 Cr P. C. in a few lines, and made only some general observations on the volume of evidence which was put before him (42 witnesses for prosecution and 100 for the defence), *held*, that the judgment was very perfunctory and was not in accordance with law.—19 A J 921

11. S 367 applies to appeals against orders for compensation.—The provisions of S. 367, Cr. P. C.

appellant, the decision thereon, and the reasons for the decision, the judgment is not in accordance with law, and is liable to be set aside.—3 Pat. T. 203

12. Reasons must be given for not passing capital sentence.—For an offence punishable with death, the extreme sentence is the exception. Therefore, if the Judge does not pass the death sentence, he must find that there are really extenuating circumstances and not merely an absence of aggravating circumstances.—11 L B 323.

13. Judgments under S. 421 Cr. P. C.—S. 421 Cr. P. C. no doubt empowers an Appellate Court to dismiss an appeal summarily, but in doing so the Court must record an order giving reasons for the dismissal and showing that the points raised were duly considered by it.—2 Pat. T. 10 : Con. (93-00) L B. 606

369. *Saves as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court, no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error.*

Changes introduced.

The section as amended is an improvement on the original section of the Code of 1898. The power of alteration or amendment was expressly confined under the Code of 1898, to (1) cases in which a sentence of whipping is found to be incapable of execution (S. 391) or (2) cases in which the punishment awarded to a person guilty of contempt of Court is remitted on submission of apology (S. 484). (3) Revision and alteration of orders under S. 144 Cr. P. C. (4) Alteration or cancellation under S. 489 of maintenance orders passed under S. 484. It has been held that S. 369 should be read as

controlled by S. 437 Cr. P. C. (28 B. 102). The words "or by any other law for the time being in force" greatly increases the scope of the section.

- (2) In the case of a High Court, the power to review its own judgment is now to be regulated by its Letters Patent. "We have redrafted the amendment so as to provide that no Court shall alter or review its judgment save as provided by or under any law for the time being in force or in the case of a High Court in its Letters Patent" (*Joint Com.* 1922)

Notes.

1. Alteration of judgment by Sessions Judge.—Where in passing a sentence of fine, the Sessions Judge omits to pass a sentence in default of payment of fine, he has no power to correct this oversight by a subsequent order. The proper course in such a case is to submit the proceeding to the High Court and ask the High Court in its revisional jurisdiction to enhance the punishment by inflicting imprisonment in default of payment of fine.—23 B. R. 846
2. Petition dismissed for default can be reheard.—The High Court has power to rehear a criminal petition dismissed for default.—23 Cr. 750 (L) (10 C. J. 80 Fd.).
3. Omission to pass orders under S. 520 Cr. P. C.—Where in setting aside a conviction for theft an Appellate Court omits to pass orders under S. 520 of the Criminal Procedure Code for restoration of the property taken from the accused, it can be subsequently corrected under S. 369 of the Code, if the omission is accidental.—24 Cr. 159 (M)
4. Alteration in High Court judgments—A judgment of High Court is not complete until it is sealed. Till then it may be altered by the Judge concerned without the necessity of having recourse to any formal procedure by way of review of judgment.—21 A 177; 27 A. 92

S. 370.

Notes.

1. Omission to give reasons for finding as required by S. 370 Cl. (1)—The omission by a Presidency Magistrate to give reasons for his finding as required by S. 370 (1), was one of the grounds for setting aside the conviction.—31 M T 400
2. S. 441 does not abrogate the terms of S. 370.—As a

matter of law it is clear that S. 441 does not abrogate the terms of S. 263 or S. 370. 'I take it that it merely allows the Presidency Magistrate to supplement the reasons which have already been stated under S. 263 and 370'—24 Cr. 84 (M)

S. 376.

Notes.

Power of High Court to go behind the verdict of the jury.—A High Court, in the exercise of its juris-

will not generally allow the verdict to be attacked arbitrarily, it being necessary for the convict to show by 2

386 (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so

(2) The Local Government may make rules regulating the manner in which warrants under sub-sec. (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant

(3) Where the Courts issue a warrant to the Collector under sub-sec. (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall

for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Changes introduced.

In appreciating the great changes introduced into the procedure laid down by this section, a study of the remarks of the two committees of 1916 and 1922 will be of great help to the student :

(1) "We agree to the substitution of the word "attachment" for the word "distress" in S. 386 as we think it is more appropriate

"We also agree to the renumbering of this section so amended as 386 (1), and to the new sub-sec. (2) proposed by the Bill. We would however retain the words "moveable property" in sub-sec. (1) and in lieu of making immovable property

section,
(2), to
lector

We can see no reason why a property-owner who may be able to conceal his moveables, should not be forced to pay a fine which has been inflicted upon him by a Criminal Court, just as much, and by the same process, as a Civil debt. It seems to be recognised that the liability is so enforceable by S. 70, Indian Penal Code, and the decision in *Emp. v. Sitamath Mitra*, I. L. R. XX Cal. 478, and we think that this should be made clear by the section under consideration. The proper person to effect such realisation is, we think the Collector of the district who will be treated as the decree-holder."—*Sel. Com.* 1916

(2) "We approve of the substitution of the word "attachment" in this clause recovered by the property through the Civil Court offender who has already been sentenced to imprisonment in default of payment of fine.

"We recognise that the procedure prescribed may in some cases involve considerable delay and we attempted to find some more summary method of proceeding against immovable property on the lines of those laws which enable moneys due to the Crown to be recovered as arrears of land-revenue. We have however found ourselves unable to devise any procedure which will not be open to most of the objections put forward against the present clause.—*Joint Com.* 1922.

Effect of the changes.—(1) Immovable property can now be attached and sold in realisation of the fine 23 C. 478, 5 B. H. (C. C.) 63 : 14 P. R. 1871 : 22 Cr. 309 (L) are rendered obsolete. (2) A discretion is given to the Court in the matter of levying fine in those cases in which the full term of imprisonment in default is served out.

Rulings rendered obsolete—3 W. R. 61 : Rat. 91 : 207. (proviso to cl. (1))—This incorporates the Punjab Cr. Chap. LI p. 264 : See 386 (23).

Notes

Scope of the words "May in his discretion"—The use of the words "may in his discretion" in S. 386 of the Criminal Procedure Code cannot be used for the purpose of interpreting the words "may be

recovered" in S. 148 of the same Code. The discretion in S. 386 of the Code only refers to cases where there has been a conviction and sentence—24 Cr. 126 (Pat.).

397. A warrant issued under section 386, sub-section (1), clause (a), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the attachment and sale of any such

Property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Changes introduced.

The substitution of the words "A warrant issued under S. 386 sub-sec. (1) cl. (a) by any Court for such warrant" is a drafting amendment. The word

"attachment" is a necessary substitution for the word "distress" as immovable properties can now be sold under S. 386 (6)

388. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, the Court may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on a date not more than fifteen days from the time of executing the bond; and in the event of the fine not having been realised the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the Court may require the person ordered to make such payment to enter into a bond as prescribed in sub-sec. (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

Changes introduced.

The substitution of the words "the Court" for the words "and the Court issues a warrant under S. 386 it" has the effect of giving the Court the power to suspend the sentence before it is actually put in execution. The latter part of the amendment

—i.e.—the substitution of the words "on a date not" for "on the day appointed for the return so such warrant" is consequential. The ruling in 4 L. B. 151 is now obsolete.

390 When the accused is sentenced to whipping only, the sentence shall *subject to the provisions of section 391* be executed at such place and time as the Court may direct.

Execution of sentence of whipping in addition to imprisonment.

391 (1) When the accused

(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(b) is sentenced to whipping in addition to imprisonment

the whipping shall not be inflicted until fifteen days from the date of the sentence, or if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months.

Changes introduced.

These sections have been amended, in accordance with the recommendations of the Committee which

considered the "Racial Distinctions Bill" by Act XII of 1923 (Criminal Law Amendment Act).

395. (1) In any case in which, under section 391, a sentence of whipping is wholly or partially prevented from being executed, the offender shall be kept in custody till the Court which passed

the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months or to a fine not exceeding five hundred rupees which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term or a fine of an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict

Changes introduced.

The addition of the words "or to a fine not exceeding five hundred rupees" make it optional with the Court either to pass an order of imprisonment or

to merely impose a fine in lieu of the sentence of whipping.

397 When a person already undergoing sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced *unless the Courts direct that the subsequent sentence shall run concurrently with such previous sentence.*

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is whilst undergoing such sentence sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

Changes introduced.

(1) The words "or to a fine not exceeding five hundred rupees" are added.

offences committed prior to the making of an order under S. 123 and those committed subsequently. "We think that in most cases that is what the law should be; that is to say in cases where the offence has been committed prior to the making of the order."

"In cases where the offence has been committed subsequent to the making of the order under S. 123 has been passed, e.g., cases of escape from custody or jail or offences committed in jail, then we think that the imprisonment for the subsequent offence should ordinarily be not concurrent."—Joint Com. 1922

option to order sentences to run concurrently (See S. 397 (3))

(2) The proviso to S. 397 definitely overrules 30 A. 334 (F. B.) and Rat 774 and affirms the rulings in 37 B. 178, 34 B. 326 and other rulings—see S. 123 (6) A distinction is however drawn between

Notes.

1. Can sentences be concurrent if passed in separate trials?—Where separate trials are held and separate

sentences passed upon the accused at each trial, the sentences, under S. 397 of the Criminal P.

cedure Code, must be served consecutively. The Court has no power in such case to direct, under S. 35 of the Code, that the sentences run concurrently, as that section relates to sentences in cases of convictions of several offences at one trial.—19 A. J. 310.

Detention of prison under S. 123 Cr. P. C.—The ruling in 15 S. 205 must be taken at a discount in view of the change in law noted above.

S. 399.

Notes.

High Court's power of revision —Reformatory schools |
Act does not in any way take away jurisdiction |

of High Court to interfere in revision.—(93-00)
L. B. 441.

401 (1) When any person has been sentenced to punishment for an offence, the Governor General in Council or the Local Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion, and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled, the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liberty upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of His Majesty or of the Governor General when such right is delegated to him to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by His Majesty or, in virtue of any powers delegated to him by the Governor General, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Governor General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Changed introduced

- (1) The Judge is now required to send a certified copy of the record of the trial along with his opinion et. "It is well known that in the case of proceedings in a High Court, the Judges object to their notes being treated as part of the records and we have therefore referred in our proposed amendment of section of 401 (2) to "a certified copy of the record of the trial, or of such record thereof as exists" — (Sel. Com 1922).
- (2) "We have made a formal amendment in S. 401 (a) in view of the special delegation to the present Governor General of His Majesty's prerogative of pardon" (Sel. Com 1916)
- (3) The sub-clause (4A) has been inserted for the

following reason "We have substituted the word "law" for the word "Act" so as to enable the provisions of S. 401 to be applied in the case of persons sentenced by Tribunals constituted by Regulations or ordinances (Joint Com 1922). It would appear that the powers under S. 401 should be exercisable under sub-sec-(4A) in the case of persons imprisoned in default of security under S. 123, or in the cases of forfeiture of security.

- (4) The clause (5A) supplies an omission with regard to the procedure to be followed when a conditional pardon is granted.

492 (1) The Governor General in Council the Local Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

Power to commute punishment.

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code.

Changes introduced.

"We accept the amendment proposed by the Bill but would refer in the new sub-sec. (2) of S. 402 to

S. 54 Indian Penal Code as well as S. 55" (Sel. Com. 1916).

S. 403.

Notes.

1. "It is well known that in the case of proceedings in a High Court, the Judges object to their notes being treated as part of the records and we have therefore referred in our proposed amendment of section of 401 (2) to "a certified copy of the record of the trial, or of such record thereof as exists" — (Sel. Com 1922).

afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under S. 235 (f) of the Code. Therefore, an accused person, who has been tried for an offence under S. 342 I. P. C. can be subsequently tried for an offence under S. 147 of the Code, even though the two offences formed the same transaction within the meaning of S. 235 (1) Cr. P. C.—24 C. N. 763.

2. Acquittal under S. 338 I. P. C. bars trial under S.

same facts cognate to or involved in the offence with which he was previously charged, is barred by S. 403 Cr. P. C. The mere prospect of getting additional evidence cannot be a ground for overriding the principle of *autrefois acquit*, as the application of S. 403, does not depend upon additional evidence being available or not.—2 Pat. T. 31 (15 C. 727. 37 B. 653 28 A. 313 Fd.)

3. Plea of *autrefois acquit* must be deferred on investigation of facts.—A decision that a prosecution is barred under the provisions of S. 403 of the Code of Criminal Procedure ought not to be arrived at without an investigation of facts put forward on behalf of the complainant.—23 C. N. 513

4. S. 403 applies to acquittals or absence of complainant.—The provision contained in S. 403 Cr. P. C. is imperative, and bars a second trial of a person who has once been acquitted on the same charge. The section does not make any distinction between acquittals after trial, and acquittals under Ss. 247, 247 and 494 Cr. P. C. So long as an acquittal under S. 247 stands, S. 403 bars a second trial on the same charge, no matter whether the order of

to the trial of that person under S. 16 of the Motor Vehicles Act for driving the car without a license. So long as his acquittal on the same facts for a different offence remains in force, the principle of *autrefois acquit* applies, and a second trial on

cedure Code, must be served consecutively. The Court has no power in such case to direct, under S. 35 of the Code, that the sentences run concurrently, as that section relates to sentences in cases of convictions of several offences at one trial.—19 A. J., 310.

Detention of prison under S. 123 Cr. P. C.—The ruling in 15 S. 205 must be taken at a discount in view of the change in law noted above.

S. 399.

Notes.

High Court's power of revision.—Reformatory school's Act does not in any way take away jurisdiction

of High Court to interfere in revision.—(93-00) L. R. 411.

401 (7) When any person has been sentenced to punishment for an offence, the Governor General in Council or the Local Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion, and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled, the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liberty upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of His Majesty or of the Governor General when such right is delegated to him to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by His Majesty or, in virtue of any powers delegated to him by the Governor General, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Governor General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Changed introduced

- (1) The Judge is now required to send a certified copy of the record of the trial along with his opinion etc. "It is well known that in the case of proceedings in a High Court, the Judges object to their notes being treated as part of the records and we have thereon referred in our proposed amendment of section of 401 (2) to "a certified copy of the record of the trial", or of such record thereof as exists" —(Sel. Com 1922)
- (2) "We have made a formal amendment in S 401 (a) in view of the special delegation to the present Governor General of His Majesty's prerogative of pardon" (Sel. Com 1916)
- (3) The sub clause (4A) has been inserted for the

following reason "We have substituted the word "law" for the word "Act" so as to enable the provisions of S 401 to be applied in the case of persons sentenced by Tribunals constituted by Regulations or ordinances (Joint Com 1922). It would appear that the powers under S. 401 should be exercisable under sub sec (1A) in the case of persons imprisoned in default of security under S 123, or in the cases of forfeiture of security.

- (4) The clause (5A) supplies an omission with regard to the procedure to be followed when a conditional pardon is granted

402 (1) The Governor General in Council the Local Government may, without the consent of

Power to commute punishment.

the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code.

Changes introduced.

"We accept the amendment proposed by the Bill but would refer in the new sub-sec. (2) of S 402 to

S. 54 Indian Penal Code as well as S. 55" (Sel. Com. 1916)

S. 403.

Notes.

1. Trial for one offence whether a bar to trial for other offences committed in the same transaction.—A person acquitted or convicted of any offence may, under S 403 (2) Criminal Procedure Code, be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under S. 235 (1) of the Code. Therefore, an accused person, who has been tried for an offence under S 342 I. P. C. can be subsequently tried for an offence under S. 147 of the Code, even though the two offences formed the same transaction within the meaning of S 235 (1) Cr. P. C.—24 C. N. 763.

2. A person who has been tried for an offence under S.

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same facts cognate to or involved in the offence with which he was previously charged, is barred by S. 403 Cr. P. C. The mere prospect of going

3. Plea of autrefois acquit must be determined on investigation of facts.—A decision that a prosecution is barred under the provisions of S. 403 of the Code of Criminal Procedure ought not to be arrived at without an investigation of facts put forward on behalf of the complainant.—23 C. N. 513.

4. S. 403 applies to acquittals or absence of complainant.—The proviso contained in S. 403 Cr. P. C. is imperative, and bars a second trial of a person who has once been acquitted on the same charge. The section does not make any distinction between acquittals after trial, and acquittals under Ss. 217, 345 and 494 Cr. P. C. So long as an acquittal under S. 217 stands, S. 403 bars a second trial on the same charge, no matter whether the order of

of autrefois acquit applies, and a second trial on

acquittal is good or bad, legal or illegal.—2 Pat. T. 170

5. Order of acquittal must be that of a competent court.

case S. 403 has no application. The acquittal of a person, tried for an offence under S. 52 of the Registration Act without the permission of one or other of the persons referred to in S. 83 of the same Act, being illegal, S. 403 will not bar a second trial for the same offence, after the requisite permission has been obtained.—24 O. C. 258

(Note—There is a divergence of judicial opinion as to the meaning of the term "competent to try".

In the latest case 23 Cr. 305 (S) which follows *Ganapathi v. K. 36*, 308 and 24 M. 611, the words "competent jurisdiction" are held to refer to the character and status of the Court which has decided the case. The opposite view is taken in 37 A. 107 and 24 O. C. 258 noted above, viz., if a case is not triable without sanction, a Court cannot be said to be of "competent jurisdiction" if it tries the case without the required sanction.)

7. Acquittal in case of "battery" bars a second trial for hurt.—A person tried and acquitted on a charge of using criminal force under S. 352 (which includes the offence of battery) cannot be tried in respect of the same criminal matter on a charge of hurt.—16 W. R. 327 B. L. (appx) 25

S. 404.

Notes.

Admission of appeal after expiry of limitation.—The accused were convicted on the 30th Sept and the last date for filing their appeal was the 6th Novr, after making allowance for the time required for obtaining copies but the appeal was filed on the 17th Novr. The explanation for the delay was that there was Civil Court Vacation from the 11th Oct to the 16th Novr, and the Vacation

Judge did not arrive on the dates on which he was expected to sit at the headquarters of the district. Held, that the failure to present the appeal in time, was due to the fact that timely notice was not given of the time and place at which the Vacation Judge proposed to hold his sitting and therefore the appeal was not barred.—22 Cr. 426 (C).

Appeal from order requiring security for keeping the peace or for good behaviour.

405 Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

- (a) if made by a Presidency Magistrate, to the High Court ;
(b) if made by any other Magistrate, to the Court of Session :

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session :

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Session Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.

Changed introduced.

- (1) It will be seen that in the absence of special notification by the Local Government all appeals in the mofussil against security orders will lie to the Sessions Judge instead of the District Magistrate
(2) The second proviso follows the rulings in 15 P R

1900, 23 I. R. 1886 ; 9 C. 878 (S. 406 (5)) It removes an anomaly. See Note No. 2 below

- (3) An appeal against an order under S. 118 by the District Magistrate, will now now lie to the Sessions Judge.—(198) A N 127 is therefore obsolete.

Notes.

1. The Additional District Magistrate is a "Magistrate other than the District Magistrate" within the meaning of S. 405 of the Code and consequently

an appeal lies from an order, under S. 118 in a proceeding under S. 110, of the Additional District Magistrate to the District Magistrate.—48 C. 574.

2. Appeals in cases where reference to Sessions Judge is necessary—No limitation is laid down in S. 403 as to the right of appeal to the District Magistrate in cases in which a person is ordered to give security for good behaviour under S. 118 by a subordinate District Magistrate. Where however, security is ordered for more than a year, a reference is to the Sessions Judge is necessary, when the accused fails to furnish security. The question therefore arises, does a reference to the Sessions Judge

the order of the Sessions Judge. This query has been raised by Abdul Kadir J. in 65 P. L. 1922 but not finally decided. However, the proviso introduced by the Amending Act settles the point and takes this class of cases out of the provisions of S. 403—See *Note above*.

3. Distinction between the powers conferred by S. 125 and 405 Cr. P. C.—Under S. 125 Cr. P. C. it is that a District Magistrate is empowered to do with a

403A Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

- (a) if made by a Presidency Magistrate, to the High Court ;
(b) if made by the District Magistrate, to the Court of Session ; or
(c) if made by a Magistrate other than the District Magistrate, to the District Magistrate.

Changes introduced.

"The new S. 403A provides for an appeal against the rejection of surety under S. 122." "We also think that those should be a general right of appeal

against the rejection of surety in such proceedings." (Sel. Com. 1916)

- 407.** (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under S. 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Sub-divisional Magistrate of the second

Appeal from sentence of Magistrate of the second or third class.

class, may appeal to the District Magistrate.

- (2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local

Transfer of appeals to first class Magistrate.

Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Changes introduced.

The words "or in respect of whom an order has been made or a sentence has been passed under S. 380" have been introduced to meet the ruling in 17 B. L. 893 (See S. 380 (4)). It has been held therein by

that appeals in such cases lie only to the Sessions Judge. This view has now been definitely overruled.

Notes.

1. Orders under the Motor Vehicles Act.—It was convicted of the offence of not producing his driver's

license on demand by the Police and sentenced under S. 16 of the Motor Vehicles Act (VIII of

403. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge Appeals to Court of Session how heard. or by an Additional Sessions Judge.

Provided that an Additional Sessions Judge shall hear only such appeals as the Local Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

Changes introduced

The subordination of an Additional Sessions Judge to the Sessions Judge is further emphasised here (see Note under S. 193). It is doubtful as to whether the Court of Additional Sessions Judge can

now be regarded as a Court of appeal within the meaning of S. 195. The rulings in 4 Pat. J. 374 and 14 Cr. 195 (C) must in this view, be regarded as of doubtful authority.—S. 403 (1).

S. 413.

Notes.

Appealable sentence passed against only some of the accused opens up the whole case.—When dealing with the appeal of those accused persons who have received appealable sentences, a Sessions Judge

is competent to deal with the application made by the co-accused who have received non-appealable sentences.—3 U. P. 44 (Pat.) (4 Pat. J. 435 Fd.).

415A *Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.*

Changes introduced.

(1) The new section incorporates the decisions of the several High Courts as reported in 33 A. 295, 42 C. 374, 17 M. J. 245, 4 P. J. 435 (Per Jwala P. J.); 3 U. P. 44 (Pa.) and other rulings noted under S. 413 notes 1, 2 and 3. The following decisions therefore stand overruled: 5 B. H. (C. C.) 35, 40 M. 591, 9 M. T. 322, 31 M. J. 837, 10 S. 156, 39 A. 549, 4 Pat. J. 435. (Per Atkinson J.)

(2) The Joint Committee of 1922 added a clause to S.

415A to meet the case in which the accused with an appealable sentence, postponed the prosecution of his appeal until the period of limitation was about to expire, providing that the limitation will run from the date on which a first appeal is preferred by a co-accused who has received an appealable sentence. This clause has been deleted by the Legislature at the time of passing the Bill in its final form.

S. 416. *Saving of sentences on European British subjects—Repealed by Act XII of 1923.*

S. 417.

Notes.

1. Opinion of the Trial Court on credibility of witnesses is to be ordinarily treated as conclusive.—As laid down in *Emperor v. Chafan Singh* (7 P. R. 1904) the Court of first instance which has the witnesses before it, has a great advantage over the Court of Appeal. The Court of Appeal has to rely on the evidence as recorded in the trial court. The Court of Appeal is not in a position to see the witnesses and to judge of their credibility. These considerations apply with greater force to an appeal from an acquittal, and naturally,

the Court is chary of disturbing a finding of the first Court, rejecting the evidence against the accused as unreliable and declaring his innocence. The same judgment further lays down the salutary rule that the findings of fact of a Court which has the evidence before itself, is ordinarily entitled to great weight and should be set aside by the Court of Appeal only when the indications of mistake are clear and this is especially true in cases where the finding is in favour of the accused's innocence. If in such a case the evidence is all oral, and its credibility is a matter of opinion with

out involving other considerations, the opinion of the Court which heard the witnesses must be treated as almost conclusive. Again, if the evidence is such, that opinions may reasonably vary as to its worth the Court of Appeal will hardly adopt the view adverse to the accused, and believe the evidence as to his guilt, which the lower Court has disbelieved, and take upon itself to set aside the verdict of acquittal. The indications of mistake must be obvious, or the evidence too strong to be rejected before the Court will interfere."—*Shadi Lal C. J. and Leslie Jones J. in 22 Cr. 172 (L)*

2. Misdirection when no justification for interference with an order of acquittal.—A mere failure on the

part of the Sessions Judge to point out to the jury all the matters which may be considered by

Cr. 47 (Pat.).

3. High Court will not interfere unless judgment is perverse.—The High Court will not interfere in a judgment of acquittal unless the lower Court has been perverse in its judgment or taken such unreasonable and distorted conclusions of the facts as to cause a miscarriage of justice.—(4 A. 148; 18 C. N. 666 Fd.)—3 Pat. T. 396, (Pat.) see 32 S.P.L. 1013.

418 (1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Explanation—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

(2) Notwithstanding anything contained in sub-section (1) or in section 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.

Changes introduced.

The Legislature has now differentiated the case of persons sentenced to death from the case of other persons. A person sentenced to death or

any co-accused of such a person can now appeal on facts as well as law.

Notes.

... the High Court in a confirmation proceeding under S. 376, has the power to go into facts whether the trial was held with the assistance of assessors or a Jury. There is no reason why

a person convicted, say of murder, by the Jury and sentenced to death, and who has appealed, should be in a worse position than a person who has been sentenced to death but who has not appealed, and whose case comes up before the High Court for confirmation in the usual course of law.—See also, 6 S. 103 (F. B.).

S. 419.

Notes.

1. Appeal through ...

Code of Criminal Procedure for differentiating between a judgment passed on an appeal filed under S. 420 of the Cr. P. C. by an appellant in jail and a judgment on a similar appeal filed through counsel under S. 419 Cr. P. C.—24 O. C. 304 (3 O. J. 326 Diss.) : 19 B. 732, 44 A. 759,

2. Unstamped copy of judgment allowed only in the case of jail appeals.—Where certain persons who ... of ... d- ... 1- ... 17

467.

S. 421.

Notes.

1. Where Jail appeal is summarily rejected, second appeal through counsel does not lie—See Note No 1 under S 419 *supra*
2. Appeal once admitted cannot be summarily dismissed—An order was recorded on the 23rd. January, 1922, in the order sheet as follows: "Admit appeal" The Magistrate heard the pleader on the 13th February, 1922 and then on the 25th, and he dismissed the appeal summarily. The appeal was remitted in order that it might be reheard on the ground that once the appeal is

admitted, the court admitting, has no jurisdiction to dismiss it summarily—23 Cr. 733 (C)

3. Complicated cases should not be summarily rejected.—In a case in which there are disputed questions of fact and a large number of documents and the Trial court has come to certain findings after a good deal of discussion of evidence, the appeal should not be summarily rejected without sending it for the record—22 Cr 349 (C)
4. Judgment in appeals dismissed summarily—See Notes under S 367 *supra*.

S. 422.

Notes.

- Reasonable notice of date and place of hearing must be given—An appellant is entitled to reasonable notice of the date and place of hearing of his appeal. A notice to the appellant's pleader that his appeal

would be heard next day, at whatever camp he might find the District Magistrate is neither reasonable nor sufficient—22 B. R. 188 : 24 Cr. 89 (M).

423.

Notes.

1. Appellate Court should see whether plea of self-defence has been made by the accused.

accused but confirmed the conviction of the remaining four accused. As there were only 4 accused, he altered the conviction to one under S 323 Cr P C and reduced the sentence of imprisonment. *Held*, that it was open to the Sessions Judge, on appeal to alter the conviction from one under S 147 to one under S 323—20 A. J. 213.

2. Opinion of Appeal Bench when not binding—The opinion of an Appeal Bench in one matter relative to an issue of law on the construction of a document, is not binding upon another Bench sitting as a Court of first instance in another matter—48 C. 328 (6 B. L. 623 Fd.)

6. Expunging remarks against witness—Amendment as authorized by S 423 (d) means amendment of the effective order of the Court below. An incidental or consequential order means an order

3. Appellate Court cannot enhance security—In an appeal from an order directing an accused person to furnish security for good behaviour, the Appellate Court has no jurisdiction to increase the amount security required by the Trial Court—24 O. C 286

trial or incidental order—44 A. J. 401 (C. B. 1911). 4 Bur T 173 : 5 Bur T 20 and, 10. J. 141 not Fd.)

4. Omission to pass order under S. 471 may be rectified by Appellate Court.—Where the Trial Court has wrongly omitted to pass an order under S 471 Cr. P. C. the High Court can pass the same in revision, as a consequential or incidental order within the meaning of S. 423 (1)(d)—42 M. J. 72.

7. Excusing delay in presentation of appeals is not an incidental or consequential order—An Appellate Court cannot excuse the delay in presenting an appeal, under S. 423 (1) (d) Cr P C, as an order excusing the delay is neither a consequential nor an incidental order—24 Cr 109 (M)

5. Power to alter conviction—The first Court convicted all the 14 accused of rioting under S. 147 I P. C. The Lower Appellate Court acquitted ten of the

8. Appeal heard in the absence of counsel.—Where the Appellant a counsel was prevented by Railway strike from attending and the Court disposed of the appeal after "perusing the record" and considering the grounds of appeal in his absence, *held*, that as the appeal had been disposed of on the merits, the High Court had no power to set aside

the judgment of the Court below merely on the ground that the pleader or the counsel on behalf of the petitioner was not heard in the Court below.—24 Cr. 119 (Pat)

9. Sessions Judge cannot order commitment—A Sessions Judge to whom an appeal has been preferred by persons convicted by a Magistrate cannot direct the commitment of them to his own Court for trial.—(83) A. N. 297

Instances of Misdirection to the Jury.

- 10(a). In a case of theft, the failure on the part of the

went to show that the accused had dealt, constituted a misdirection.—(1884) 2 Weir 488

- 11 (b) Where in a case of theft, the only evidence against the accused was the possession of stolen property 5 years after the occurrence, *held*, that the Judge had misdirected the Jury by saying that "on this evidence, notwithstanding that it is

nearly 5 years since the crime occurred, you will decide whether you are satisfied with the prisoner's explanation for his possession of stolen property." The proper course would be to tell them to consider whether, after 5 years, it was reasonable to require the prisoner to prove how he came by the goods or whether his story, not being in itself improbable, ought not to be accepted.—(1884) 2 Weir 497.

12. (C) A direction to the Jury that they should convict the prisoner, if they believed that he had shown the stolen property to the Police, is open to exception. If a person is found in possession or control of stolen property, there is, of course, a presumption that he was the thief. But the mere fact of knowing where such property is, is not equivalent to possession.—(1895) 2 Weir 493.
- 13 Can appellate Court order retrial by another Court?—An Appellate Court may order the retrial of an accused person by another Court of competent Jurisdiction, even where the first trial has been held by a Court of competent jurisdiction.—(1903-00) L. B. 233 (210).

S. 424.

Notes.

Judgments of Appellate Court.—An Appellate Court is not required to write a long and elaborate judgment.

have been duly considered and decided. An Appellate Court, which writes a judgment which a High Court is unable to follow, without reference to the judgment of the Trial Court, obviously fails in the discharge of the duty imposed upon it by the law.—2 L. B. 308; 19 A. J. 921.

435. (1) The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the Local Government in this behalf may call for and examine the record of any proceeding, before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437.

(2) If any Sub-divisional Magistrate acting under sub-sec. (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) * * *

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

Changes introduced.

- (1) The power to grant bail or to suspend execution of sentence is a necessary concomitant of the power to call for records of inferior Courts. The omission to provide for the exercise of this power has now been remedied.
- (2) The explanation clearly adopts the view in such rulings as ('89) A. N. 100 in which it was definitely laid down that the Court of a District Magistrate

of the District Magistrate exercising appellate jurisdiction was held not to be inferior to the Sessions Court.

- (3) "It has been suggested from various quarters that revision should be allowed in respect of proceedings under ss 143 and 144 and Chapter XII. We do not agree that any change should be made in the law in this respect."—(*Joint Com. 1922*). The Legislature has however omitted Sub-section (3) at the final passage of the Bill.

Notes.

Revision under the Upper Burma Criminal Justice Regulation.—(1) Under the provisions of S XV of the Schedule to the Upper Burma Criminal Justice Regulation, the Judicial Commissioner will not interfere with an order of District Magistrate, even where the procedure is irregular, unless that procedure has occasioned a failure of justice.—(1920) 3 U. B. 270

- (2) U. B. 269.

U. B. 269.

3. *Principles of Criminal Procedure*, 1920, p. 114.

purports to have been made. If it is within the scope of the section, the court cannot revise the order on its merits, in other words, we are not concerned with the propriety of the order if it is within the scope of S. 144. If it is outside the scope of the section, it is liable to be set aside on the ground that the lower court has no jurisdiction to make it.—22 B. R. 157

4. Revision after expiry of two months.—A High Court will not decline to revise an order passed under S 144 Cr. P. C. after the expiry of two months from the date of the order. It will examine the order to see whether it was passed with or without jurisdiction, and if in its opinion it is a wrong order, it will express its views about it.—42 M. J. 352 (24 M. 45 and 1 Pat. T. 377 Fd.).

5. High Court will not act under S. 439 unless lower has been moved under S. 435.—It is not the practice of the High Court to entertain an application for revision, under S. 433 Cr. P. C. against an order of a District Magistrate.

6. Enquiries under Bombay District Police Act (IV of 1893).—An order made under S. 41 of the Bombay District Police Act by a District Magistrate is an

executive order and not one of an inferior Court with which a High Court can interfere.—15 S. 126 (11 S. 113 : 5 S. 54 : 12 B. R. 1029 *led Reon*).

Orders under S. 145 Cr. P. C.—The High Court refused to interfere in the following cases.

- 7 (1) The following irregularities were committed :
(a) the order under sub-sec. (1) did not mention

- 8 (2) In the notice under the section there was no finding about any likelihood of a breach of the peace.—23 Cr. 303 (A). 18 A. J. 1140.

- 9 (3) Where the preliminary order did not contain any finding as to who was in possession on the actual date of the order, the order is illegal but if there is nothing on the record to suggest that there was any change of possession in the interval, the omission will not be regarded as material.—14 L. W. 678 (6 C. N. 841 and 5 C. N. 563 Fd.).

- 10 Refusal to exercise jurisdiction under S. 145.—Where a Magistrate refuses to take action under S. 145 Cr. P. C. merely on the ground that the parties are jointly entitled to the land in question, a High Court has jurisdiction to interfere in revision where such irregularity has been committed.—2 L. 372 (2 L. W. 1205 : 17 Cr. 217 (M). : 23 P. R. 1902 Fd.).

(Note.—The principle has always been recognised that where the Magistrate has adopted none of the procedure required under S. 145 Cr. P. C. and has passed an order without reference thereto. The High Court may interfere with such order as not one which has really been made under the section.—2 P. R. 1892 (F. B.). : 24 Cr. 109 (M) : 133 P. L. 1912) where however the irregularities committed are not grave, the High Court will not interfere merely on the ground that substantial justice has not been done.—23 Cr. 724 (L) (see 23 P. R. 1902 and 7 P. R. 1907).

11. District Magistrate as appellate Court inferior to Sessions Judge.—A District Magistrate acting as a Court of Appeal is an inferior Criminal Court to the Sessions Court for the purposes of S. 435

Cr. P. C.—3 L. 23 (14 C. N. *crim. Dist.*: 335 P. L. 1913: 15 P. R. 1904: 12 C. 73 (F. B.) 7 A. 853 (F. B.) Referred to.)

12. High Court will not ordinarily proceed *ex mola* Under the very extensive powers contained in S. 437 of the Cr. P. C. the High Court can call for and examine the record of proceeding if the necessity for so doing has been brought to its notice in any manner, and it is satisfied that there are *a priori* grounds for apprehending a miscarriage of justice, but it should be loth to interfere on behalf of a person convicted in a criminal case, if that person is an adult of ordinary intelligence when that person himself in no way contests the propriety of his conviction.—21 Cr. 115 (A)

13. Fine imposed under Bengal Regulation VI of 1827.—It is only the Collector who can take action and impose a fine under Bengal Regulation VI of 1827. Where the Joint Magistrate proceeds under S. 2 of the Regulation, which he has no jurisdiction to do, he deals with the case as a Magistrate and the Sessions Judge can take action under S. 433 Cr. P. C.—7 A. J. 983.

436. On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under S. 203 or sub-sec. (3) of S. 201, or into the case of any person accused of an offence who has been discharged.

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of shewing cause why such direction should not be made.

Changes introduced.

of this amendment.—Sec 437 (9). This proviso

should be studied along with the notes embodied

in Chapter V. (notes under S. 437) in which the matter has been exhaustively dealt with (pp 757 and 758). It is now clear that in cases in which the complaint has been summarily dismissed, no notice is necessary (see S. 437 (6)). "We have added a proviso to the present S. 437 to give effect to the rule laid down by the Courts that a fresh enquiry should not be made into the case of a person who has been discharged unless he has had an opportunity of shewing cause." (*Joint Com. 1922*)

Notes.

Notice to accused.—(1) There is nothing in S. 437 of the Code of Criminal Procedure which renders previous notice to the accused compulsory before an order setting aside an order of discharge and directing further enquiry into the case, can be passed under that section, but as a matter of judicial discretion it is advisable that such notice should be given.—24 O. C. 142: See 26 M. 41: 4 L. J. 411, 24 Cr 136 (Fesh.).

(2) An order for further enquiry against an accused person who has been discharged, should not be passed without first serving notice on him so show cause why the order should not be passed. 20 A. J. 91

3. Meaning of "accused" person.—The term "accused person" in S. 437 Cr. P. C. includes persons against whom proceedings under S. 110 and the following sections of the Cr. P. C. have been taken.—(91) A. N. 106.

4. Effect of 'revival of a prosecution' within S. 7 Expl. 2 of the Presidency Magistrate's Act.—A revival of prosecution is not a continuation of the original prosecution from which the accused has

been discharged. Upon the revival of such prosecution, all the witnesses on whose evidence the prosecutors intend to rely, as justifying the committal of the accused, must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution they must be examined *de novo*—5 C. 121.

5. Sufficient reasons must be given.—No Court can properly set aside an order of discharge without having and assigning solid and sufficient reasons for doing so. An order for further enquiry under S. 437, Cr. P. C. (S. 436) without setting out grounds therefor is bad and must be set aside (13) M. N. 639.

6. The essential consideration for ordering further enquiry.—The essential matter for consideration in setting aside an order of discharge and directing a further enquiry under S. 437 Cr. P. C. (S. 436) is the prospect of any public advantage from the case being re-opened. Where there is no such prospect by reason of the comparatively insignificant character of the offence, of the considerable time which has elapsed since its commission, a

the nature of the evidence available, an order directing further enquiry would be without jurisdiction.—43 M. J. 555.

7. Further enquiry only when order of discharge is perverse or foolish.—Further enquiry under S. 437 (436) should not, as a general rule, be ordered unless the order of discharge is manifestly perverse or foolish or is based on a record of evidence obviously incomplete. The mere fact that the District

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8. Retrial will not be ordered when evidence is doubtful—High Court will not order a retrial, where a conviction on the evidence is doubtful—30 M. T. 18.

9. Lapse of time no ground for refusing further enquiry.—Lapse of time is not a sufficient ground for refusing to order further enquiry if the offence appears to have been really committed. It would be encouraging accused persons to delay proceedings if mere lapse of time were admitted as a good reason for not proceeding with the case, when such a course is otherwise justified.—23 Cr. 745 (N).

20 P. W. 1916 Fd) : 44 A. 691 : 24 Cr. 184 (A)

437. When, on examining the record of any case under S. 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused

person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged.

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of shewing cause why such direction should not be made.

Provided as follows :—

- (a) What the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;
- (b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

Changes introduced.

S. 437 was S. 436 of the Code of 1898 before it was amended by Act No. XVIII of 1923. As to the

reason for the change see under the heading "changes introduced" under S. 436.

Notes.

Notice must be served on the accused.—It is an essential condition precedent to a valid order under S. 436 Cr. P. C. that the accused should have an opportunity

of showing cause against his commitment.—(189) A. N. 276.

438 (1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report to High Court. report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

Changes introduced.

"By or under any general or special order of the Sessions Judge" is introduced in order to facilitate the work of the Additional Sessions Judge by obviating the necessity of issuing a separate order in every case."

1. Commitment can be quashed only on a question of law—A commitment can only be quashed on a question of law. The question whether the evidence already on the record is sufficient to establish the charge is not such a question. It is a question connected more with the propriety of a conviction rather than with the propriety of a commitment—8 O. J. 627.
2. District Magistrate cannot set aside order of acquittal—A District Magistrate has no authority to set

aside an order of acquittal by a subordinate Magistrate in revision or to act otherwise than as provided by S. 439 Cr. P. C. A High Court can take action of its own motion and set aside an order of acquittal and direct a retrial—9 O. J. 54.

3. High Court not bound by the term of the report—Although in a report to the High Court under S. 439 Cr. P. C. a Sessions Judge does not recommend that the proceedings against the accused be quashed, yet, as a consequence of the report, the facts of the case are brought to the knowledge of the High Court, that Court has jurisdiction under S. 439 to stop further proceedings if it is satisfied that they are barred—23 Cr. 303 (S).

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court by Appeal by sections 123, 126, 127 and 428 or on a Court by section 338, and may enhance the sentence; and when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 31, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-sec. (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

Changes introduced.

- (1) "We have introduced an amendment of s. 439 consequential upon the alteration made by the Bill in S. 195" (Joint Com. 1922).

- (2) Though an accused person was entitled under sub-sec (2) to show cause why the sentence passed

on him should not be enhanced, he was not at the same time entitled to show that the conviction itself was illegal. This privilege has been now expressly conferred on him by law.

Notes.

- I. Practice of the High Court—It is not the practice**

S. 435 to make a reference to the High Court under S. 438 of the Code :—48 C. 534.

(Note—Before moving the High Court in revision an application to the lower Court is an essential step in the procedure, irrespective of whether the District Magistrate or the Sessions Judge has power to grant the relief or not.—43 A 497 (41 A. 587 (59f) Ed.)

3. Where appeal lies High Court would not act under S. 439.—Where it is open to an accused person to appeal and he does not do so, clause (5) of S. 439 Cr. P. C. bars the entertainment of an application for revision.—14 S. 173.

3. Revision of orders of acquittal—The High Court has no power to convert an acquittal into a conviction, but it has power to direct the Trial Court to conclude the trial in the manner provided by law.—2 U. P. (L) 39.

4. When Govt. refuses to appeal—Where there is an appeal by a Police Prosecutor or the Crown from an acquittal, the High Court, sets its face against revision. But when an aggrieved complainant moves the Government to appeal under S. 417 Cr. P. C. and the Government refuses, he can move the High Court in revision, but the latter will exercise its jurisdiction sparingly and only where it is urgently demanded in the interests of public justice—45 M. 913 (4 C. 612) (816) Fd.]

3. Order for retrial of case ending in acquittal—Upon an application in revision against an order of acquittal, the High Court has no doubt the power to order a retrial, but this power should be exercised in exceptional cases and with caution. Only when the offence is of a serious character and where there has been a miscarriage of justice—e.g.—the lower Court has misquoted the evidence or rejected evidence which is *prima facie* reasonable and credible, without assigning any reason, that the High Court will interfere—19 A. J. 589; 19 A. J. 382; 24 O. C. 157.

6. Note—The High Court can direct only a retrial in such cases. It cannot convert the finding of acquittal into one of conviction—19 A. J. 382, 44 A. 332.

7. **Retrial for a graver offence by a competent Court.**—Where the evidence discloses an offence of a graver character beyond the jurisdiction of a subordinate tribunal, the High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction over the graver offence. Whether it will do so or not is a question, not of law but of expediency on the facts of the particular case.—(9) 2 Weir 569; see (90) 2 Weir 569.

4. Power to expunge remarks—Where the Trying Magistrate came to a finding that the prosecution evidence was insufficient and unconvincing and

the defence evidence as more convincing, and recorded a judgment of acquittal, but added that his own impression was that the case was "not false" and that it should be entered as "true" in the Police register, *held* on an application by the accused. (A police officer) that the remarks were illegal and inconsistent with the judgment of acquittal and should be expunged from the judgment—3 Pat. T. 239 (Pat.), 5 Bar. T. 20 (R.).

- [illegible]

jurisdiction, and where rightly or wrongly, he comes to the conclusion that the land is not within his jurisdiction, and passes an order dropping the proceedings, his act does not amount to a failure to exercise jurisdiction to enable the High Court to interfere in revision—22 Cr. 392 (C).

10. Order passed by Revenue Court under S. 476—The High Court has no jurisdiction, under S. 439 Cr. P. C. to entertain an application to revise an order passed by a Revenue Court under S. 476 of the Code. Such an order, however, is open to remission under S. 115 Civil Procedure Code or S. 107 of the Government of India Act—6 Pat. J. 178.

21. Interference on questions of facts—It is the duty of the High Court, in revision, not to weigh the evidence given on behalf of one side or the other but only to see whether the Court below has approached the consideration of the appeal in a fair way, having regard to the interest not only of the prosecution, but also of the accused. Ordinarily where the evidence has been considered by two Courts, the High Court will not interfere in revision on the facts. (4 O. G. 223 13 A. J. 1074 See 13 P. R. 1874 114 P. L. 1012). In cases under S. 110 the High Court will interfere and undo the work of months," only if the evidence

home to the accused, complicity with a definite piece of badmash (19 A. J. 605) When in a revision petition to quash proceedings against the petitioner, it is alleged among other grounds that no offence has been committed on the facts as given in the complaint, it is not desirable that a High Court should give its preliminary finding on those facts. (15 D. 149). The practice of the High Court has long been not to interfere in criminal revision on facts found by the lower Appellate Court, but this rule is not an absolute one. The High Court will examine the record in order to satisfy itself as to the propriety of the finding " and acquit the accused if it is of opinion that the guilt of the accused has not been established beyond reasonable doubt."—20 A. J. 276.

12. Composition of offence can now be allowed in revision.—The Code as amended by Act XVIII of 1923 contains an express provision (see s. 345

case laying down a contrary proposition is 3 Pat. 458 which follows 43 C. 1143: 18 C. N. 1212: 29 M. J. 621: 37 A. 127. All these rulings are now therefore obsolete.

13. Order under S. 197 Cr. P. C.—Under the revisional powers conferred by the Cr. P. C. the High Court has no authority to interfere with an order made by a subordinate Court granting or refusing sanction under S. 197 Cr. P. C.—2 L. 303(26 C. 852 Fd.).
14. High Court will insist on lower Courts having summons and warrants properly executed—It is the business of a Court to see that its summonses and warrants are duly executed and if the accused insists on the Court issuing process for the attendance of his witnesses, he has done all that the law requires of him. Where the Magistrate has disposed of the case without compelling the defence witnesses to attend, the High Court will remand the case for disposal in accordance with law after hearing those witnesses.—10 A. J. 915.
15. Quashing proceedings in revision before the trial takes place.—Where an accused person is only

were allowed to continue.—(23 Cr. 429 (L)). A High Court has the power to set aside in revision an order of a Magistrate charging the accused with an offence but it should exercise the power only in exceptional cases. (24 Cr. 118 (L). 33 P. R. 1910).

16. Objection that Magistrate has failed to comply with S. 342 may be raised in revision.—An objection that the Magistrate has failed to comply with the requirements of S. 342 of the Cr. P. C. raises a point of law and may be taken for the first time at the hearing of an application for revision, although it was not urged in the Courts below, and is not set forth in the application.—3 Pat. 7347.
17. Interference with sentences.—The sentence to be passed in each case after conviction must be left to the Court.—(23 Cr. 429 (L)).
18. Enhancement of sentence.—The High Court will not as a rule interfere to enhance a sentence of imprisonment. But where the offence is of a serious nature having far-reaching consequences, and the sentence is manifestly inadequate the High Court would enhance the sentence, even when the conviction has taken place after the lapse of three years after the offence was committed.—4 S. 86.
19. Interference with orders of Revenue Courts.—The High Court had no jurisdiction to interfere as the District Registrar had acted as a Revenue Court, and that the proper remedy was to obtain a re-

versal of the order of the District Registrar by the Board of Revenue or by a decree of a Civil Court.—23 (Tr. 415 (Pat)).

20. Retrial to supply omission to record evidence of previous conviction.—Where the omission to record evidence of previous conviction is due to the neglect of the Magistrate, the High Court is competent to interfere in revision and order a new trial.—13 P. R. 1874: 30 P. R. 1934: 28 P. R. 1979: 19 P. R. 1879: 12 P. R. 1874.
21. Stay of proceedings pending result of Civil litigation.—It cannot be said that, as a general rule, a proceeding in Criminal Court should be stayed, pending a decision of a Civil Court in regard to the same subject matter. The Legislature has given to a Magistrate the power to regulate the proceedings of his own Court and discretion should ordinarily be left to the Magistrate either to stay proceedings or not, as lie, in the circumstances of the case, may think right and proper.—23 C. 610: 31 C. 858: 35 C. 909: 23 B. 785: see 5 C. N. 44: 8 C. N. xxvi: 9 C. N. cxlii: 10 C. N. cliv: cxv: 14 C. N. cxviii: 31 C. 818: 30 M. 220.
22. Conversion of finding of acquittal to one of conviction.—The meaning of S. 439 (4) Cr. P. C. is that, where an accused person has been acquitted on all charges he is not to be convicted, but if he has been convicted at all, S. 439(4) does not apply to him. 28 O. C. 44 (37 M. 110 Fd.): 24 Cr. 17 (M): 24 Cr. 120 (Fesh.).
23. Note.—(1) In Lahore, it has been held that the Court clearly has power, on the revision side, to set aside even an order for acquittal, and may well do so when the order is based on a misapprehension of the law.—3 Cr. 609 (L) (8 P. R. 1918 Fd.).
24. Note (2) "As a rule, an interference is not made in revision with an order of acquittal on the application of a private party, except where such interference is imperatively demanded in the interests of public justice, or where the procedure adopted is so irregular or illegal as to vitiate the whole trial."—*Kankanya Lal J. C.* in 24 Cr. 186 (O) (See 37A 110: 24 O. C. 157).
25. Power to rehear criminal petition.—The High Court has power to rehear a criminal petition dismissed for default.—23 Cr. 750 (L) (10 C. J. 80 Fd.).
26. Stay of proceedings.—Proceedings in one of two courts—cases of rioting arising out of the same occurrence cannot be stayed, merely on the ground that the prosecution witnesses in one case, if examined as witnesses before the trial of the other case, in which they are accused, will be seriously prejudiced in their defence, nor can proceedings in one of such cases be stayed on the ground that after the disposal of that case, it may not be necessary to try the counter-case.—24 Cr. 233 (C).
27. Stay of criminal proceedings ordered by Civil Court.—The High Court has the power to stay criminal proceedings ordered by a Civil Court for the reason for holding the other way.—31 M. 610.

18. Alteration of finding.—The High Court is competent in revision to alter a finding of conviction maintaining the sentence—(87) A. N. 93.
29. Judicial notice of Government letter.—The High Court exercised its revisional powers by taking judicial notice of a letter from the Government enquiring "whether in the opinion of the High Court, the judgment of the Magistrate was legal and equitable" and disposing of it under S. 439 Cr. P. C.—2 A. 522 : see also (87) A. N. 144.
30. Interference with orders under the Legal Practitioner's Act.—The High Court cannot interfere with an order of a subordinate Court under S. 33 of the Legal Practitioner's Act, on the ground that the finding of that Court is against the weight of evidence. It will interfere if at all under S. 15 of the High Courts Act.—21 A. 181.
31. Revisional powers of the High Court as affected by S. 16 of the Reformatory Schools Act (VIII of 1897)—See 1 L. B. 68.
32. Order of discharge can be set aside in revision.—The High Court has power under S. 439 read with S. 423 Cr. P. C. to revise an order of discharge passed by a Presidency Magistrate and to direct a further enquiry, if there are good reasons for doing so, although no question of jurisdiction arises in the case (20 C. N. 1128 : 27 B. 84). An order of discharge, due to misconception of the law, may be set aside under S. 439 (114 P. L. 1912).
33. All forms of judicial injustice within High Court's power of rectification.—There is no form of judicial injustice which the High Court, if need be, cannot reach under the Charter Act—12 C. N. 678.

S. 440.

Notes.

Applicant absconding after grant of bail.—A person who applies for revision to the High Court, and on being released on bail, disappears and is not to

be found, is not entitled to be heard through his pleader and the High Court may refuse to proceed with his application—24 Cr. 240 (A).

S. 441.

Notes.

S. 441 does not abrogate the provisions of ss. 263 or S. 370—S. 441 does not abrogate the terms of S. 263 or S. 370. It merely allows the Presidency

Magistrate to supplement the reasons which have already been stated under S. 263 and 370—24 Cr. 84 (M).

PART VIII

SPECIAL PROCEEDINGS

SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

443. (1) Where, in the course of the trial outside a presidency town of any offence punishable with imprisonment, the accused person, at any time before he is committed for trial under section 213 or is asked to show cause under section 212 or enters on his defence under section 256, as the case may be, claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case, after making such inquiry as he thinks necessary, and after allowing the accused person reasonable time within which to adduce evidence in support of his claim, shall if he is satisfied—
- (a) that the complainant and the accused persons or any of them are respectively Europeans and Indian British subjects or Indian and European British subjects, or
- (b) that, in view of the connection with the case of both an European British subject and an Indian British subject, it is expedient for the ends of justice that the case should be tried under the

- (5A)). conferring power on a High Court exercising revisional jurisdiction under S. 439, to allow any person to compound any offence which he is competent to compound under S. S. 315. The latest case laying down a contrary proposition is 3 Pat. 458 which follows 43 C. 1143: 18 C. N. 1212: 29 M. J. 621: 37 A. 127. All these rulings are now therefore obsolete.
13. Order under S. 297 Cr. P. C.—Under the revisional powers conferred by the Cr. P. C. the High Court has no authority to interfere with an order made by a subordinate Court granting or refusing sanction under S. 197 Cr. P. C.—2 L. 303(28 C. 552 Fd.).
 14. High Court will insist on lower Courts having summons and warrants properly executed.—It is the business of a Court to see that its summonses and warrants are duly executed and if the accused insists on the Court issuing process for the attendance of his witnesses, he has done all that the law requires of him. Where the Magistrate has disposed of the case without compelling the defence witnesses to attend, the High Court will remand the case for disposal in accordance with law after hearing those witnesses.—10 A. J. 945.
 15. Quashing proceedings in revision before the trial takes place.—Where an accused person is only allowed to continue.—(23 Cr. 429 (L)). A High Court has the power to set aside in revision an order of a Magistrate charging the accused with an offence but it should exercise the power only in exceptional cases. (24 Cr. 118 (L). 33 P. R. 1910).
 16. Objection that Magistrate has failed to comply with S. 342 may be raised in revision.—An objection that the Magistrate has failed to comply with the requirements of S. 342 of the Cr. P. C. raises a point of law and may be taken for the first time at the hearing of an application for revision, although it was not urged in the Courts below, and is not set forth in the application.—3 Pat. T. 347.
 17. Interference with sentences.—The sentence to be passed in each case after conviction must be left to the Court.—(23 Cr. 429 (L)).
 18. Enhancement of sentence.—The High Court will not as a rule interfere to enhance a sentence of imprisonment. But where the offence is of a serious nature having far-reaching consequences, and the sentence is manifestly inadequate the High Court would enhance the sentence, even when the convict has taken place after the lapse of three years after the offence was committed.—4 S. 80.
 19. Interference with orders of Revenue Courts.—The High Court had no jurisdiction to interfere as the District Registrar had acted as a Revenue Court, and that the proper remedy was to obtain a reversal of the order of the District Registrar by the Board of Revenue or by a decree of a Civil Court.—23 Cr. 415 (Pat.).
 20. Retrial to supply omission to record evidence of previous conviction.—Where the omission to record evidence of previous conviction is a mere oversight, the Court may order a retrial.—12 P. R. 1874.
 21. Stay of proceedings pending result of Civil litigation.—It cannot be said that, as a general rule, a proceeding in Criminal Court should be stayed, pending a decision of a Civil Suit in regard to the same subject matter. The Legislature has given to a Magistrate the power to regulate the proceedings of his own Court and discretion should ordinarily be exercised in favour of the accused.—10 C. N. xxi: 9 C. N. cxliii: 10 C. N. cxlv: cxlv: 14 C. N. xxxii: 34 C. 848: 30 M. 226.
 22. Conversion of finding of acquittal to one of conviction.—The meaning of S. 439 (4) Cr. P. C. is that, where an accused person has been acquitted on all charges he is not to be convicted, but if he has been convicted at all, S. 439(4) does not apply to him. 26 O. C. 44 (37 M. 119 Fd.): 24 Cr. 17 (M). 24 Cr. 120 (Pesh.).
 23. Note.—(1) In Lahore, it has been held that the Court clearly has power, on the revision side, to set aside even an order for acquittal, and may well do so when the order is based on a misapprehension of the law.—3 Cr. 699 (L) (3 P. R. 1018 Fd.).
 24. Note (2) "As a rule, an interference is not made in revision with an order of acquittal on the application of a private party, except where such interference is imperatively demanded in the interests of public justice, or where the procedure adopted is so irregular or illegal as to vitiate the whole trial."—*Kanhaya Lal J. G.* in 24 Cr. 159 (O) (See 37A 110: 24 O. C. 157).
 25. Power to rehear criminal petition.—The High Court has power to rehear a criminal petition dismissed for default.—23 Cr. 750 (L) (10 C. J. 80 Fd.).
 26. Stay of proceedings.—Proceedings in one of two counter-cases of rioting arising out of the same occurrence cannot be stayed, merely on the ground that the prosecution witnesses in one case, if examined as witnesses before the trial of the other case, in which they are accused, will be seriously prejudiced in their defence, nor can proceedings in one of such cases be stayed on the ground that after the disposal of that case, it may not be necessary to try the counter-case.—24 Cr. 233 (G).
 27. Stay of criminal proceedings ordered by Civil Court.—The High Court has the power to stay criminal proceedings.—10 C. N. xxi: 9 C. N. cxliii: 10 C. N. cxlv: cxlv: 14 C. N. xxxii: 34 C. 848: 30 M. 226.

district specified in the notification shall be tried as if they were warrant-cases in accordance with the provisions hereinafter in this Chapter laid down for the trial of warrant-cases.

446. (1) *Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a warrant-case, the Magistrate inquiring into or trying the case*

Procedure in warrant cases.

shall, if he does not discharge the accused under section 209 or section 253, as the case may be, commit the case for trial to the Court of Session, whether the case is or is not exclusively triable by that Court.

(2) *Where an accused is committed to the Court of Session under sub-sec. (1), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of section 275, and the provisions of that section and the other provisions of Chapter XXIII, so far as they are applicable, shall apply accordingly :*

Provided that where the trial before the Court of Session would in the ordinary course be with the aid of assessors and the accused, or, all of them jointly, require to be tried in accordance with the provisions of S 231A, the trial shall be held with the aid of assessors all of whom shall in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

447. *If at any stage of an inquiry or trial under this Code it appears to be the Magistrate that the case is or might be held to be a case which ought to be tried under the provisions of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter.*

Court to inform accused persons of their rights in certain cases.

448. *For the purpose of the trial in Rangoon of any person under the provisions of this Chapter, references to Sessions Judge to be construed as references to High Court in Rangoon.*

references to the Sessions Judge shall be construed as references to the High Court of Judicature at Rangoon.

Special provisions relating to appeal.

449 (1) *Where—*

(a) *a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter, or*

(b) *a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, or*

(c) *a case is trial by jury in the High Court in a presidency-town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a presidency-town, have been triable under the provisions of this Chapter,*

then notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the letters patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law.

(2) *Notwithstanding anything contained in the letters patent of any High Court, the Local Government may direct the Public Prosecutor to present on appeal to the High Court from an original order of a quittal passed by the High Court in any such trial as is referred to in sub-sec (1).*

(3) *An appeal under sub-section (1) or sub-section (2) shall, where the High Court consists of more than one judge, be heard by two judges of the High Court.*

Changes introduced.

It will be seen that Chapter XXXIII has been extensively modified. No less than fourteen sections (450 to 463) have been repealed, by the Criminal Law Amendment Act (XII of 1922). It will be seen that Act XII of 1922, besides recasting the entire Chapter, has also introduced several new sections in the Code, viz., 29A, 31A, 284A, 285A, 491A, 526A and 528A to 528D, besides repealing sections 111, 330, 416 and sections 450 to 463. Sections 274, 275, 284, 323, 391, 393, 443-9, 478, 480, 491 and 534 have been amended to meet the altered situation brought about by the Act. The principle that an accused person is entitled to be tried by a jury composed of his peers has apparently been recognised but experience alone can shew whether the changes

will put an end to the deplorable instances of miscarriage of justice in the past, due to perverse verdict of the jury based mainly on racial grounds.

Nature of the changes.—The changes perpetuate the special privileges enjoyed hitherto by Europeans and Americans in Criminal trials in which they figure as accused persons. The only changes of note are that an Indian Magistrate may try summons cases when sitting with a European Magistrate (S. 445) and Sessions Judges need not be European British Subjects. The decision as to the whether the accused is a European British Subject or not now rests with the Sessions Judge as a final referee. [443 (2)] and a special appeal against acquittals is provided for (S. 449).

S. 460-463. Repealed by Act XIII of 1923 (Criminal Law Amendment Act).**Notes.**

Rulings which are obsolete—1A. 274 F. B.; 4A. 141; 21 Cr. 767 (A); 1 B. 232; 14 B. 160; 29 C. 236 (F.B.); 36 C. 467; 5 W. R. 43; 5 M. H. 277; 7

M H (apps) xxxii in so far as they relate to the provisions of the repealed sections.

CHAPTER XXXIV.**LUNATICS.**

464. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused

Procedure in case of accused being lunatic.

is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(1A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

Changes introduced.

- (1) The clause (1A) introduces a salutary provision. It enables the Magistrate to release the lunatic on bail pending enquiry
- (2) 'The words 'record a finding' make it obligatory

on the Magistrate to take and record sufficient evidence to enable him to come to a decision on the point.

465. (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged.

(2) The trial of the act of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Changes Introduced.

word "finding" is substituted for the word "judgment" (see Note under S 464) The provision

for the discharge of the jury supplies a decided omission.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Local Government.

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.

Changes introduced.

(1) The Legislature having since 1916 made an amendment of S. 35 (2) of the Indian Lunacy Act 1912, the provision as to the Local Government's power to order the confinement of the accused in a lunatic asylum, etc is superfluous. The new sub-sec (2) therefore merely refers to "such rules as the Local Government may have made under the

Indian Lunacy Act 1912." "We would draw attention to the fact that the word "detain" is in the Code, being substituted for the word "confine" (Joint Com 1922)

(2) The first sub-clause as amended now empowers the Court to release the accused on bail even in non bailable cases.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or sec. 465, as the case

may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.

Changes introduced.

The amendment supplies one of the three necessary alternatives left out by the drafter of the former Codes. A person may be either capable of making his defence (sub-sec. 1), or may be temporarily incapable of doing so (sub-sec. 2). He may also

be incapable of making his defence for all times being a confirmed lunatic." In the latter case he is to be dealt with under S. 466. This contingency is now provided for by the words "and if the accused—S. 466" added to sub clause (a).

471. (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the Local Government.

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.

(2) The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector General of Prisons under * * section 473 or section 471

Power of Local Government to relieve Inspector General of certain functions.

Changes introduced.

- (1) The words "the finding" substituted for the word "the accused" in the preceding clause.
- (2) The word "kept" was not a suitable term. The proper expression is "detained" as the final orders rest with the Local Government.
- (3) The addition of the words "and shall report the action taken to the Local Government" is necessary as the order of detention is not final until it is confirmed by the Local Government.
- (4) The reasons for the proviso is given by the Select

Committee of 1916 as follows: "We have also made it clear that a detention order must be in accordance with the rules made under the Lunacy Act 1912. "With regard to the first proposed proviso to sub-sec. (1) of S. 471, we note that the Local Government has power under S. 475 to deliver lunatics to relatives after an order has been passed under S. 471, and the Local Government can only exercise its powers under that section on receipt of expert advice. We do not think it desirable to enable a Court to exercise the same power on its own responsibility. (Joint Com. 1922).

Notes.

1. Substitution of the word "detained" for "kept" is permitted

a Court to send the accused to a lunatic asylum. All that is necessary is to see that such safeguards are taken, as would keep the accused from mischief, and it is permissible to order the accused to

be kept under the control and custody of his parents—42 M. J. 72.

2. Subsequent Sanity of the accused—Where it is clear from the evidence, the previous and family history of the accused, and want of any real motive for the murder itself, that the accused committed it while she was not accountable for her actions, it is the absolute duty of the Court after acquitting the accused, to make an order in accordance with

the statutory provisions of the law. *If as a result of the treatment in Lunatic Asylum, the person becomes comparatively well again that is not a matter which concerns the Court.* The future orders for the disposition of the accused does not rest with Court, but with the Local Government. (The

High Court directed the accused to be kept in safe custody in the jail at Muttra, or if the Superintendent of such jail thought better, in the Lunatic Asylum at Agra, pending further orders in the case by the Local Government)—24 Cr. 225 (A).

472. *Lunatic prisoners to be visited by Inspector General.* [Rep. by Act IV of 1912.]

473. If such person is *detained* under the provisions of section 466, and in the case of a person *detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them* shall certify that, in

Procedure where lunatic prisoner is reported capable of making his defence.

his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of, such Inspector-General or visitors as aforesaid shall be receivable as evidence.

Changes introduced.

The amendments are only drafting amendments.

474. (1) If such person is *detained* under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be *released* without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be *released* or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his *release* or detention as it thinks fit.

Changes introduced.

The amendments in this section are drafting amendments.

475. (1) *Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Local Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such Local Government that the person delivered shall—*

(a) *be properly taken care of and prevented from doing injury to himself or to any other person, and*

(b) *be produced for the inspection of such officer, and at such times and places, as the Local Government may direct, and*

(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,
order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.

Changes introduced.

The section as redrafted is a decided improvement on the original section. The provisions are set forth in clear and explicit terms. Between them the

Ss. 473, 474 and 475 of the Code appear to provide for all contingencies including absolute release or release on security.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

476. (1) When any Civil, Revenue or Criminal Court, is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or, if the alleged offence is non-bailable, may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

For the purpose of this sub-section, a Chief Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200..

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

Changes introduced.

We have redrafted S. 476 and added two new Sections 476A and 476B in accordance with our note to

clause 36 (S. 195) These new clauses lay down the the procedure to be followed in the case of all

complaints by a Court in respect of offences referred to in S. 195 (b) and (c).

"S. 476 (1) provides that the complaint is to be made to the nearest First class Magistrate having jurisdiction—a term which is also to include a Chief

"S. 476A allows the complaint to be made either by the Court before which the offence is alleged to have been committed, or by a Superior Court as defined in S. 195(3) and either on its own motion or upon the application of a party.

"The explanation to this section makes it clear that such application may be made in any criminal proceedings by the Crown.

"S. 476B gives a limited right of appeal to either party to the Superior Courts. The substitution of a complaint by a Court for the old sanction" provisions making it necessary to see the necessity

is no reason why the matter should not be investigated in the ordinary course. The same limited right of appeal against a refusal on the part of the sub-ordinate Court to make a complaint, may, we think, be accorded to a party interested, to meet the case of a perverse refusal to prosecute by the subordinate Court."

"For reasons indicated above we think that the revisional jurisdiction of the Courts should also be excluded" (*Sri. Com.* 1916).

"The changes that we have made in the proposed S. 476 are not of great importance. We have provided that a Court, can act on application made to it or *suo motu* and after such preliminary enquiry if any, as it thinks necessary. For the words "committed before it or brought under its notice in the course of a judicial proceeding" we have substituted the phraseology used in the proposed new S. 195. We have substituted "may make a complaint" for "shall make a complaint" and in view of the criticism of the words "nearest first class Magistrate" we have provided that a

complaint should be sent to a first class Magistrate having jurisdiction. For the words "if he thinks expedient in the interests of justice" which we think might hamper a Magistrate in the exercise of his powers of adjournment, we have substituted "if he thinks fit." In order to give effect to the decision arrived at, in our consideration of clause 114, that proceedings under S. 476, etc., should be subject to revision, we have introduced words which will make it necessary for the Court to record an order.

"We have entirely redrafted Ss. 476A and 476B. S. 476A in our redraft is now confined to the case where a superior Court takes action, after no action

Notes—It will be seen that Ss. 476, 476A and 476B incorporate practically the whole of the deleted provisions of S. 195 *supra*, with this change that whereas S. 195 applied to cases of sanction granted to private parties, S. 476, as modified, gives power only to Courts to deal directly with offences against public justice and contempts of Court. Private

them are too often used to wreak vengeance or satisfy a private grudge. Stress has been laid in a current decision, on the importance of scrutinizing application for sanction in order to find out whether the sanction is being sought for an ulterior motive. But this is easier said than done. In the summary proceedings held in these matters the Courts are not able in a majority of cases, to

"will be so worked as to prevent barefaced attempts at fraud and perjury by litigants and their witnesses which unfortunately form a feature of too many trials.

Notes.

1. Court ought to act directly.—As a rule, a Court ought not to give sanction to a private individual to prosecute for perjury, if the Court before whom perjury has been committed, is of opinion, that it should be tried, it should, under S. 476 Cr. P. C. order the prosecution of the person whom it thinks guilty.—22 Cr. 393(A).
2. Meaning of the word "Court".—The word "Court" in S. 476 Cr. P. C. includes the successor of the Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceed-

ing—19 A. J. 819 (37 C. 642 (F.B.) Fd.) : 65 P. L. 1922 7 P. 1; 1913 *Dur.* 24 Cr. 180 (L.) : 6 F. R. 1909 *Dur.* 34 A. 393 32 B. 184 : 29 M. 331.

3. Discovery of offence in the course of a subsequent proceeding.—The discovery of the commission of an offence committed with reference to a judicial proceeding may not be made till after the judicial proceeding in which it is said to have been committed is over. It may not be brought to light in the course of an enquiry made in some cognate matter in another judicial proceeding.

It would be multiplying the scope of S. 476, to hold that a court is not competent to deal with such an offence, unless the discovery is made in the course of the very proceeding in which it has been committed—5 O. J. 622.

4. Duty of Courts to take action under S. 476.—It is the duty of every Court to take action of its own

prosecution resulting in a conviction—23 Cr. 609(N) (10 N. 177 and 9 N. 184 R.) see also 23 Cr. 605 (N).

5. Can a Court take action after it is functus officio? "The view which I take is that under the provisions of S. 476 Cr. P. C. proceedings can undoubtedly be taken by a Court after the decision in the substantive case has been delivered and the Court is functus officio in respect of the decision of the substantive case."—Stuart J. in 44 A 642 ((01) A N. 177 Pd.).

6. Can the Court act in the face of opposite conclusion by another Court—Does the circumstance that another Court, which passed the final orders in the case, arrived at a different conclusion on the merits, take away the jurisdiction of the Court, which practically heard all the evidence before the case was transferred for decision to the 2nd. Court; to pass orders under S. 476 Cr. P. C.—Stuart J. in 23 Cr 603 (A) answered the question in the negative.

7. Notice when necessary—It is not necessary that a Court should give notice of its intention to take action under S. 476, Cr. P. C. against a party to a suit. But a notice is necessary where the person proceeded against had no opportunity to cross-examine the witnesses on whose evidence his prosecution has been ordered. 44 M. J. 74; 19 A. J. 56; 22 Cr. 233 (Pat.).

8. Accused entitled to cross-examine witnesses—A person who is called upon to show cause under S. 476 Cr. P. C. has a right to place his case before Court, either by offering evidence on his own behalf, or by cross-examining the witnesses on behalf of the opposite party.—6 Pat. J. 146.

9. Enquiry must be made and order passed by the same Court—Either the trying Magistrate or the Court hearing the appeal is competent, after the necessary notice and enquiry, to direct the prosecution of a witness for perjury, but the appellate Court cannot direct the Trial Magistrate to make the enquiry and upon his report, order the prosecution. The enquiry must be made and the order passed by the same Court—24 O. G. 258.

10. When no preliminary enquiry is necessary—Where the Court granting the sanction to prosecute is already sufficiently acquainted with the facts of the case, there is no necessity for a preliminary enquiry before granting sanction—(82) A. N. 20.

11. Order which is not in the terms of S. 476—The following order: "A copy of this order will be sent to the District Magistrate... with a request that he will cause proceedings to be instituted

against the other three persons. If the District Magistrate decides to institute proceedings, he should inform the C. I. D. who investigated the matter" was held to be an order not in the terms of S. 476—23 Cr. 291 (A).

12. Order must set forth elements of the offence.—A Magistrate should not sanction a prosecution under S. 188, unless he thinks that all the elements necessary for a conviction are present. An order which does not set forth all the elements of an offence covered by it is therefore, without jurisdiction. (14 C. N. 234 (239) Fd.)—3 Pat. T. 103 (Pat.).

13. Conditional order is illegal—It has been held under S. 105 that no sanction can be granted of a provisional character in case certain conditions are satisfied in the future. It is the duty of the Magistrate before granting sanction to satisfy himself that there was, at the time of the order a *prima facie* case against the petitioners—35 M. 471.

14. Order must contain assignments of perjury—An order directing under S. 476 Cr. P. C. the prosecution of a person under S. 199 I. P. C. is bad if it does not contain the assignments of perjury, inasmuch as the accused is entitled to know the exact words which are alleged to have been used by him—21 Cr. 197 (A).

15. The words "committed before it"—In S. 476 Cr. P. C. are qualified by the words "in the course of a judicial proceeding" where applications containing forged signatures of a pleader were filed for return of documents, after the original suit and the subsequent proceedings in execution were finally disposed of, *held*, that these applications were not put in the course of judicial proceeding within the meaning of S. 476 Cr. P. C.—24 Cr 202 (C).

16. Prosecution for perjury—A person cannot be convicted of perjury for having acted maliciously or for having failed to make a reasonable enquiry in regard to the facts alleged by him to be true. It must be proved that he made some statement which he knew to be false or which he did not believe to be true. (22 Cr. 393 (A); 36 A. 362.) Where a question is put to a witness which is absolutely irrelevant and ought not to have been put to him, a false answer would not render him liable to prosecution for perjury (2 Pat. T. 359). A prosecution for a false declaration lies only when the same is made in reference to a judicial proceeding (2 L. J. 535) where a witness makes a statement which is false and at once admits this, and then states what is the real truth, he should not be prosecuted for giving false evidence. (230 P. L. 1511) A Joint Magistrate, after dismissing a complaint directed the prosecution of the complainant under S. 211 I. P. C. The complainant was convicted by the lower Court but acquitted on appeal. Thereupon the Joint Magistrate, who had in the meantime become the District Magistrate, ordered his

1. Resistance to attachment—legality of warrant—Where the warrant for the attachment of property was signed by the *Sheristadar* of the Court "by order" and was addressed to the *Baib* Nazir of the Court, held, that a resistance to the execution of such warrant, come within the purview of S. 476 Cr. P. C.—3 U. P. (Pat.) 41 (3 Pat. J. 636 Fd.)
2. False report to the Police—A report was made to the Police for an enquiry the alleged act was found to be a mere accident. The Police dropped the matter and did not report for any action against the informant and the case was entered as a "mistake of fact"; held that there was no complaint and no judicial enquiry could be held under the law. An order directing the prosecution of the importance under S. 211 I. P. C. was therefore illegal.—(2 Pat. T. 202)
3. Prosecution under S. 465 I. P. C.—An order under S. 476 Cr. P. C. for prosecution of an offence under S. 465 I. P. C. can be passed also against a person who is not a party to the Civil suit—e.g., a witness. 24 O. C. 367 (40 A. 24. 43 B. 300. 1 Pat. J. 293 Fd.)
- Judicial proceedings within S. 476.
20. (a) A proceeding under S. 14 of the Legal Practitioners' Act is not a judicial proceeding within the meaning of S. 476.—15 C. N. 269
21. (b) Proceedings in execution of decrees of Civil Court are judicial proceedings.—121 C. J. 618.
22. (c) Proceedings before a Collector acting under S. 69 sub-sec (3) of Bengal Tenancy Act are judicial proceedings.—48 C. 1086.
23. Nature of order under S. 476 Cr. P. C.—An order under S. 476 is not really a complaint though in the nature of a complaint.—3 Bur. T. 119.
24. Prosecution on basis of bond not produced in Court—N and S were prosecuted at the instance of C under S. 417 I. P. C. on the allegation that he (C) had been deceived into a compromise on the basis

of two forged bonds produced in two Civil suits by the bonds, were merely examined by a Court witness but not produced in Courts by C or given in evidence, and N and S were discharged. The Magistrate subsequently ordered the prosecution of N and S under S. 471 P. C. Held, as proceedings to which N and S. were parties, the Magistrate had no jurisdiction to take action under S. 476 Cr. P. C.—3 P. L. 1920.

25. Prosecution orders under S. 476 will not be stayed pending appeal—When an experienced Civil Court has ordered prosecution under S. 476, the proceedings before the Magistrate will not be stayed pending the decision in the appeal.—23 Cr. 84 (A): But see 31 M. 500 below
26. Power to stay proceedings—The High Court has power to stay proceedings under S. 476 (ordered by a Civil Court) in Criminal Courts till the appeal from that Court is disposed of.—31 M. 610
27. Revision of orders under S. 476 by Civil Court—

C. 367)

28. Orders by Revenue Courts—The High Court has no Jurisdiction, under S. 439 Cr. P. C. to entertain an application to revise an order passed by a Revenue Court, under S. 476 of that Code. Such an order, however, is open to revision under S. 115, Civil Procedure Code—6 Pat. J. 178 (See 40 C. 477 (F.B.))
29. Revision only in cases of serious irregularity—The power of revision can only be exercised where there has been some error of law, irregularity, abuse or failure to exercise jurisdiction, and not merely because the High Court might form a different opinion on the case from that formed by the Court below.—38 P. R. 1902.

476A. The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence or rejected an application for the making of such complaint; and where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.

476B Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon after notice to the parties concerned direct the withdrawal of the complaint, or, as the case may be, itself make the complaint which the subordinate Court might have been under section 476, and if it makes such complaint the provisions of that section shall apply accordingly.

Changes introduced.

See Notes under S. 476 above. These sections incorporate with appropriate changes the provisions

of sub-sec. (6) and (7)(a), (b) and (c) of S. 193 as they stood before the amendment.

Notes.

1. Jurisdiction of superior Courts to entertain application—Ordinarily an application for the prosecution of the person who has committed an offence in relation to a proceeding in Court, should be made in the first instance to the Court in which the alleged offence is said to have been committed, but this does not mean that the superior Court to which such Court is subordinate has no jurisdiction to entertain such an application. The two Courts, in this respect, have *prima facie* concurrent jurisdiction—22 Cr. 333 (C) (17 W. R. 46 1 A 17 (F.B) R.).
2. Subordinate Judge subordinate to District Judge—For the purposes of these sections, the Court of the subordinate Judge is subordinate only to the District Judge—See 26 C N. 1010.

3. Revocation of order—It was held in 1 A. J. 136 that the High Court had under S. 193 (6) power to set aside a judgment or order made by a

to the Court to which it is subordinate, and S. 410 is not intended to provide for a "succession of appeals or applications in revision."

S. 477.

Notes.

5. 477—Repealed by Act XVIII of 1923. (Power of Court of Session as to such offences committed before itself)

478. (1) When any such offence is committed before any Civil or Revenue Court, or brought under

Power of Civil and Revenue Courts to complete inquiry and commit to High Court or Court of Session.

the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by a High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the

High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(2) For the purpose of an inquiry under this section the Civil or Revenue Court may, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be accordance with the provisions of Chapter XVIII and of Chapter XXXIII in cases where that Chapter applies and shall be deemed to have been held by a Magistrate.

Changes introduced.

This section has been amended by the Criminal Law Amendment Act, (XII of 1923).

480. (1) When any such offence as is described in section 175, section 178, section 179, section 180

Procedure in certain cases of contempt.

or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue

Court, the Court may cause the offender, to be detained in custody and at any time before the rising

of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) Nothing in section 29.1 or in Chapter XXXIII shall be deemed to apply to proceedings under this section.

Changes introduced.

This section has been amended by the Criminal Law amendment Act (XII of 1923).

Notes.

Particulars to be recorded.—A Court proceeding under S. 480 Cr. P. C., must, in addition to other particulars, record the nature of the interruption or insult attributed to the accused. "It is obvious that the procedure prescribed by S. 450 Cr. P. C. punishing a contempt committed *in facie curiae* is of a summary character, and the Court taking action under that section is therefore, required to record certain particulars mentioned in S. 481 Cr. P. C. It was probably intended that these particulars, if properly recorded, would provide a safeguard against an abuse of power vested in Court and enable the Appellate Court to decide whether there was any material to warrant the conviction."—*Shadi Lal C. J.* in 2 L. 308.

Contempts of subordinate Courts.—The question as to

"... the law as to contempt of Court ..."

consisting of *Jenkins C. J.*, *Mukherjee J.*, and

opinion, such defects as exists, at present, in the law relating to contempts of courts other than the High Courts can be removed only by Legislature and that it is desirable to remove them.

Imputation against trying Judge in written statement.—The accused, while opening his defence, put in a written statement complaining that he was being tried by a prejudiced Judge. When asked to withdraw this expression, he refused. *Held*, that the accused was guilty of the offence of contempt under S. 228 I. P. C. as his intention was clearly to offer an insult to the Court.—46 B. 973.

Towns have the inherent Common Law powers in connection with matters of contempt which were exercised by the old Court of King's Bench and are now exercised by the King's Bench Division

487. (1) Except as provided in sections 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court * * * * *

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his

notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

Changes introduced.

The amendment (commission of the figures "477") is consequential upon the repeal of s. 477.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488 (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate not exceeding *one hundred rupees in the whole*, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) If any person so ordered *fails without sufficient cause* to comply with the order, and such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Enforcement of order. Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown on application made within three months from the date thereof.

(7) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(8) *Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or as the case may be, the mother of the illegitimate child.*

Changes introduced

- (1) "We notice that the original Bill proposed to raise from Rs. 50 to Rs. 100 the amount awardable as maintenance under S. 489. This proposal was rejected by the committee of 1916 but in view of the passing of the Maintenance Orders Enforcement Act 1921 which enables our Courts to enforce summary orders up to £ 2 a week, we think the limit in our own law might well be raised to Rs. 100" (*Joint Com. 1922*).
- (2) By substituting the words "without sufficient cause" for the word "wilfully" in cl. (3), the Legislature has removed an unnecessary restriction of the operation of the clause.
- (3) The new proviso to cl. (3) by laying down a time limit to the enforcement of maintenance orders ~~providing against defaulters~~
 clause, as we think that some period of limitation is required for the recovery of outstanding arrears." (*Sel. Com. 1915*).
- (4) Sub-sec (7) has been omitted in view of the amendment to S. 340 *supra* which makes the retention of this clause unnecessary.
- (5) The amendment to sub-sec (9) is a drafting amendment.

Notes:

1. Jurisdiction—S. 488 (9) Cr. P. C. requires that an application for maintenance should be made either in the district where the husband resides, or at the place where he last resided with his wife. Such residence does not include casual visits by a person to the house of his mother in law where his wife happens to be at the time—24 O. C. 249.
2. Meaning of "child"—"There is no limit of age placed by S. 489 for the maintenance allowance awarded under that section to be paid. Under the English law, the age is specified under various statutes from 13 to 16 years. But as there is no express specification in the Indian Law, no limit can at all be placed. It has, however, been held that maintenance is to be allowed till the child can maintain itself." *Jwala Prasad J.*—2 Pat. T. 109 (28 P. W. 1910; 9 L. B. 49 Ed.).
3. Note—The word "child" has been held to be a person who has not attained the age of majority—(37 M. 565; 23 Cr. 107 (N)). Under S. 488 Cr. P. C. a child who has attained majority is not entitled to claim maintenance from his father, as he is capable of earning his own livelihood (23 Cr. 107 (N)).
4. Refusal to cohabit no ground for granting separate maintenance—"I do not think there is anything in the Code which compels the Criminal Court to award separate maintenance to a wife whom the husband agrees to protect and maintain in a manner suitable to her position in life because he refuses to cohabit with her."—*Kumaraswami Sastri J.* in (1922 M. N. 265 (14 B. 269; 17 M. 260 (263) Ed.)
5. Incompatibility of temper no ground—Incompatibility of temper is no ground for claiming separate maintenance. A wife is not entitled to claim separate maintenance on the husband's contracting a second marriage and compelling her to live in one apartment with the second wife—31 P. R. 1882.
6. Father cannot refuse maintenance because child is not living with him—A father cannot refuse to maintain his children on the ground that they are not living with him—(12 Bur. R. 33). Even a valid divorce of the mother will not free the father from liability to maintain his children. (1 Bur. R. 193). Neither can a father refuse to maintain his children on the ground that they are living with their mother ((192'96) U. B. 67; 69; 1 L. B. 46). There is no provision in the Criminal Procedure Code for cancelling an order awarding maintenance to a child. (17 P. R. 1883).
7. Evidence as to means of husband must be taken—In a maintenance case by a wife, a Magistrate should take evidence as to the means of the husband before deciding the amount of maintenance to be granted ((83) A. N. 233).
8. "The Magistrate should ascertain the means of the husband."
9. Accumulation of arrears—In a case where the question arose whether arrears of maintenance for a long period should be recovered by summary procedure provided in S. 489; *held*, that in each case, the Magistrate ought to ascertain under what circumstances the arrears came to accumulate; and if there was no good reason why the applicant should not have applied with greater promptitude, whether it would be equitable and in accordance with the spirit of the Cr. P. C. to enforce payment of the accumulation. In the nature of things no husband could be expected to hold down a steady job and pay arrears of maintenance. Each year part of the arrears, and if so, for how many years (192) U. B. 3-421; see (99) U. B. 3-49; 4 Bur. R. 29.

10. Rs. 50 per month for each child.—A Magistrate may order the father to pay as much as Rs. 50 for each child, if each child is living separately with a different person; and the fact that all the children were at the time in the custody of the mother cannot affect the question of what should be paid to each child.—4 Bur. T. 139.
11. Can a wife contract herself out of maintenance?—The language of the section is inconsistent with a wife making a contract to absolve the husband from liability to maintain her. The object of the law is to prevent the wife from being a burden to other people, dependent on the charity of her

neighbours. The fact that the husband has a lump sum down, which being properly invested might have yielded a sufficient income to sustain her, is no answer to a claim for maintenance. If it is found that the sum so paid had been frittered away and the wife was incapable of maintaining herself.—(35) U. R. 45.

12. Talak need not be directly addressed.—According to the Hanafi Law, it is not necessary that the words of repudiation should be addressed directly to the wife to constitute a valid divorce. 537 (Str.); See 36 C. 194; (59) A. N. 85; C. M. 22; 4 C. 548.

459 (1) On proof of a change in the circumstances of any person receiving under section

Alteration in allowance.

monthly allowance, ordered under the same section, the Magistrate may make such alteration in the allowance as he thinks fit: Provided that if he increases the allowance the monthly rate of one hundred rupees in the whole be not exceeded.

trate may make such alteration in the allowance as he thinks fit: Provided that if he increases the allowance the monthly rate of one hundred rupees in the whole be not exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Court, any order made under section 458 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

Changes introduced.

- (1) The amendment is consequential upon that introduced into S. 458. The Court has now a discretion to award maintenance allowance upto a limit of Rs. 100.
- (2) Sub sec (2) removes a real deficiency. Courts had,

previous to the amendment, to give effect to Court decrees as having brought on "a change in the circumstances". The Code now contains provision for the enforcement of a decision of a competent Civil Court.

Notes.

1. Divorce after the order.—Where a wife whose husband has been ordered to pay her an allowance under S. 459 Cr. P. C. is proved to have been completely and validly divorced, a Magistrate is not only bound to refuse to enforce the order under S. 490 but is also empowered to alter the amount payable under it to "nothing" under S. 459, that is to say, he can set aside the order. In such cases the Magistrate is not only competent but is bound to inquire into the fact and the validity of the divorce.—17 N. 92 (19 W. R. 73; 21 P. R. 1894 *Reid. on*; 19 A. 50; 5 A. 226; 5 C. 558 *Dir.*).
2. Meaning of "change in circumstances"—The expression "change in the circumstances" in S. 459 of the Cr. P. C. means not merely a temporary or accidental change in one of such circumstances (such as salary) but a change in all the circumstan-

ces connected with the conviction of the person concerned.—(90) 11 A. N. 32.

3. Effect of Civil Court decree on a previous order of maintenance.—Where the husband obtains a decree in Civil Court for the restitution of conjugal rights after an order under S. 458 had been passed against him, and obtained possession of the wife, *held*, that although a subsequent Court decree superseded a previous order for maintenance, the Criminal Courts are entitled to enforce the conditions of the decree had duly complied with. If it is proved, that the husband is still refusing to maintain the wife and is ill-treating her, it will be open to the wife to apply for enforcement of the previous order passed in her favour under S. 458 Cr. P. C.—1 P. 133 (4 1906 Fd).

S. 490.

Notes.

Divorce as ground for refusing to enforce the order.—Where a wife whose husband has been ordered to pay her an allowance under S. 458 Cr. P. C., is

proved to have been completely and validly divorced, a Magistrate is bound to refuse to enforce the order.—17 N. 92; (00-02) L. B. 19.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*. 491. (1) Any High Court may, whenever it thinks fit, direct—

- (a) that a person within the limits of its *appellate criminal jurisdiction* be brought up before the Court to be dealt with according to law ;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of the commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively ,
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and
- (f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the State Prisoners Act, 1850, or the State Prisoners Act, 1858.

491A Any High Court established by letters patent may exercise the powers conferred by section 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the Governor General in Council

Power of High Court outside the limits of appellate jurisdiction.

ay direct.

PART IX

SUPPLEMENTARY PROVISIONS

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. (1) The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) The District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Local Government may prescribe in this behalf to be Public prosecutor for the purpose of any case.

Changes introduced.

The special provision for cases committed for trial to the Court of Session is done away with and all cases are now placed on a footing of equality. By substituting the words "such rank as the Local Government may prescribe in this behalf for the words "the rank of Assistant District Superintendent" the Code gives an ampler margin

of discretion to local Government. "There is a variety of nomenclature and we think it better to leave to the Local Governments to prescribe the rank of Police-Officers who may be appointed Public Prosecutors for the purposes of a particular case. (Joint Com. 1922).

494. Any Public Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal,—

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

Changes introduced.

- (1) "We propose to omit at the commencement of S. 494 the words "appointed by the Governor-General in Council or the Local Government." This will confer the power of withdrawal on any Public Prosecutor as defined in S. 4(1) and will,

draw from all or any of the charges as he thinks fit. This meets the objection raised in 2 C. J. xviii which is now overruled.

- (2) The words "either generally or in respect of any one or more of the offences for which he is tried" give a discretion to the public prosecutor to with-

(3) The words "in respect of etc." are consequential upon the amendment just mentioned.

(4) The addition of the words "in respect of such offence or offences" in sub sec. (b) is also consequential on the amendment referred to in para (2) above

Rulings rendered obsolete—S. A. 291 (F.B.) : 2 Wair 652 : 2 Weir 653 : 2 C. J. xviii.

Notes.

Order passed under S. 404 is judicial order.—An order passed under S. 494 Cr. P. C. by a Magistrate is a judicial order, and if the discretion vested in a Magistrate by that section is arbitrarily exercised,

ould
t to
400
) :

45 C. 1100

Note.—The reason for every such order should be recorded—48 C. 1105.

Complainant has no locus standi in police cases—Where a case has been started upon a police report, and the Court Sub-Inspector wants to withdraw the case, the Court acts without jurisdiction in rejecting the prayer for withdrawal, simply because the complainant wants to proceed with the case. In such a case the complainant has no locus standi to control the proceedings—*ibid.* (22 C. N. 69 : 4 Pat. J. 656 : *Burdett v. Abbot* (1811) 12 R. R. 450, R.).

Can Court of co-ordinate authority revive a case withdrawn under S. 494 Cr. P. C. ?—Where a case

accused on the ground that there is a *prima facie* case against him, except in accordance with the provisions of S. 437 (now S. 436) Cr. P. C.—15 S. 131 (3 C. 983 and 22 A. 106 *Reid on*).

6. Note.—“An order of discharge under S. 494 (a)

formerly and upon which there is a possibility of conviction—23 Cr. 236 (Pat.)

6. S. 494 governs other provisions of the Code regarding withdrawals—“Having regard, however, to the language of S. 491, there are good reasons for thinking that S. 494 really controls so far as this matter is concerned, namely, the withdrawal by the Police Prosecutor with the consent of the Court of the case against the accused, the other sections of the Cr. P. C.”—24 Cr 5 (C).

7. Non-compoundable case—An withdrawal by a private prosecutor in a non compoundable warrant case is not permissible. The only provision in the criminal procedure Code which authorises withdrawal in such cases are ss. 494 and 495 Cr. P. C—10 L. B. 375 (2 L. B. 165 *Diss.*)

495.

Notes.

1. Power of Police officer below the rank of Inspector to prosecute—The special local law, (Bombay District Police Act VII of 1867) has been preserved by the Code, whether intentionally or through

oversight. Therefore a prosecution instituted by a police officer below the rank of an Inspector, that is to say, a chief constable, was held to be valid—8 B. 534.

CHAPTER XXXIX.

OF BAIL.

496. When any person other than a person accused of a non-liaible offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail. Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his appearance as hereinafter provided. Provided, further, that nothing in this section shall be deemed to affect the provisions of section 497, sub-section (4), or section 117, sub-section (3),

Changes introduced.

The amendment gives legislative confirmation to the view taken in 22 M. J. 357 and 32 C. 80 which lay

down that the provisions of S. 107 cl. (4) are not subject to or controlled by s. 496 Cr. P. C.

497. (1) When any person accused of any non-bailable offence is arrested or detained without

When bail may be taken in case of non-bailable offence.

warrant by an officer in charge of a police-station, appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life.

sonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life.

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, in the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

Changes introduced.

case unless there appears to be reasonable ground for believing that the accused has been guilty of any offence punishable with death or transportation for life.

are of opinion that this decision goes too far and that in the end it will not tend towards the administration of justice (Joint Com. 1922).

- (2) As to the proviso to cl. (1) the following reasons were given by the Select Committee of 1916 : We would substitute for the word "minor" the words "any person under the age of 16." We

do not think that any minor over this age need be released merely on account of youth.

Effect of the changes—(1) Bail can now be granted to a person accused of a non bailable offence punishable with death or transportation for life, even if there are reasonable grounds for believing that he is guilty. The ruling in 21 Cr. 181 (All) and 6 M. 69 : 6 M. 63 : 1 L. B. 60 must therefore be regarded as superseded, in so far as they lay down a contrary dictum.

(2) Exception is made even in the cases of offences punishable with death or transportation for life in the case of persons under the age of 16 years or women or sick or infirm persons.

(3) Provision is made for release on bail between the date of the conclusion of the trial, and the date of the delivering of judgment, in cases in which the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any offence.

(4) Power is given to the High Court or the Court of Session to revise orders granting bail in non bailable cases.

Notes.

Relevant considerations in deciding bail applications—
In dealing with an application for bail it is relevant that the Court should consider what are the penal consequences of the act when proved, and what

is the nature of the offence charged, and whether the offence charged is or is not a bailable offence—
19 A. J. 693.

S. 503.

Notes.

Commissions should not be issued in case of important witnesses—The issue of a commission for the examination of an important witness such as an eye-witness, in a serious criminal trial is a pro-

cedure which is much to be deprecated and which should never be adopted except for the most cogent reasons—3 Pat T. 398.

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to such Presidency Magistrate, who thereupon may compel the attendance of, and examine, such

Commission in case of witness being within presidency town,

witness as if he were a witness in a case pending before himself.

(1A) When a commission is issued under this section to a Chief Presidency Magistrate, he may exercise his powers and duties under the commission to any Presidency Magistrate subordinate to him.

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876, section.

40 Vic., c. 46.

ges introduced.

First part of the amendment is a mere matter of drafting. The new sub-clause (1A) gives the

Chief Presidency Magistrate the power to delegate his duty to any other Presidency Magistrate.

55. (1) The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may deem relevant to the issue, and the Magistrate or officer to whom the commission is directed or to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or if not in person, may examine, cross-examine and re-examine (as the case may be) the said witness.

ges introduced.

Amendment is consequential upon the amendment to S. 504 Cr. P. C.

512.

Notes.

A person be forfeited, if the approver is examined under S. 512?—The mere fact that an accused person has been tendered pardon and examined under S. 512 in the absence of the absconding offender (who is also the principal offender) does

not render the pardon invalid. There is no substance in the distinction between a pardon tendered for the purpose of an inquiry and a pardon tendered for the purpose of securing evidence under S. 512 Cr. P. C. The proceeding under S. 512 is only

ancillary to the enquiry. If it is sought afterwards to proceed against the approver on the ground that he has given false evidence under S. 512 Cr.

P. C. the approver is entitled to plead the same as a defence—46 B. 129. (39 B. 611; 42 C. 72)

CHAPTER XLII.

PROVISIONS AS TO BONDS.

514 (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class, or, when the bond is for appearance before a Court, to the satisfaction of such Court, that such bond has been forfeited, the Court shall record the grounds of such proof, and may upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to cover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it, and it shall authorize the attachment and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 106 or section 118 or section 512 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, of a bond executed in lieu of his bond under section 511B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his estate or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved

Changed introduced.

- (1) The word "attachment" is substituted for the word "distress" to meet the case in (17) M. N. 105 which lays down that "it is difficult to say that the word 'distress' is used in S. 514 with reference to other than tangible moveable property.—See S. 514 (G).

- (2) Sub-clause (7) as redrafted by the Select Committee of 1916, made a certified copy of the judgment conclusive proof of the conviction. The Select Committee of 1922 has altered the redraft. "It was indeed suggested to us that we should make a

certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his estate or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved

- (3) The words "out of the party who gave the bond" may be required to find a new security." has been omitted as they were obviously in view the new sections 514 A. and 514 B.

Notes.

1. Liability of surety is irrespective of the legality or illegality of arrest.—Where a person stands surety for the attendance of another person before a Court and the latter fails to attend before that Court on the date fixed in the bonds the surety is liable under the bond even if it turns out that the arrest of the principal was illegal.—2 L. 264
2. Fine cannot be deducted from surety's deposit.—Fine cannot be deducted from the money deposited by a surety for the appearance of the accused, even if the surety and the accused are brothers and even if they be assumed to be members of a Joint Hindu family.—19 A. J. 887.
3. Surety bond should be strictly construed.—A surety bond in criminal cases must be strictly construed, and a surety cannot be required to pay the amount of his bond as the result of an opinion held by a Court, as to what was in his mind when he signed it. He can be required to forfeit the amount only if the terms expressed in the bond are broken. Where therefore, a surety binds himself to produce an accused person on a particular date and he does so, his liability is discharged, and he is not bound for the non appearance of the accused on any subsequent date.—(1921) 4 U. B. 71
4. Notice to show cause must be given.—Before a warrant can issue attaching the property of a surety, he should be called on to show cause why he should not pay the penalty mentioned in his bond, and it must appear clearly on the face of the record that he had such notice given him.—15 W. R. 82
5. Prima facie proof of forfeiture necessary before issue of notice.—Sec. 514 lays down that it must be proved to the satisfaction of the court that the bond has been forfeited and the court shall record the grounds of such proof, and it is after such grounds have been recorded that the person bound by the bond may be called on to show cause why the amount should not be paid.—23 Cr. 478 (Pat.) [11 B II 170 Fd.]
6. Order may be made after lapse of period if proceedings initiated within period.—Where the proceedings for forfeiture of the bond were initiated within the time provided by the bond, but for one reason or other the enquiry was not taken up before the period had lapsed, held that there was no legal bar to the proceedings.—23 Cr. 623 (A) [25 A 202 Dist 1 C L 134 Diss.]

514A *When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court by whose*

Proceedings in case of insolvency or death of surety or when a bond is forfeited.

order such bond was taken, or a Presidency Magistrate or Magistrate of the first class, may order the person from whom

such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

514B. *When the person required by any Court or officer to execute a bond is a minor, such Court or*

*Bond required from a minor
surety or sureties only "*

officer may accept, in lieu thereof, a bond executed by a

Changes introduced.

The former provides for the taking of fresh security on the original surety dying or becoming insol-

vent. The latter has been added "to provide for the case of a bond being required from a minor."

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

516A. *When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence,*

Order for custody and disposal of property pending trial in certain cases.

is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for

the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order to be sold or otherwise disposed of.

Changes introduced.

S 517 provides for the disposal of property regarding which or by means of which an offence has been committed at the conclusion of the trial. The new section 516A is intended to enable the Court to make orders for proper custody or disposal

before conclusion of the trial, when such property is liable to speedy or natural decay. In view of this change in law, the rulings in Cr R 10 of '95 Pat. 957; 24 M. J. 1 must be regarded as *obsolet* [517-525 (61)]

517 (1) *When an inquiry or a trial in any Criminal Court is concluded, the Court may make such*

Order for disposal of property regarding which offence committed.

order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) *When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.*

(3) *When an order is made under this section such order shall, not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4) be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.*

Explanation—In this section the term "property" includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

(4) *Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.*

Changes introduced.

(1) "We prefer the term "delivery" to "restoration," and we think that in section 517 (3) it would be sufficient to allow one month for the presentation of an appeal, or an application for revision where this is allowed."—[*Sel. Com.* 1916]

(2) The word "confiscation" now inserted in cl (1)

meets the case in O C. N 957 in which an order of confiscation was held to be illegal.

(3) By providing for the taking of bonds for production of the property delivered to a party the Legislature has definitely overruled 19 M J. 519 [See 517-525 (13)]

Notes.

1 Property cannot be ordered to return property.—Sec. 517 Cr. P. C. is not applicable to a case where the property has already passed out of the custody of a court. Therefore a party who has

taken delivery from the Police of crops attached cannot be ordered to return the same to the opposite party.—(1921) Pat. 128

2. Bonafide pawnee of misappropriated goods—Where the accused was convicted in respect of certain jewellery for criminal breach of trust, it is not competent to the court to order the pawnee of the jewellery, in the absence of anything in the transaction to raise a presumption of guilty knowledge to return it to the rightful owner.—11 L. B. 217 [4 L. B. 25 Fd ; 4 L. B. 13 Doss]
3. Appeals—See Notes under S. 520 *post*.
4. Return of goods to pawnee—Where the pawnor stole the articles pawned from the pawnee and sold to an apparently innocent purchaser—held

that the articles, after conviction, should be made over to the pawnee and not to the purchaser. The purchaser could reimburse himself from the proceeds of the sale by the pawnee, if anything remained after the pawnee had paid himself in full.—24 Cr. 238 (C)

5. Is judicial investigation necessary preliminary to order for disposal?—"I think that, as a general rule, the Magistrate acting under S. 517 Cr. P. C. should pass orders according to his discretion, without making further enquiry" except in exceptional cases.—[Neubould J]—*Ibid*

520.

Notes.

Appeal lies to the District Magistrate.—An appeal from an order under S. 517 Cr. P. C. by a stationary Sub-Magistrate directing the return of the subject-matter of a charge to the complainant lies to a District Magistrate and not to a sub-divisional Magistrate inasmuch as the latter exercises appellate powers only on delegation by the former.—23 Cr. 387 (M) [Cr. Rev. Cases no 525 of 1905 and No. 84 of 1908 Fd.] ; Com. 24 Cr. 162 (M)

Omission by Appellate Court to order restitution.—Where in setting aside a conviction for theft an Appellate Court omits to pass orders under S. 520 Cr. P. C. for restoration of the property taken from the accused, if the omission is accidental, it can be subsequently corrected under S. 369 Cr. P. C. : 43 M J 87.

522. (1) Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property, the Court may, if it thinks fit when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the possession of the same
- (2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit
- (3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.

Changes introduced.

- (1) The scope of section is enlarged by the addition of the words "or show of force or by criminal intimidation." This meets the case in 38 P. W. 1912 which held that S. 522 has no application in the absence of a finding that criminal force has been used.—[517-525 (14A)]
- (2) The words "the person dispossessed" substituted for the words "such person" are modelled after the decision in 5 C. N. 374 that S. 522 enables the Court merely to restore the state of things which existed at the time of dispossession [See 517-525 (14)].
- (3) The new sub-clause (3) extends the operation of the section to Courts other than Courts of original

jurisdiction vide "the words" courts of appeal confirmation, reference or revision."

The sub-clause adopts the view of the High Courts in 19 C. N. 990 29 C 724 ; 27 A. 415 ; 3 A J. 770 (1906) A. N. 256. 17 B R 922. 14 Cr. 172 (C) and is opposed to 25 C 630 ; 39 C 1020 ; 14 P. R 1919 which must be regarded as overruled.—See Notes 517-525 (131-133).

- (4) The words "which may be made by any Court of appeal, confirmation, reference or revision" are substituted for the words "which may be made by any Court of appeal, confirmation, reference or revision" with slight verbal alterations and substituting a period of one month for six months from the date

of conviction, as the time within which an application for restoration must be made. We do not think that an order of restoration need be made simultaneously with the conviction; but we think

that any application for such an order should be made promptly and that one month is a reasonable time to allow for this purpose.

Notes.

1. Criminal force used against property as opposed to person—A conviction for criminal trespass will not entitle the complainant to seek his remedy under S. 522 Cr. P. C., unless there is a finding of the Court convicting the accused, that the offence was attended with the use of criminal force as defined in S. 350 I. P. C. against the person (and not the property of the complainant)—2 Pat. T. 120; see 31 M. T. 20; 26 M. 49.
2. (Note—In order to make S. 522 applicable to immovable property, it is not necessary that force should be an ingredient of the offence of which the accused is convicted, provided the use of force appears from the evidence—12 L. W. 227.
3. Order to be passed in favour of dispossessed party—An order under S. 522 Cr. P. C. is not passed against any person, but in favour of the party dispossessed.

provided the conditions necessary to give jurisdiction to make that order are proved (Cr. 575 (Pat)).

4. Order cannot be passed after acquittal—Magistrate after acquitting the accused cannot order under S. 522. The wording of the section is very clear and gives jurisdiction only when a person is convicted of an offence attended with criminal force.—21 O. C. 352.
5. Order for restoration should be made on conviction—Where the Appellate Court on conviction finds that no criminal offence was committed, it is its duty to restore the property in which they were before possession was wrongfully given to the alleged accused (1922) M. N. 356 (15 C. N. 1147 Fd.).

S. 523.

Notes.

1. Procedure where the person entitled to possession is not known.—Where the person entitled to possession of the property stolen is not known, the Magistrate should under S. 523, detain it and issue the proclamation required by the section. The property should be handed over after the lapse of six months to the person who establishes a claim to it—(1848) 2 Weir 676.

2. Inquiry as to title is unnecessary—S. 523 (2) does not require a Magistrate to make any inquiry as to title. He proceeds on such materials available before him and has to decide the question not who was in possession at the time the property was seized by the Police, but who was entitled to possession—J S 2.

525. If the person entitled to the possession of such property is unknown or absent and the

Power to sell perishable property.

property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion

that its sale would be for the benefit of the owner or that the value of such property is less than ten rupees, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall nearly as may be practicable, apply to the nett proceeds of such sale.

Changes introduced.

The amendment is one principally of drafting. The words "or that the value of such property is less than ten rupees" is a salutary provision.

Before the amendment a Magistrate could only sell such property as was "subject to speedy natural decay."

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case or itself try it. **526.** (1) Whenever it is made to appear to the High Court :—

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice or is required by any provision of this Code, it may order—

- (i) that any offence be required into or tried by any Court not empowered under sections 177 to 184 (both inclusive) but in other respects competent to inquire into or try such offence ;

- (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;

- (iii) that any particular case or appeal be transferred to and tried before itself ; or

- (iv) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the procedure which that Court would have observed if the case had not been so withdrawn

(3) The High Court may act either on the report of the lower Court or in the application interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by which shall, except when the applicant is the Advocate General, be supported by affidavit or in

(5) When an accused person makes an application under this section the High Court may to execute a bond, with or without sureties conditioned that he will, if so ordered, pay any which the High Court has power under this section to award by way of costs to the person opposing motion.

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made, and no order shall be made on the merits of the application unless at least twenty-

so Public Prosecutor of application section, have elapsed between the giving of such notice and the hearing of the application.

(6A) Where any application for the exercise of the power conferred by this section is dismissed, Court may, if it is of opinion that the application was frivolous or vexatious, order the app^y

to pay by way of costs to any person who has opposed the application any expenses reasonably incurred by such person in consequence of the application.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8) If, in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon.

(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.

Changes introduced.

- (1) The omission of the words "criminal" and "such" in cl (ii) makes S. 526 applicable to miscellaneous proceedings such as those under chapter VIII or XII. The rulings cited in S. 526 (8) relating to transfer of proceedings under S. 110, in Note No. 11, are still valid.

- (2) The following reasons given for the other amendments introduced into this section are interesting : "We have found S. 526 difficult to deal with. One class of opinion presses for greater safeguards against frivolous vexatious or dilatory applications for transfer. Another class deprecates any measure which makes a transfer more difficult to obtain. We think it is unavoidable to retain in the Code some provision for the compulsory adjournment of a case when an intention to apply for a transfer has been notified. But we recognise that the provisions of the section, as they stand have lent themselves to gross abuse, and therefore we feel that certain safeguards are necessary. Without

sub sec. (6A) was superfluous in view of the provisions of S. 517.

- (3) "We consider that the new sub-sec. (8) proposed by the Bill was unsatisfactory in several respects. The opening words of the sub-sec. contemplated notification at any stage of the case, provided that it was made before the commencement of a day's hearing. But words occurring later in the sub-sec. indicated that its application was confined to a notification made before the accused was called upon to enter on his defence. The proviso, therefore, which dealt with an intention to apply for a transfer formed after the accused had entered on his defence, was not a true proviso to that sub-sec. We considered whether sub-sec. (8) should not refer to an application made at any stage, and whether in such case, discretion as to an adjournment should not be left with the Court except when the applicant gave security, in which case, the adjournment should be compulsory. On the whole, however, we have decided in favour of rejecting the proposal to provide for a bond. Apart from other objections, we think it was calculated to enhance the delays involved by S. 526. Our amendment of the Bill therefore provides for a compulsory adjournment at any stage of the case except that a Sessions Court may refuse to adjourn when it is of opinion that the application has been unreasonably delayed. (See Com. 1922). The following rulings have lost their authority in view of the amendments in heated above : 33 C. 1183, 1. S. 35, 10 O. J. 218, 4 B. T. 213 : 8 C. N. 77 : 35 M. 701 : 85 P. L. 1901.

will enable the High Court, in cases where it is of

11. We think the last sentence of new

Notes.

1. Object of the provisions.—In making provision for the transfer of cases, the law has regard not so

suspicion and distrust of the Tribunal and so to the administration of order v. Date

2. Refusal to adjourn under sub-sec. (8) vitiates the trial—A Magistrate is bound to postpone the hearing of a case for the purpose of enabling a party to apply to a higher Court for a transfer, and his refusal to do so renders the subsequent proceedings voidable, if not void.—33 C. 1183 : 1 P. R. 1913 : 22 Cr. 717 (L).

When refusal to adjourn is justified.—Under S.

for his defence. But where, before he is called on for his defence, he has ample time to make such an application, and does not do so, the legality of the proceedings of the Magistrate cannot be questioned.—18 A. J. 1145 : 11 C. N. 507 : 8 C. N. 77 Not Fd. (12) M. N. 1121 Appd.

Affidavit by the accused is permissible under the law—When an accused person makes an application for the transfer of a case against him, he is not precluded by S. 342 Cr. P. C. from making an affidavit in support of such application, nor would there be any bar to his being prosecuted for making a false statement in the affidavit.—3 L. 46 (23 A. 371 Diss.)

What are valid grounds for transfer.—

(1) The fact that the trying Magistrate has permitted a private individual to discuss with him the case, and to write to him slips and chits about it is a sufficient ground.—2 Pat. T. 198

(2) The fact that a Magistrate exhibits haste in recording the statement of an accused person before all the evidence for the prosecution is concluded, is sufficient to create an apprehension.—18 A. J. 1145 (12 A. J. 736 : 19 A. 64 R.).

7. (3) The fact that a Magistrate acts with some rapidity in the trial of a case, and refuses to grant a short adjournment to enable the accused to prepare his cross examination of the prosecution witnesses, thereby depriving him of a full opportunity of putting forward a defence.—2 Pat. T. 297.

8. (4) Where in framing charges against the accused the Magistrate uses the expression, "*Jurm sabit hai*" (the offence is established) it is sufficient to entitle the accused to get the case transferred to some other Magistrate.—23 Cr. 168 (L).

9. (5) Where the Magistrate just before he heard the case, went to the scene of occurrence with the complainant, his act was improper and the case should be transferred from his file.—165 P. L. 1901.

10. (6) Discussion of a criminal case at a club by the Civil Surgeon or any of the other officers who are likely to be concerned in the disposal of it before a Sessions Judge who is to try the case, is a sufficient ground for transfer of the case from the Court of that Sessions Judge.—19 A. J. 946

What are not valid grounds for transfer—

11. (1) Where certain strikers against a Navigation Company are placed on their trial under ss. 508 and 143 P. C. before the District Magistrate, it is no ground for the transfer of the case that the District Magistrate has been taking precautions against the intimidation and illegal picketing indulged in by the strikers.—23 Cr. 88 (C).

12. (2) The fact that a Sessions Judge has tried the appeals of some of several persons convicted of dacoity and dismissed the appeals is not a valid ground for transfer of the appeals of the remaining persons.—2 U. P. (A) 421.

8A. (1) Where any person subject to the Naval Discipline Act or to the Army Act or to the Air

Force Act is accused of any offence such as is referred to

Court to transfer for trial to itself in

cases. in proviso (a) to section 41 of the Army Act, the Advocate General shall, if so instructed by the competent authority, the High Court for the committal or transfer of the case to that High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall thereafter try the case by jury

(2) The Governor General in Council may, by notification in the Gazette of India, declare any to be the competent authority for the purpose of issuing instructions under sub-section (1) in regard class of cases specified in the notification.

res Introduced.

—This section has been inserted by the Criminal Law Amendment Act (XII of 1923).

27. (1) The Governor General in Council may, by notification in the Gazette of India, direct transfer of any particular case or appeal from one High Court to another High Court,

from any Criminal Court subordinate to one High Court, to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

Changes introduced.

The amendment makes S. 527 applicable to miscellaneous proceedings.

Sessions Judge may withdraw cases from Assistant Sessions Judge.

523. (1) Any Session Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him.

(2) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

District or Sub-divisional Magistrate may withdraw or refer cases.

(3) The Local Government may authorise the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.

(5) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(6) The head of a village under the Madras Village-Police Regulation, 1816, or the Madras Village-Police Regulation, 1821, is a Magistrate for the purposes of this section.

Changes introduced.

(1) The operation of this section is now extended to Sessions Judges, who, be it noted, had no power of withdrawal of cases made over by them to Assistant Sessions Judge, before the amendment.

(2) The new sub-sec. (4) follows the case 9 Cr. 300 which lays down that a Magistrate authorised under S. 523 to transfer a case is competent to withdraw

it to his own file. This power is already given by S. 192 *Supra*.

(3) The new sub-clause (6) overrules 25 M. 394 and 15 M. 24 (see 523 (48)) which laid down that the operation of S. 523 is limited only to cases of theft tried by village Magistrates.

Notes.

Notice and record of reasons.—Although strictly speaking, it is not necessary to issue notice before transferring a case under S. 523 Cr. P. C. the practice is to do so. The order of a District Magistrate

transferring a case under S. 523 Cr. P. C. without recording reasons for the transfer is bad and is liable to be set aside.—24 Cr. 137 (L).

CHAPTER XLIV (A).

SUPPLEMENTARY PROVISIONS RELATIVE TO EUROPEAN AND INDIAN BRITISH SUBJECTS
AND OTHERS.

528A. (1) Where, in any case to which the provisions of Chapter XXXIII do not apply, any person claims to be dealt with as an European or Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall deal with him accordingly.

(2) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the Court of Session, and such person repeats the claim before such Court, such Court shall, after such further inquiry, if any, as it thinks fit, decide the claim, and shall deal with such person accordingly.

(3) When any Court before which any person is tried rejects any such claim as aforesaid, the decision shall form a ground of appeal from the sentence or order passed in such trial.

528C. Where a person, not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject, is dealt with as an Indian British subject or, not being an European (other than an European British subject) or American, is dealt with as an European or American, and such person does not object, the inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid.

528D. (1) Unless there is something repugnant in the context, all enactments made by the Governor General in Council or the Indian Legislature which confer jurisdiction on Magistrates or on the Court of Session over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects.

Changes introduced.

Note—A new Chapter XLIV (A) containing ss. 524A to 528D has been inserted by the Criminal Law

Amendment Act (XII of 1923).

S. 531.

Notes.

1. Case made over to Additional Sessions Judge ultimately heard by the Sessions Judge.—Where a Sessions Judge makes over a criminal appeal for decision to an Additional Sessions Judge, working in the same Jurisdiction as himself and empowered to try cases or appeals made over to him by the Sessions Judge but subsequently, after notice to the parties hears the appeal himself, he does not act outside

his jurisdiction inasmuch as the making over of a case is not "transfer" of the case—19 A. J. 95

2. Offence committed outside jurisdiction.—In the absence of prejudice, or of a failure of justice, the conviction of an accused person for an offence under S. 41 P. C. by a Magistrate outside whose territorial jurisdiction the offence was committed, is a mere irregularity cured by S. 531 Cr. P. C.—34 C. J. 200

S. 533.

Notes.

1. S. 533 applies only when there is a written record.—S. 533 Cr. P. C. can only be invoked when there is some written record but that record is defective, through some error in not strictly following the provisions of S. 361, the object being to take such records out of the excluding provisions of S. 91 of the Evidence Act—(1921) M. N. 779.
2. Omission to enquire whether confession voluntary not covered by S. 533.—The omission to question the accused before recording his confession as to whether he was making it voluntarily was a material omission which prejudiced him, and we are of opinion that the defect is a fatal one, not curable by S. 533 and that the confessions must, therefore, be excluded.—2 L. 325 (3 L. B. 173 : 3 L. B. 213 : 9 M. 224 : 17 C. 862 : 52 P. R. 1887 R.).

3. Informalities may be cured by evidence of records Magistrate.—"S. 533 Cr. P. C. completely cures any formal defects which might have been made in the recording of the confession. The Magistrate himself was called, and he swore that he had all Police removed from the Court room and all had the handcuffs removed from the accused's hands, he asked the accused whether he was tutored by anybody and after being satisfied that the accused was not tutored by anybody, he recorded his confession. He admitted having recorded the confession in English but says that he translated to the accused who admitted the statement to be correct and fixed his thumb mark thereto." *Stuart and Ryces JJ* in 24 Cr. 6(A) ((91) A. N. 55 (92) A. N. 60 : 23 B. 221 Fd. : 17 C. 862 Diss.).

Omission to give information under section 447.

534. An omission to inform under section 447 a person of his rights under Chapter XXXIII, shall not affect the validity of any proceeding

Changes introduced.

This section has been amended by the Criminal Law Amendment Act XII of 1923.

Conviction under S. 352 I. P. C. after charging under S. 147 is cured by S. 535 Cr. P. C.—Where the accused were charged under S. 147 I. P. C. but ultimately

Finding or sentence when reversible by reason of error or omission in charge or other proceedings,

537. Subject to the provisions hereinbefore contained no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or an appeal or revision on account—

- (a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) * * * * *

- (c) of the omission to revise any list of jurors or assessors in accordance with section 324, or

(d) of any misdirection in any charge to a jury unless such error, omission, irregularity, or misdirection has in fact occasioned a failure of justice.

Explanation.—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Changes introduced.

"Having regard to the new sections introduced into the Code, the amendments are—"

I. Charges.

Objection may be taken at any stage.—An objection as to misjoinder of charges in a criminal case whenever and wherever taken is fatal to the conviction and there must be a retrial.—19 C. J. 633.

Violation of the provision of S. 233 Cr. P. C.—S. 233 Cr. P. C. requires that a separate charge should be framed in respect of every distinct offence where the learned Judge lumped all the charges together in a manner which is contrary to the provisions of S. 233, but the irregularity in the absence of prejudice was held not to vitiate the trial.—8 O. J. 10. 23 Cr. 320 (S) (41 C. 66. 19 C. N. 972 Fd.).

Disregard of express provisions.—Where one of the three offences was not committed in the course of the same transaction but all the three were tried together held that the disregard of an express provision of law as to the mode of trial is not a mere irregularity such as could be remedied by S. 537 Cr. P. C.—23 Cr. 268 (L).

Stolen property recovered separately from the accused.—Where stolen property is recovered from the possession of several persons at different times, there should be a separate trial under S. 411 I. P. C. of each of such persons. The joint trial of such persons is illegal, and the illegality is not curable by the application of S. 537 Cr. P. C.—19 A. J. 815

Failure to enter actual words in a charge of perjury.—

— 19 C. J. 633 (S).

II. Examination of the accused.

Examination before evidence completed.—The examination of an accused person before all the witnesses for the prosecution have been examined is a fatal defect.—430 : 24 Cr.

Examination in summons cases.—The procedure prescribed by S. 342 Cr. P. C. is binding on the Courts,

even in summons-cases, and the omission to comply with the provisions of that section is not a mere irregularity such as can be cured under S. 537 Cr. P. C. but is an illegality vitiating the trial.—23 Cr. 154 (L) (1 P. R. 1919. 45 B. 672 Fd.).

Omission to examine after charge.—Where in a warrant case the accused is examined only before the charge is framed, and not also after the prosecution witnesses have been recalled for further cross-examination under S. 256 Cr. P. C. the procedure cannot be regarded as a mere error, omission or irregularity such as is contemplated in S. 537 (a) of that Code, because the accused is entitled to an opportunity of stating his case both before and after the charge is framed.—24 Cr. 124 (M) (41 C. 743 : 6 Pat. J. 644 Fd.).

III. Judgments.

Indecent question after setting accused at liberty.—Where

Judgment pronounced by another Magistrate.—A Magistrate before delivering the judgment became too ill to come to Court and sent it to another Magistrate to be delivered. Held, that the irregularity was completely covered by S. 537 Cr. P. C.—24 Cr. 173 (A).

IV. Misdirection.

How to find out whether jury has been misdirected.—In determining whether there has been misdirection to a jury, the charge must be judged as a whole, and it must be seen whether the case for both sides has been fairly put, so that the jury understood what they had to decide and could come to a right decision.—34 C. J. 512

Rule as to accomplices evidence.—The omission on the part of the Judge to tell the Jury that it is dangerous to convict on the evidence of an accomplice alone when uncorroborated in material particulars by independent testimony is an error in law which if it materially prejudiced the prisoner, justifies the High Court in setting aside the verdict.—(1859) Pat. 466.

Misdirection in a charge under S. 211 I. P. C.—Where in a charge under S. 211 I. P. C. "W"

merely directed the jury that, if they believed the charge of dacoity, which had been instituted by the accused to be false, they should acquit the accused.

charge of dacoity, there was no just ground for the charge, the conviction should be set aside and fresh trial should be ordered.—1 G. N. 301.

V. Other irregularities.

Simultaneous trial of two cases with the aid of some assessors.—Where the accused in two separate cases were placed in the dock simultaneously and both cases were heard, simultaneously with the aid of the same set of assessors, *held*, as the mode of trial was illegal as being "prohibited in the mode," S. 537 had no application.—11 L. R. 73

Refusal to adjourn to give opportunity for transfer.—The refusal of a Magistrate to give opportunity to an accused person to apply for a transfer of a

case, is an illegality which vitiates the whole proceeding.—22 Cr. 717 (L) (33 G. 1183 Fd.).

Final order passed by the First Magistrate after a referred to another Magistrate.—Where a Magistrate has directed the party, in a proceedings under S. 133 to appear before himself he cannot refer the matter for enquiry to some other Magistrate and then pass the judgment on the matter submitted.

Sanctions.—The rulings in 48 G. 867 (F. B.) and 10 R. 177 relate to sanction and are therefore obsolete.

S. 537 does not cure want of sanction required by special Acts.—S. 537 only cures the want of sanction in those cases which are covered by S. 195 Cr. P. C. the absence of sanction required by any other provision of the law cannot be remedied.—(23 C. 303 (S)). An irregularity in a sanction, as required by S. 314 of the U. P. Municipalities Act, cannot be cured by S. 537 Cr. P. C. which is not applicable to sanction under that section (19 A. J. 942).

538. No attachment made under this Code shall be deemed unlawful, nor shall any person making

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

Changes introduced.

The substitution of the word "attachment" for the word "distress" is consequent upon the amend-

ment introduced in S. 396. *supra*.

539A. (1) When any application is made to any Court in the course of any inquiry, trial or other pro-

Affidavit in proof of conduct of public servant.

ceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

Changes introduced.

(1) "We think that the provisions of the section should apply to all criminal proceedings including appeals. We would allow the applicant to give evidence by

affidavit and would leave the Court a discretion to require this to be done in any case, provided that no accused person should be compelled to

make an affidavit himself (*Sel. Com. 1916*) The Select Committee of 1922 deleted the word "appeals" and the proviso with regard to the accused. "We have omitted the proviso contained in sub sec (1) of the proposed new S. 539 providing that an accused person shall not be compelled to make an affidavit, as, in the first place, it will be extremely difficult to say what the expression

"accused person" means, and secondly the proviso is in conflict with the provisions of sub-sec. (4) of S. 526 (*Sel. Com. 1922*).

- (2) The word "any Magistrate" renders obsolete 14 C. 653 which laid down that a Deputy Magistrate had no power to administer oath to a person making a declaration in the form of an affidavit and affirms S. C. N. xi

539B. (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other

Local inspection.

place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost:

Provided that, in the case of a trial by jury or with the aid of assessors, the Judge shall not act under this section unless such jury or assessors are also allowed a view under section 293

inges introduced.

- 1) "We are of opinion that the Judge or Magistrate should only view the locus in quo for the purpose of properly appreciating the evidence given at the

reason: "We also think that notice should be given to the parties of the intention of the Judge or Magistrate to visit the locus" (*Sel. Com. 1916*.)"

- (3) "We think it desirable that the copy of the memorandum referred to in sub-sec. (2) of the new S. 539B shall be given free of cost. (*Joint Com. 1922*).

- 2) The words "after due notice to the parties," were introduced by the *Sel. Com. 1916* for the following

540.

Notes.

- Prosecution witness examined on initiative of Court—
A witness whom the prosecution declines to examine and who is examined by the Court on its

own initiative, is a witness called by the Court within the meaning of S. 540 Cr. P. C.—24 Cr. 193 (C).

540A. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such

provision for inquiries and trial being held in absence of accused in certain cases.

used is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in absence, and may at any subsequent stage of the proceedings direct the personal attendance of such used.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

Changes introduced.

- (4) "Our sub-sec (1) provides for the case of an accused who is represented by a pleader, and whose personal attendance can be dispensed with. Sub-sec (2) provides for the case of an accused who is not so represented, or whose continued personal attend-

ance may be necessary, and allows the Court in such a case either to adjourn the trial of all the accused, or so order the particular accused to be tried separately." (Sel. Com. 1916)

545. (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or

Power of Court to pay expenses or compensation out of fine.

confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part

of the fine recovered to be applied—

- In defraying expenses properly incurred in the prosecution;
- in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.
- when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possessor of the person entitled thereto

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Changes introduced.

- (1) By providing for the power of the Court to com-

- (2) The words "or of having voluntarily assisted in disposing of" were added by the Joint Committee of 1922: "In the new sub-cl. (c) to be added to S. 545 we have added a reference to the offence specified in S. 414 of the Indian Penal Code."

545)

Notes.

- Compensation to innocent purchaser of stolen property—is now allowed by law. See Note No. (1) above. The ruling in 46 B. 393 (B) is now obsolete
- Courtfees awarded to complainant in cognizable case—Where a person accused of a non-cognizable offence is convicted of a cognizable offence, the Court cannot legally direct him to pay the expenses

incurred by the complainant under S. 31 of the Court-fees Act, inasmuch as that section applies only to cases where the accused has been convicted of a non-cognizable offence. The expenses so incurred can, however, be awarded to the complainant as compensation under S. 545 Cr. P. C.—Rat. 397.

Order of payment of certain fees paid by complainant in non-cognizable cases,

545A. (1) Whenever any complaint of a noncognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant—

- (a) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and
- (b) any fees paid by the complainant for serving processes on his witnesses or on the accused, and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.
- (2) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision.

Changes introduced.

- (1) This new section confers on the Court the power to compel the accused to pay, in the case of conviction, the process fees incurred by the complainant in prosecuting the case.
- (2) "We have added a new sub-sec. 516A (2) to enable an order under this section to be made by a High Court in revision."

(3) "We think the Court should not be bound to exercise the power conferred by the new R. 516A in *trial cases*, and have accordingly substituted the word "may" in sub-sec. (1) of the proposed new subsection with consequential alteration in sub-sec. (2)" (Sel. Com. 1912.)

547. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine.

Changes introduced.

"We think that a small amendment is required in S. 547, as the Code already contains various provisions for the recovery of e.g. costs (S. 148 (3)), compensation (S. 250 (2)) maintenance (S. 498 (3)),

as if they were fines. We propose therefore to amend R. 517 by inserting after the words "under this Code," the words "and not otherwise specifically provided for" (Joint Com. 1922).

Notes.

Scope of the section—R. 517 Cr. P. C., only provides a summary method of realising "money payable"

and these words cannot be stretched so as to include livestock or other goods—23 Cr. 157 (1).

556.

Notes.

The explanation to the section.—The explanation to S. 556 is "The explanation to the section is—"

any case" In R. 556 Cr. P. C. are comprehensive enough to include the hearing of an appeal. Where, upon the allegations of an official Receiver, a District Judge presents a complaint against an insolvent under S. 67 (2) of the Provincial Insolvency Act he is a party to the case, although he has little or nothing to do with the prosecution. Consequently in the event of the insolvent being convicted the District Judge would be disqualified under S. 556 Cr. P. C. from hearing an appeal against the conviction as Sessions Judge—14 P. W. 1922 [23 C. 41 [45] P.] 9 N. 81. (29) A. N. 74. But see 24 Cr. 144 (A).

District Magistrate acting as Inspector of Factories—A District Magistrate, who as Inspector of Factories directs the District Engineer to visit a factory and see whether certain directions have been carried out, is precluded by the provisions of S. 250 Cr. P. C. from trying a prosecution based upon the report of the District Engineer—22 Cr. 71 (1); see (97-01) U. R. 125 : (97-01) U. R. 133 : (97-01) U. R. 135

Consent of the party—The consent of a party concerned cannot effect the absolute disqualification imposed by R. 556 Cr. P. C.—45d [32 A. 615 P.]

Officer of Municipality cannot try Municipal

Scope of the words "try any case."—The words "try

member or an office-bearer of a Municipality is debarred from trying a case, whether singly or as member of a Bench, arising out of the proceedings of the Municipality or to which the Municipality is a party—23 Cr. 704 (L) (2 P. R. 1895 : 5 P. R. 1896 : 5 S. 137 : 2 C. 23. Fd.)

Cantonment Magistrate also Secretary of the Cantonment Committee—Where a prosecution is ordered by a Cantonment Magistrate in his capacity as Secretary of the Cantonment Committee, it is advisable that the case should be tried by some Magistrate other than the Cantonment Magistrate—24 Cr. 128 (A).

Instrumentality of the trying Magistrate in bringing

about the prosecution.—A Municipal Commissioner invited the attention of the Executive Officer of the Committee to the infringement of a Municipal Bye-law by the accused. The Executive Officer called the attention of the Health Officer who instituted proceeding against the accused. The case was tried by a Bench of Honorary Magistrate of which that Municipal Commissioner was a member, *held*, that the Municipal Commissioner was neither personally interested in the success of the prosecution, nor a party to it within the meaning of S. 556 Cr. P. C.—24 Cr. 135 (A) : 2 Weir 721 (Adinarayan)

Provision for powers of Judges and Magistrates being exercised by their successors in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency-town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

Changes introduced.

“It would appear that the retention of S. 559 of the Code of Criminal Procedure 1898, was accidental, its provisions being covered by those of S 14 of the General Clause Act 1897. We have accordingly inserted the new S. 559A proposed by the

Bill as S. 559 in the place of the present section (Joint Com. 1922). The new section removes the difficulty sometimes experienced in ascertaining as to who is the successor of a partially transferred Magistrate.

561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Changes introduced.

S. 561A is modelled on S 153 of the Civil Procedure Code, with the difference that the inherent power of the Court to prevent abuse of process or to secure the ends of justice by making such orders as may be necessary to give effect to any order made under the Code, is recognized only in the case of the High Courts (See Note No. 4 under S. 435). “We think that it will be sufficient by the new S. 561A to recognise the inherent powers

of the High Court in this direction” (Sel Com 1911). We have slightly elaborated the provisions of this clause. We understand that a High Court has recently held that it has no power to direct the expungement of objectionable matter from a record. We think it desirable that it should be made clear that this clause is intended to meet such a case (Joint Com 1922).

First Offenders.

562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when

Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class or a Magistrate of the second class not specially empowered by the Local Government in this behalf and the Magistrate is of opinion that the powers conferred by this section should be exercised he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380

(2) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law.

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(4) The provisions of sections 122, 126A and 406A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section

changes introduced.

(1) "We have made several alterations in the new S. 562 proposed by the Bill

(2) "We have substituted the words "imprisonment for not more than three years" for the words "not more than three years imprisonment and fine"

(3) "We have added to the section of the Penal Code enumerated on sub-sec (1) S. 340 (theft in a dwelling house, and 420 (cheating and dishonestly inducing delivery of property, which we think may be appropriately included

(4) The other alterations which we have made are merely verbal. (S.L. Com. 1916)

(5) "We are of opinion that the salutary provisions of S. 562 of the Code are capable of extension—

more especially in view of the provisions of sub-sec. (3) of the new section proposed by the Bill. We have accordingly provided that any offender who is over the age of 21 years may be bound over on conviction of any offence not punishable with imprisonment exceeding seven years, and that all women and all persons under the age of 21 may be so bound over, when convicted of offences not punishable with death or transportation for life. We have altered the provisions as follows:—(3) We think that the High Court should in no case inflict a more severe sentence than could have been inflicted by the Court which tried the case. (Jual Com. 1922)

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30 Mooshee Harakh ..	6070 " Fokiroddin ..	6111 " 6 P R 1907	6170 Munirama 5 M T 29
31 Mooshee Synd Abdul ..	6071 " Hadi 26 A 173	6112 " 25 C 20 (P C)	6171 Muni Sami 15 M 39
32 " 11 B L (Appx) 8	6072 " Hanif ..	60 C 253	6172 " 2 Weir 323
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6176 " 24 A 151	6241 " Moopan—26 M 315	18 Cr. 519 (C)	6357 Nalluri—42 M 50
6177 " Lal 10 A 114	6242 " Swamiyar—	—12 CN 381	6358 Nalla—Bat 331
6178 " 30 C 916	30 M 166	6294 " —	6359 Namak—9 P R 15
6179 Munni 3 C N 81	6243 Muthish Chetti—29 M 190	6295 Nalishat—19 B 714	6360 Namakavar—13 C
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6181 " 13 P W 1907	6245 Muthirala—2 M 140	6297 Naba Sankar—31 C 1 (FB)	6362 Namdeo—Bat 61
6182 " 25 P R 1900	6246 Muthooram—4 BL 351	6298 Naela—2 Weir 150	6363 " Sakharu
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6184 " Ishwar	2 W R 10	6300 Nachimuthu—27 M J 37	6364 Namder—Bat 31
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6190 Murad 2 P R 1903	6252 " Komaran—27 M 525	6307 Nadditodiyil—2 Weir 125	6371 Nana Chand—2
6191 " 29 P R 1894	6253 " Kadam—26 M 190	6308 Nafar—21 Cr. 751 (C)	6372 " —2
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6194 Murar 4 A 147	6256 " Swamy—11 M J 54	6311 " —23 W R 24	6375 Nanalil—Dor T
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" Naraiab—19 B R 350	6194 Narayanappa—1 Weir 69	6547 " —15 Cr 712 (C)	6608 " " Gyl—(19-01) U B 127
" Naraiadas—Cr R 8 of 7-12-01	6195 Narayanasami—(11) M N 125	6548 " —11 P R 1859	6609 " " Po—2 Cr 474
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" Dhodiber—9 B R 896	6219 " —14 C 431	6572 Nawab—Cr R 31 of 14-4-03	6633 " Hman—1 L B 41 (F B)
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" Jivan—4 B R 687	6222 " —14 C 431	6575 " Khaja—8 C N 109	6636 " Hman—1 L B 41 (F B)
" Mahadu—2 B R 331	6223 " —14 C 431	6576 " Singh—30 B L (A C) 10	6637 " Hman—1 L B 41 (F B)
" Missar—30 J 137	6224 " —14 C 431	6577 " —10 P R 1906	6638 " Hman—1 L B 41 (F B)
" M. Pendshe—11 B II (C) 102	6225 " —14 C 431	6578 Nawab—12 Bur T 56	6639 " Hman—1 L B 41 (F B)
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" Raghunath—32 B 111 (F B)	6227 " —14 C 431	6580 " Zalkarkhan—9 C 409	6641 " Hman—1 L B 41 (F B)
	6228 " —14 C 431	6581 Nawani—(15) Pat 41	6642 " Hman—1 L B 41 (F B)
	6229 " —14 C 431	6582 Nawarish—A G N (14-02)	6643 " Hman—1 L B 41 (F B)
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	6232 " —14 C 431	6585 Nazimuddin—40 C 103	6646 " Hman—1 L B 41 (F B)
	6233 " —14 C 431		6647 " Hman—1 L B 41 (F B)
	6234 " —14 C 431		6648 " Hman—1 L B 41 (F B)
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	6321 " —14 C 431		6735 " Hman—1 L B 41 (F B)
	6322 " —14 C 431		6736 " Hman—1 L B 41 (F B)
	6323 " —14 C 431		6737 " Hman—1 L B 41 (F B)
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	6341 " —14 C 431		6755 " Hman—1 L B 41 (F B)
	6342 " —14 C 431		6756 " Hman—1 L B 41 (F B)
	6343 " —14 C 431		6757 " Hman—1 L B 41 (F B)
	6344 " —14 C 431		6758 " Hman—1 L B 41 (F B)
	6345 " —14 C 431		6759 " Hman—1 L B 41 (F B)
	6346 " —14 C 431		6760 " Hman—1 L B 41 (F B)
	6347 " —14 C 431		6761 " Hman—1 L B 41 (F B)
	6348 " —14 C 431		6762 " Hman—1 L B 41 (F B)
	6349 " —14 C 431		6763 " Hman—1 L B 41 (F B)
	6350 " —14 C 431		6764 " Hman—1 L B 41 (F B)
	6351 " —14 C 431		6765 " Hman—1 L B 41 (F B)
	6352 " —14 C 431		6766 " Hman—1 L B 41 (F B)
	6353 " —14 C 431		6767 " Hman—1 L B 41 (F B)
	6354 " —14 C 431		6768 " Hman—1 L B 41 (F B)
	6355 " —14 C 431		6769 " Hman—1 L B 41 (F B)
	6356 " —14 C 431		6770 " Hman—1 L B 41 (F B)
	6357 " —14 C 431		6771 " Hman—1 L B 41 (F B)
	6358 " —14 C 431		6772 " Hman—1 L B 41 (F B)
	6359 " —14 C 431		6773 " Hman—1 L B 41 (F B)
	6360 " —14 C 431		6774 " Hman—1 L B 41 (F B)
	6361 " —14 C 431		6775 " Hman—1 L B 41 (F B)
	6362 " —14 C 431		6776 " Hman—1 L B 41 (F B)
	6363 " —14 C 431		6777 " Hman—1 L B 41 (F B)
	6364 " —14 C 431		6778 " Hman—1 L B 41 (F B)
	6365 " —14 C 431		6779 " Hman—1 L B 41 (F B)
	6366 " —14 C 431		6780 " Hman—1 L B 41 (F B)
	6367 " —14 C 431		6781 " Hman—1 L B 41 (F B)
	6368 " —14 C 431		6782 " Hman—1 L B 41 (F B)

N

641 Nga Khan—1 L B 121	6689 Nga Po—1 Bur R 169	6729 Nga Po Tha—(13) U B	6774 Nga Sen (Gon)
642 " Kjin—1 Bur R 271	6690 " —5 L B 72	2 Cr P C 170	6775 " Shere T
643 " Kjin—(93-'00) L B 606	6691 " —10 Bur R 166	Thaung—	6776 " Shere B
644 " Kun—(93-'00) L B 637	6692 " —Aung—12 Cr. 392	(93-'00) L B 352	6777 " Shorya-
645 " Kun—(93-'00) U B 41	6693 " —	Thaw—	6778 " Shun—
645A " Kwe—(93-'00) L B 317	6694 " —	(12) U B 1 Cr P C 155	6779 " Shame—
646 " Kyaak—	6695 " —	Thin—2 L B 72	
(97-'01) U B 1 227	6696 " —	—2 L B 116	
647 " Kyaak—	6697 " —	Tok—3 U B 111	
(13) U B 1-q 160	6698 " —	—4 Bur T 60	
648 " Kyaak Khan—	6699 " —	Tu—(93-'00)	
(72-'02) L B 279	6700 " —	L B 213	6780 " —
649 " Kyaak Lon—	6701 " —	Yin—3 L B 97	6781 " —
(90-'02) L B 75	6702 " —	—(96)	6782 " —
650 " Kyaw—	6703 " —	U B Fr. 3	6783 " —
(92-'06) U B 1 32	6704 " —	(10) U B	6784 " —
651 " Kyaw—	6705 " —	1 Cr P C 2	6785 " —
(97-'01) U B 1 195	6706 " —	(10) U B	6786 " —
652 " Kyaw Zan—	6707 " —	1 Cr P C 1	6787 " —
(17) U B 11 91	6708 " —		6788 " —
653 " Kye—(93-'00) L B 53	6709 " —		6789 " —
654 " Kyin U—(74-'02) L B	6710 " —		6790 " —
271	6711 " —		6791 " —
655 " Kyon—(97-'00) L B 14	6712 " —		6792 " —
656 " Ia Galge—19 Cr 31	6713 " —		6793 " —
657 " Kye—1 Bur R 420	6714 " —		6794 " —
658 " Moung—	6715 " —		6795 " —
1 Bur R 412	6716 " —		6796 " —
659 " " Po—4 Bur T 258	6717 " —		6797 " —
660 " " Po—	6718 " —		6798 " —
(98) U B Cr P C 13	6719 " —		6799 " —
661 " Lum—1 L B 9	6720 " —		6800 " —
662 " Minda—(17) 3 U B 16	6721 " —		6801 " —
663 " Moung—	6722 " —		6802 " —
(98) U B Cr P C 15	6723 " —		6803 " —
664 " Mya—8 L B 308 (FB)	6724 " —		6804 " —
665 " " —(97-'01) U B 108	6725 " —		6805 " —
666 " " E—	6726 " —		6806 " —
(72-'02) L B 400	6727 " —		6807 " —
667 " Nan Da—	6728 " —		6808 " —
21 Cr 97 (U B)	6729 " —		6809 " —
668 " Ngwe—(97-'01) U B 21	6730 " —		6810 " —
669 " Nyan Wen—	6731 " —		6811 " —
(93-'00) L B 441	6732 " —		6812 " —
670 " Nyo Gyi—14 Bur R 38	6733 " —		6813 " —
671 " Nyuin—1 L B 40	6734 " —		6814 " —
672 " O—(97-'01) U B 61	6735 " —		6815 " —
673 " O—(97-'01) U B 71	6736 " —		6816 " —
674 " " Bok—	6737 " —		6817 " —
(93-'00) L B 169	6738 " —		6818 " —
675 " On—(93-'00) L B 203	6739 " —		6819 " —
676 " Pa Thaung—	6740 " —		6820 " —
(93) U B Cr P C 29	6741 " —		6821 " —
677 " Paik—3 U B 118	6742 " —		6822 " —
678 " Paing—(97-'01) U B 56	6743 " —		6823 " —
679 " Pan Hlaing—	6744 " —		6824 " —
8 Bur T 17	6745 " —		6825 " —
680 " " Tin—2 L B 137	6746 " —		6826 " —
681 " Paw—(97-'01) U B 28	6747 " —		6827 " —
682 " " —(93-'00) L B 281	6748 " —		6828 " —
683 " " —4 L B 239	6749 " —		6829 " —
684 " " —(97) U B	6750 " —		6830 " —
(Cr. P C) 1	6751 " —		6831 " —
685 " Paw Dun—	6752 " —		6832 " —
(93-'00) L B 582	6753 " —		6833 " —
686 " " Lon—	6754 " —		6834 " —
(72-'02) L B 289	6755 " —		6835 " —
687 " Po—(12) U B 151	6756 " —		6836 " —
688 " " —7 Bur 66	6757 " —		6837 " —
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N—P

Nga Than—5 Bur T 37	6876 Nilmoney Bhatt	6974 Noslat—5 C 586	6987 Obloy Chaudra—10 C 70
Thau Bo—1 Bur S 158	Acharjee—16 W R 58	6945 Noti—9 Cr 268	6988 " Oburn—2 C L 555
That—1 L B 8	6877 Nilmoney Poddar—	6946 Notobar—15 W R 87	6989 Oborno—5 L B 12
That U—2 L B 115	16 C 142 (F B)	6947 Noradi Bai—Cr R 1 of	6990 O'Brien—19 A 111
Thaug—	6878 Nibratan—23 C 951	10-3-02	6991 Ochlan—11 A J 809
11 Bur R 133	6879 Nimac—26 W R 7	6948 Nowab Jan—10 C 551	6992 Ofel—18 C N 180
Thia Ga—	6880 Nimchand—20 W R 11	6949 " Singh—21 W R 70	6993 O'Hara—17 C 612 (F B)
(04) 1 U B 13	6881 Nirmappa—7 B H 979	6950 Nrisantika—16 C N 580	6994 Olu bhansa—46 C 741
Thin—(04) U B 13	6882 Nipela—4 C 712	6951 Nrisinha—20 C N 1112	6995 Obiduddin—19 Cr 200
Ti—(10) 2 U B 157	6883 Niranjankal—13 P R 1918	6952 Nritta—10 C N 1088	6996 Okhil—1 C L 48
To Gale—7 L B 1	6884 Nirbhoe—4 C 376	6953 Nobas—8 W R 45	6997 Okhoy—19 W R 56
Ton—1 L B 46	6885 Nirbhakar—13 C N 580	6954 Nobico—3 W R (Cr let) 16	6998 " Kumar—7 C L 393
" —1 Bur S 595	6886 Nirghin—21 Cr 500 (Pal)	6955 Noggardi—19 W R 3	6999 Olu Mahomed—7 C N xxx
Tim Baw—	6887 Nirchan—12 M 36	6956 Nogueira—6 W R 41	7000 Omerto Lal—19 W R 32
(07-01) U B 1 94	6888 Nirnal Das—22 A 415	6957 Nulti—7 N 93	7001 Omesh—14 W R 1
Tim Baw—	6889 Nirnal Singh—12 A 67	6958 Numbur—5 M 381	7002 On Bu—1 L B 270
14 Bur R 38	6890 Nirmalkanta—41 C 1072	6959 Nund Lal—10 W R 31	7003 Ooyulmoyee—12 W R
Ton Bhang—	6891 Niruni—7 W R 19	6960 Nundo Gopal—1 C J 434	18 (F B)
(72-92) L B 476	6892 Nirunjan—2 N P 411	6961 " Kumaree—	7004 Oolaganadan—13 M 142
" Byn—	6893 Nisha Chandra—	21 W R 68	7005 Ooma Moya—13 W R 25
(93-00) L B 226	14 C 195 (C)	6962 Nur Aslam—21 P R 1884	7006 Oomoyan—(14) M N 521
" Tha—	6894 Nissankara—(15) MN 240	6963 " Bakhsh—17 P R 1902	7007 Oomroo—3 N P 317
(83-00) L B 78	6895 Nistarinee—7 W R 75	6964 " —22 P R 1017	7008 Ootumchand—2 N P 287
" Tha—	6896 Nistarani—23 C 44	6965 " Dia—3 P R 1892	7009 Opendra—12 C 473
(00-02) L B 57	6897 Nithura—6 A J 697	6966 " —27 P R 1903	7010 Oopoola—1 C N 40
Twet Pe—14 Bur R 37	6898 Nitto Gopal—13 W R 69	6967 " Khan—31 P R 1894	7011 Orinal—18 Cr 1006 (L B)
U—(93-00) L B 268	6899 Nityanand—9 C N 619	6968 " —20 Cr 99	7012 Oseuff—5 C 538
Wao Ye—2 L B 53	6900 " Roy—12 C 771	6969 " —Cr R 14 of	7013 Otandar—8 S 311
We—2 L B 317	6901 Nitya Pal—9 C N 633	6970 " Mahammad—	7014 Otarruddi—5 C N 372
Ya B—	6902 Nityamundo—21 W R 75	(0) A N 34	7015 Ottum—19 W R 38
(07-01) U B 1 224	6903 Niyamat—1 C J 930	6971 " Mahmud—Cr R 149 of	7016 Ottupura—33 M 18 (F B)
Yan Lin—	6904 Nizam—(86) A N 257	7-10 03	7017 Oudh Bohari—1 C L 143
(92-98) U B 1 14	6905 Nizam of Hyderabad—	19 C 52	7018 Outla—32 P R 1901
Yen Shin—	6906 Nona—11 C xxxv	19 P R 1905	
(02-03) U B 1	6907 Nobin Chand—25 W R 32	6972 " —1 S 72	
Yo—(02-06) U B 20	6908 " Chundar—8 C 560	6973 " —16 C 781	
Yon—(18) 3 U B 81	6909 " Chunder—25 W R 1	6974 " Mohamed—5 C J 249	
Niamtulla—6 B L (Ap) 0	6910 " —1 C 867	6975 " Muhammad—27 A 483	
Niaz Ali—5 A 17	6911 " —20 W R 70	6976 " —17 P R	
Niaz Ali—(05) A N 2	6912 " —	1905	
Nizali—5 N P 80	13 B L (App) 20	6977 " —11 P R	
Nizuliah—(89) A N 130	6913 " Done—2 W R 37	1905	
Nobaran—21 C N 914	6914 " Krishna—100 1017	6978 " Muhammad—	
" —2 Pat W 48	6915 " —10 C 194	8 P W 1917	
Nobaran—21 C N 914	6916 " Krishito—10 C 268	1918	
" —21 Cr 48(C)	6917 Nobi Kishore—7 C L 291	6979 " —17 P R	
Nobaran—20 W R 40	6918 Nobi Kristo—20 W R 35	6980 " —	
Nobina—(88) A N 134	6919 Nobokisto—8 W R 87	6981 " Nara—22 P R 1901	
Nodamauri—2 Weir 140	6920 Nagen—12 C N 771	6982 " Narsin—17 P R 1880	
Nobal—Cr R 8 of 3-105	6921 Nomal—4 B L (apps) 9	6983 " Nari—20 C 483	
" Clond—2 B R 580	6922 Noma—7 C N 855	6984 " Nari—20 P R 1900	
" Kour—170 P L 1914	6923 Nomi—15 C N 938	6985 " Narpul—4 N P 84	
" Singh—11 P L 1905	6924 Nor Bux—6 C 279	6986 " Narsingh—15 W R 52	
Nobala—21 P R 1887	6925 " Kian—1 W R 11	6987 " Narsingh—10 W R 41	
Nobal—13 S 166	6926 " Mahammed—	6988 " Narsul Huq—3 C 737	
Nobut—1 N P 304	11 C N 410	6989 " Narsingh—4 C 481	
Nobla—1 Weir 64	6927 " Mahomed—	6990 " Narsurany—Hat 891	
Nobla—5 C N 294	11 B R 268	6991 " Narsuruddeen—	
Nobanth—37 M 247	6928 " Mahomed—	11 W R 21	
Nobanthub—19 W R 1	18 W R 2	6992 " Nasseruddin—21 W R 5	
Nobanth—2 A 276	6929 " —	6993 " Nasseruddin—2 N P 161	
Nokama—6 C J 711	6930 " —	6994 " Nya Shakh—1 Bur S 510	
Nokanta—(2) C 161	6931 " —	6995 " Nyan—22 W R 84	
Nokanth—2 B C 31	6932 " —		
" Kulkarni—	6933 " —		
13 B R 175	6934 " —		
Nokantlajo—6 B 670	6935 " —		
Nokantl—19 W R 6	6936 " —		
Nokantand—32 C 771	6937 " —		
Nokanthub—13 C 595	6938 " —		

P

7010 Paban Singh—10 C N 817	7042 " Naran—17 M J 219
7020 Pachar—26 M 180	7043 " Nalan—2 Weir 425
7021 Pachudayan—9 M T 321	7044 " Nalan—32 M 255
7022 Padmrath—21 Cr 145 (Pat)	7045 " —
7023 Padmanabha—8 M 18 (F B)	475 (M)
7024 " —Hat 128	
7025 " —12 M 422	
(F B)	
7026 " —21 Cr 610	
(Pat)	
7027 Padmanabha Pat—2 B 381	
7028 " Pat—2 Weir 48	
7029 Padma—21 Cr 126 (L)	
7030 Pajoo—19 B 116	
7031 Pajoo—11 A 361	
7032 Pakabala—6 C P 21	
7033 Paki—5 N 19	
7034 Paktal—10 A J 351	
7035 Paktalla—16 C N 238	
7036 Paktalla—16 Cr 814 (31)	
7037 Paktal—19 Cr 521	
7038 Paktal—21 P R 1907	
7039 Paktal—26 M 35	
7040 Paktal Chetty—25 M J 278	
7041 " —Goudan—15 Cr	
475 (M)	
7042 " Naran—17 M J 219	
7043 " Nalan—2 Weir 425	
7044 " Nalan—32 M 255	
7045 " —	

O

6987 Obloy Chaudra—10 W R 42

P

7047 Palaniappa—3 Bur T 11	7107 Panjab—6 C 579	7167 Partappa—33 P R 1500
7049 " —32 M 54	7108 Panico—15 W R 64	7168 Parthasarnali—5 M 301
7049 " —4 M T 213	7109 Panna—7 N P 351	7169 Parvat—12 H 241
7050 " Asari—31M 139	7110 Pannalal—19 W R 1	7170 Parvatham—2 Weir 650
7051 " Chetti—18 M	7111 Pannuswami—25 M J 501	7171 Parvathi—2 Weir 630
	7112 Pantambi—19 M J 65	7172 " Annual—
7052 " Chetty—3 Bur	7113 Papi—Cr 31 of 16-6-96	
	7114 " —Cr R 55 of 25-6-96	7173 Parsali—7 B H (C C) 82
	7115 Papada—7 M 11	7174 Paryag—22 C 139
7053 Palaniappavelan—20M 187	7116 Papakka—5 M T 372	7175 Pasiput—1 C N 515
7054 Palaniyandi—17 Cr 235 (M)	7117 Para Thandan—1M T 350	7176 Pascoe—Rat 409
7055 Palaniyappu—2 Weir 31	7118 Paramananda—10 C 85	7177 Pasupathi—6 M T 91
7056 Palannagiri—2 Weir 323	7119 " —27M J 617	7178 Pasupati—C N 67
7057 Palavesam—2 Weir 700	7120 Paramaswa—30 M 45	7179 Patala—30 M 332
7058 Palavesam—2 Weir 46	7121 Parameshwar—7 O C 113	7180 Patan Din—16 Cr 614 (O)
7060 Palayatham—18 M 18	7122 Parmakwar Lal—	7181 Patilana—3 P R 1901
7061 Palu—Rat 468		7182 Patiram—6 C P 21
7062 Palia—12 P W 1919		7183 Patrick Mcquire—
7063 Pallagathodi—1 Cr 118	7123 Parameswar—18 M T 322	
7064 Paluta—23 A 54	7124 Parameswar—	7184 Pattayilkooru—2 Weir 453
7065 Paman—(90) A N 170		7185 Patu Kadam—26 M 213
7066 Pampatari—23 M 410	7125 Parankuam—2 M H 396	7186 Pattikadu—28 M 213
7067 Pan Anug—3 L B 34	7126 Parappati—37 M J 361	7187 Patu—13 O C 314
7068 " Nyan—3 L B 20	7127 Paras Ram—14 P W 1911	7188 Patu—(96) U B 2
7069 Panaganti—34 M 144	7128 Parasram—(54) A N 233	7189 Paul—Rat 510
7070 Panatulla—13 C 351	7129 Parasutha—13 C N 244	7190 " Das—10 W R 51
7071 Pancham—4 A 198	7130 Parasurama—9 M T 168	7191 Pawtha—3 L D 250
7072 " —(81) A N 151	7131 " Naiker—	7192 Payagi—(79) U B 2 q 1
7073 Panchasanda—1 M H 229		7193 Payai—(82) A N 170
7074 Panchoo—29 C 147	7132 Parathi—27 M J 555	7194 Payuni—5 M T 236
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7076 Panchu Ghosi—14 C N 69	7134 " Charan—37 C 350	7196 Peary—23 C N 426 (F B)
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	7732 " 21 C N 753	7791 " 17 C N 753	7844 " 1
	7733 " 21 C N 753	7792 " 17 C N 753	7845 " 1
	7734 " 21 C N 753	7793 " 17 C N 753	7846 " 1
	7735 " 21 C N 753	7794 " 17 C N 753	7847 " 1
	7736 " 21 C N 753	7795 " 17 C N 753	7848 " 1
	7737 " 21 C N 753	7796 " 17 C N 753	7849 " 1
	7738 " 21 C N 753	7797 " 17 C N 753	7850 " 1
	7739 " 21 C N 753	7798 " 17 C N 753	7851 " 1
	7740 " 21 C N 753	7799 " 17 C N 753	7852 " 1
	7741 " 21 C N 753	7800 " 17 C N 753	7853 " 1
	7742 " 21 C N 753	7801 " 17 C N 753	7854 " 1
	7743 " 21 C N 753	7802 " 17 C N 753	7855 " 1
	7744 " 21 C N 753	7803 " 17 C N 753	7856 " 1
	7745 " 21 C N 753	7804 " 17 C N 753	7857 " 1
	7746 " 21 C N 753	7805 " 17 C N 753	7858 " 1
	7747 " 21 C N 753	7806 " 17 C N 753	7859 " 1
	7748 " 21 C N 753	7807 " 17 C N 753	7860 " 1
	7749 " 21 C N 753	7808 " 17 C N 753	7861 " 1
	7750 " 21 C N 753	7809 " 17 C N 753	7862 " 1
	7751 " 21 C N 753	7810 " 17 C N 753	7863 " 1
	7752 " 21 C N 753	7811 " 17 C N 753	7864 " 1
	7753 " 21 C N 753	7812 " 17 C N 753	7865 " 1
	7754 " 21 C N 753	7813 " 17 C N 753	7866 " 1
	7755 " 21 C N 753	7814 " 17 C N 753	7867 " 1
	7756 " 21 C N 753	7815 " 17 C N 753	7868 " 1
	7757 " 21 C N 753	7816 " 17 C N 753	7869 " 1
	7758 " 21 C N 753	7817 " 17 C N 753	7870 " 1
	7759 " 21 C N 753	7818 " 17 C N 753	7871 " 1
	7760 " 21 C N 753	7819 " 17 C N 753	7872 " 1
	7761 " 21 C N 753	7820 " 17 C N 753	7873 " 1
	7762 " 21 C N 753	7821 " 17 C N 753	7874 " 1
	7763 " 21 C N 753	7822 " 17 C N 753	7875 " 1
	7764 " 21 C N 753	7823 " 17 C N 753	7876 " 1
	7765 " 21 C N 753	7824 " 17 C N 753	7877 " 1
	7766 " 21 C N 753	7825 " 17 C N 753	7878 " 1
	7767 " 21 C N 753	7826 " 17 C N 753	7879 " 1
	7768 " 21 C N 753	7827 " 17 C N 753	7880 " 1
	7769 " 21 C N 753	7828 " 17 C N 753	7881 " 1
	7770 " 21 C N 753	7829 " 17 C N 753	7882 " 1
	7771 " 21 C N 753	7830 " 17 C N 753	7883 " 1
	7772 " 21 C N 753	7831 " 17 C N 753	7884 " 1
	7773 " 21 C N 753	7832 " 17 C N 753	7885 " 1
	7774 " 21 C N 753	7833 " 17 C N 753	7886 " 1
	7775 " 21 C N 753	7834 " 17 C N 753	7887 " 1
	7776 " 21 C N 753	7835 " 17 C N 753	7888 " 1
	7777 " 21 C N 753	7836 " 17 C N 753	7889 " 1
	7778 " 21 C N 753	7837 " 17 C N 753	7890 " 1
	7779 " 21 C N 753	7838 " 17 C N 753	7891 " 1
	7780 " 21 C N 753	7839 " 17 C N 753	7892 " 1
	7781 " 21 C N 753	7840 " 17 C N 753	7893 " 1
	7782 " 21 C N 753	7841 " 17 C N 753	7894 " 1
	7783 " 21 C N 753	7842 " 17 C N 753	7895 " 1
	7784 " 21 C N 753	7843 " 17 C N 753	7896 " 1
	7785 " 21 C N 753	7844 " 17 C N 753	7897 " 1
	7786 " 21 C N 753	7845 " 17 C N 753	7898 " 1
	7		

R

Ram Dai, ('90) A N 178	7843 Ram Loockan, ('72-'92) L R 157	7904 Ram Loockan—5 A 7	7993 Ramalingam—16 Cr 736 (M)
" Das 13 C 110	7844 " Mahto 22 Cr 331 (Pat)	7905 " Saroop—21 Cr 718 (Pat)	7996 Ramamoni—16 Cr 813 (M)
" " 40 A 307	7845 " Mandak 3 O 510	7906 " Sarup—13 O C 161	7997 Ramani—21 M 83
" " 22 Cr 2 (A)	7846 " Naicker 22 M J 355	7907 " " —7 A 757 (FB)	7998 " " —2 Weir 374
" " 21 C N 469	7847 " Narain 8 A 514	7908 " " —4 O C 127	7999 " " —2 Weir 163
" " ('83) A N 1	7848 " " 8 C J 212	7909 " " —9 C N 1027	7970 " Behari—41 O 722
" Dava 11 W R 35	7849 " " —18 Cr	7910 " " —4 C N 253	7971 " Singh—23 O 411
" Dayal 3 N 50	7850 " " —21 B R 732	7911 " " —6 C N 98	7972 Ramasadhan—24 M 45
" " 6 C J 182	7851 " " 1014 (O)	7912 " " —9 Bur T 135	7973 Ramasani—('85) A N 221
" " 20 O C 221	7852 " " —88 P L 1916	7913 " " —17 A J 48	7974 " " Singh—11 O C 267
" " 19 C N 223	7853 " " —34 C 697 (FB)	7914 " " —(98) A N 22	7975 Ramapanda—1 O J 218
" " 5 BL (Ap) 89	7854 " " —34 C 697 (FB)	7915 " " —13 O C 161	7976 Ramasatha—3 C J 360
" " 28 A 203	7855 " " —11 A J 751	7916 " " —15 Mys 70	7977 Ramasimohan—21 Cr 255 (Pat)
" Dev 18 A 350	7856 " " —16 A J 824	7917 " Seshayya—15 Mys 70	7978 Ramaniyya—2 M 5
" Dena 30 A 109	7857 " " —4 Pat J 299	7918 " Sewak—15 Cr 367 (A)	7979 Ramanjala—2 Weir 264
" " 3 M T 115	7858 " " —17 C 18	7919 " Shale—15 W R 7	7980 Ramanna—12 M 273
" Deo 19 C N 223	7859 " " —12 N 146	7920 " Shoday—7 W R 95	7981 Ramaniy Aiyangar—2 Weir 89
" Dhari 4 Pat W 44	7860 " " —37 C 13	7921 " Singh—1 P R 1853	7982 " " Char—10 M T 96
" Dhir 11 A J 747	7861 " " —(32) A N 112	7922 " " —34 A 351	7983 Ramannizam—2 Weir 487A
" Dial 8 A J 310	7862 " " —B L (Rule) 426 (F B)	7923 " " —(7) A N 208	7984 Ramannojcharar—12 Cr 497
" Din 13 C P 125	7863 " " —16 C N 593	7924 " " —19 C N 972	7985 Ramannund—11 O 230
" Ditta 22 Cr 45 (L)	7864 " " —11 A J 751	7925 " " —256 (B)	7986 Ramasanda—11 O N cli
" Doyal 3 W R 46	7865 " " —16 A J 824	7926 " " —5 O J 70	7987 Ramasota—23 W R 5
" Dulari 16 O C 192	7866 " " —4 Pat J 299	7927 " " —(97) A N 47	7988 Ramasami—2 Weir 457
" Dutt 23 W R 35	7867 " " —17 C 18	7928 " " —6 A 477	7989 " " —14 M 370
" Eashad 43 P R 1888	7868 " " —5 C P 33	7929 " " —12 C 375	7990 " " —23 M 49
" Golam 11 W R 22	7869 " " —10 A J 247	7930 " " —6 A 477	7991 " " —13 M 17
" Gopal, ('89) A N 107	7870 " " —32 A 153	7931 " " —20 M R 1870	7992 " " Aiyer—24 M J 1
" " 32 C 791	7871 " " —12 N 146	7932 " " —20 M R 1870	7993 Ramasatmar—10 Cr 713 (M)
" Harakh 1 O J 239	7872 " " —37 C 13	7933 " " —20 M R 1870	7994 Ramasawmi—24 M 321
" " 9 S 89	7873 " " —(32) A N 112	7934 " " —21 C J 109	7995 " " —21 M 114
" Jas 6 B L (Ap) 67	7874 " " —B L (Rule) 426 (F B)	7935 " " —2 Weir 291	7996 " " —12 M 48
" Jas 14 A J 1230	7875 " " —13 C N 1038	7936 " " —31 A 136	7997 " " —7 M 292
" Jivan 18 O N 594	7876 " " —16 O J 453	7937 " " —31 A 136	7998 " " —14 M 370
" Kala 42 P R 1885	7877 " " —1 C N 400	7938 " " —31 A 136	7999 " " —14 M 370
" Kanoo 19 W R 24	7878 " " —37 A 439	7939 " " —31 A 136	8000 " " —(19) N 824
" Kanta 4 Pat W 212	7879 " " —13 N 169	7940 " " —31 A 136	8001 " " —27 M 271
" Khilawan ('00) A N 167	7880 " " —42 B 190	7941 " " —31 A 136	8002 " " —2 Weir 18
" " 24 A 703	7881 " " —20 Cr 244	7942 " " —31 A 136	8003 " " —2 Weir 18
" Kishan 25 W R 48	7882 " " —22 C N 1111	7943 " " —31 A 136	8004 " " —2 Weir 18
" " 40 A 30	7883 " " —22 C N 1111	7944 " " —31 A 136	8005 " " —2 Weir 18
" " 21 Cr	7884 " " —22 C N 1111	7945 " " —31 A 136	8006 " " —2 Weir 18
" " 437 (L)	7885 " " —22 C N 1111	7946 " " —31 A 136	8007 " " —2 Weir 18
" Kishan 35 A 5	7886 " " —22 C N 1111	7947 " " —31 A 136	8008 " " —2 Weir 18
" " 24 P W 1908	7887 " " —22 C N 1111	7948 " " —31 A 136	8009 " " —2 Weir 18
" Kishan 2 Pat W 298	7888 " " —22 C N 1111	7949 " " —31 A 136	8010 " " —2 Weir 18
" Kesore 100 M 1095	7889 " " —22 C N 1111	7950 " " —31 A 136	8011 " " —2 Weir 18
" Kishna 27 C 565	7890 " " —22 C N 1111	7951 " " —31 A 136	8012 " " —2 Weir 18
" " 31 B 204	7891 " " —22 C N 1111	7952 " " —31 A 136	8013 " " —2 Weir 18
" Krishnapuri 8 N 57	7892 " " —22 C N 1111	7953 " " —31 A 136	8014 " " —2 Weir 18
" Kumar 1 C N 26	7893 " " —22 C N 1111	7954 " " —31 A 136	8015 " " —2 Weir 18
" " 13 C N 1040	7894 " " —22 C N 1111	7955 " " —31 A 136	8016 " " —2 Weir 18
" Kura 6 A 622 (FB)	7895 " " —22 C N 1111	7956 " " —31 A 136	8017 " " —2 Weir 18
" Lal 15 A 193	7896 " " —22 C N 1111	7957 " " —31 A 136	8018 " " —2 Weir 18
" " 1 O N 391	7897 " " —22 C N 1111	7958 " " —31 A 136	8019 " " —2 Weir 18
" " 8 C 875	7898 " " —22 C N 1111	7959 " " —31 A 136	8020 " " —2 Weir 18
" " 6 A 40	7899 " " —22 C N 1111	7960 " " —31 A 136	8021 " " —2 Weir 18
" " 15 C 194	7900 " " —22 C N 1111	7961 " " —31 A 136	8022 " " —2 Weir 18
" " 21 Cr 269 (Pat)	7901 " " —22 C N 1111	7962 " " —31 A 136	8023 " " —2 Weir 18
" " 7 P R 1911	7902 " " —22 C N 1111	7963 " " —31 A 136	8024 " " —2 Weir 18
" " 41 A 390	7903 " " —22 C N 1111	7964 " " —31 A 136	8025 " " —2 Weir 18
" " 21 Cr 269 (Pat)	7904 " " —22 C N 1111	7965 " " —31 A 136	8026 " " —2 Weir 18
" " 1 BL (N) xxx	7905 " " —22 C N 1111	7966 " " —31 A 136	8027 " " —2 Weir 18
" " 2 L B 220	7906 " " —22 C N 1111	7967 " " —31 A 136	8028 " " —2 Weir 18
" " 36 A 141	7907 " " —22 C N 1111	7968 " " —31 A 136	8029 " " —2 Weir 18
" " 18 W R 15	7908 " " —22 C N 1111	7969 " " —31 A 136	8030 " " —2 Weir 18
" " 7 O N 553	7909 " " —22 C N 1111	7970 " " —22 C N 1111	8031 " " —2 Weir 18
	7910 " " —22 C N 1111	7971 " " —22 C N 1111	8032 " " —2 Weir 18
	7911 " " —22 C N 1111	7972 " " —22 C N 1111	8033 " " —2 Weir 18
	7912 " " —22 C N 1111	7973 " " —22 C N 1111	8034 " " —2 Weir 18
	7913 " " —22 C N 1111	7974 " " —22 C N 1111	8035 " " —2 Weir 18
	7914 " " —22 C N 1111	7975 " " —22 C N 1111	8036 " " —2 Weir 18
	7915 " " —22 C N 1111	7976 " " —22 C N 1111	8037 " " —2 Weir 18
	7916 " " —22 C N 1111	7977 " " —22 C N 1111	8038 " " —2 Weir 18
	7917 " " —22 C N 1111	7978 " " —22 C N 1111	8039 " " —2 Weir 18
	7918 " " —22 C N 1111	7979 " " —22 C N 1111	8040 " " —2 Weir 18
	7919 " " —22 C N 1111	7980 " " —22 C N 1111	8041 " " —2 Weir 18
	7920 " " —22 C N 1111	7981 " " —22 C N 1111	8042 " " —2 Weir 18
	7921 " " —22 C N 1111	7982 " " —22 C N 1111	8043 " " —2 Weir 18
	7922 " " —22 C N 1111	7983 " " —22 C N 1111	8044 " " —2 Weir 18
	7923 " " —22 C N 1111	7984 " " —22 C N 1111	8045 " " —2 Weir 18
	7924 " " —22 C N 1111	7985 " " —22 C N 1111	8046 " " —2 Weir 18
	7925 " " —22 C N 1111	7986 " " —22 C N 1111	8047 " " —2 Weir 18
	7926 " " —22 C N 1111	7987 " " —22 C N 1111	8048 " " —2 Weir 18
	7927 " " —22 C N 1111	7988 " " —22 C N 1111	8049 " " —2 Weir 18
	7928 " " —22 C N 1111	7989 " " —22 C N 1111	8050 " " —2 Weir 18
	7929 " " —22 C N 1111	7990 " " —22 C N 1111	8051 " " —2 Weir 18
	7930 " " —22 C N 1111	7991 " " —22 C N 1111	8052 " " —2 Weir 18
	7931 " " —22 C N 1111	7992 " " —22 C N 1111	8053 " " —2 Weir 18
	7932 " " —22 C N 1111	7993 " " —22 C N 1111	8054 " " —2 Weir 18
	7933 " " —22 C N 1111	7994 " " —22 C N 1111	8055 " " —2 Weir 18
	7934 " " —22 C N 1111	7995 " " —22 C N 1111	8056 " " —2 Weir 18
	7935 " " —22 C N 1111	7996 " " —22 C N 1111	8057 " " —2 Weir 18
	7936 " " —22 C N 1111	7997 " " —22 C N 1111	8058 " " —2 Weir 18
	7937 " " —22 C N 1111	7998 " " —22 C N 1111	8059 " " —2 Weir 18
	7938 " " —22 C N 1111	7999 " " —22 C N 1111	8060 " " —2 Weir 18
	7939 " " —22 C N 1111	8000 " " —22 C N 1111	8061 " " —2 Weir 18
	7940 " " —22 C N 1111	8001 " " —22 C N 1111	8062 " " —2 Weir 18
	7941 " " —22 C N 1111	8002 " " —22 C N 1111	8063 " " —2 Weir 18
	7942 " " —22 C N 1111	8003 " " —22 C N 1111	8064 " " —2 Weir 18
	7943 " " —22 C N 1111	8004 " " —22 C N 1111	8065 " " —2 Weir 18
	7944 " " —22 C N 1111	8005 " " —22 C N 1111	8066 " " —2 Weir 18
	7945 " " —22 C N 1111	8006 " " —22 C N 1111	8067 " " —2 Weir 18
	7946 " " —22 C N 1111	8007 " " —22 C N 1111	8068 " " —2 Weir 18
	7947 " " —22 C N 1111	8008 " " —22 C N 1111	8069 " " —2 Weir 18
	7948 " " —22 C N 1111	8009 " " —22 C N 1111	8070 " " —2 Weir 18
	7949 " " —22 C N 1111	8010 " " —22 C N 1111	8071 " " —2 Weir 18
	7950 " " —22 C N 1111	8011 " " —22 C N 1111	8072 " " —2 Weir 18
	7951 " " —22 C N 1111	8012 " " —22 C N 1111	8073 " " —2 Weir 18
	7952 " " —22 C N 1111	8013 " " —22 C N 1111	8074 " " —2 Weir 18
	7953 " " —22 C N 1111	8014 " " —22 C N 1111	8075 " " —2 Weir 18
	7954 " " —22 C N 1111	8015 " " —22 C N 1111	8076 " " —2 Weir 18
	7955 " " —22 C N 1111	8016 " " —22 C N 1111	8077 " " —2 Weir 18
	7956 " " —22 C N 1111	8017 " " —22 C N 1111	8078 " " —2 Weir 18
	7957 " " —22 C N 1111	8018 " " —22 C N 1111	8079 " " —2 Weir 18
	7958 " " —22 C N 1111	8019 " " —22 C N 1111	8080 " " —2 Weir 18
	7959 " " —22 C N 1111	8020 " " —22 C N 1111	8081 " " —2 Weir 18
	7960 " " —22 C N 1111	8021 " " —22 C N 1111	8082 " " —2 Weir 18
	7961 " " —22 C N 1111	8022 " " —22 C N 1111	8083 " " —2 Weir 18
	7962 " " —22 C N 1111	8023 " " —22 C N 1111	8084 " " —2 Weir 18
	7963 " " —22 C N 1111	8024 " " —22 C N 1111	8085 " " —2 Weir 18
	7964 " " —22 C N 1111	8025 " " —22 C N 1111	8086 " " —2 Weir 18
	7965 " " —22 C N 1111	8026 " " —22 C N 1111	8087 " " —2 Weir 18
	7966 " " —22 C N 1111	8027 " " —22 C N 1111	8088 " " —2 Weir 18
	7967 " " —22 C N 1111	8028 " " —22 C N 1111	8089 " " —2 Weir 18
	7968 " " —22 C N 1111	8029 " " —22 C N 1111	8090 " " —2 Weir 18
	7969 " " —22 C N 1111	8030 " " —22 C N 1111	8091 " " —2 Weir 18
	7970 " " —22 C N 1111	8031 " " —22 C N 1111	8092 " " —2 Weir 18
	7971 " " —22 C N 1111	8032 " " —22 C N 1111	8093 " " —2 Weir 18
	7972 " " —22 C N 1111	8033 " " —22 C N 1111	8094 " " —2 Weir 18
	7973 " " —22 C N 1111	8034 " " —22 C N 1111	8095 " " —2 Weir 18
	7974 " " —22 C N 1111	8035 " " —22 C N 1111	8096 " " —2 Weir 18
	7975 " " —22 C N 1111	8036 " " —22 C N 1111	8097 " " —2 Weir 18
	7976 " " —22 C N 1111	8037 " " —22 C N 1111	8098 " " —2 Weir 18
	7977 " " —22 C N 1111	8038 " " —22 C N 1111	8099 " " —2 Weir 18
	7978 " " —22 C N 1111	8039 " " —22 C N 1111	8100 " " —2 Weir 18
	7979 " " —22 C N 1111	8040 " " —22 C N 1111	8101 " " —2 Weir 18
	7980 " " —22 C N 1111	8041 " " —22 C N 1111	8102 " " —2 Weir 18
	7981 " " —22 C N 1111	8042 " " —22 C N 1111	8103 " " —2 Weir 18
	7982 " " —22 C N 1111	8043 " " —22 C N 1111	8104 " " —2 Weir 18
	7983 " " —22 C N 1111	8044 " " —22 C N 1111	8105 " " —2 Weir 18
	7984 " " —22 C N 1111	8045 " " —22 C N 1111	8106 " " —2 Weir 18
	7985 " " —22 C N 1111	8046 " " —22 C N 1111	8107 " " —2 Weir 18
	7986 " " —22 C N 1111	8047 " " —22 C N 1111	8108 " " —2 Weir 18
	7987 " " —22 C N 1111	8048 " " —22 C N 1111	8109 " " —2 Weir 18
	7988 " " —22 C N 1111	8049 " " —22 C N 1111	8110 " " —2 Weir 18
	7989 " " —22 C N 1111	8050 " " —22 C N 1111	8111 " " —2 Weir 18
	7990 " " —22 C N 1111	8051 " " —22 C N 1111	8112 " " —2 Weir 18
	7991 " " —22 C N 1111	8052 " " —22 C N 1111	8113 " " —2 Weir 18
	7992 " " —22 C N 1111	8053 " " —22 C N 1111	8114 " " —2 Weir 18
	7993 " " —22 C N 1111	8054 " " —22 C N 1111	8115 " " —2 Weir 18
	7994 " " —22 C N 1111	8055 " " —22 C N 1111	8116 " " —2 Weir 18
	7995 " " —22 C N 1111	8056 " " —22 C N 1111	8117 " " —2 Weir 18
	7996 " " —22 C N 1111	8057 " " —22 C N 1111	8118 " " —2 Weir 18
	7997 " " —22 C N 1111	8058 " " —22 C N 1111	8119 " " —2 Weir 18
	7998 " " —22 C N 1111	8059 " " —22 C N 1111	8120 " " —2 Weir 18
	7999 " " —22 C N 1111	8060 " " —22 C N 1111	8121 " " —2 Weir 18
	8000 " " —22 C N 1111	8061 " " —22 C N 1111	8122 " " —2 Weir 18
	8001 " " —22 C N 1111	8062 " " —22 C N 1111	8123 " " —2 Weir 18
	8002 " " —22 C N 1111	8063 " " —22 C N 1111	8124 " " —2 Weir 18
	8003 " " —22 C N 1111	8064 " " —22 C N 1111	8125 " " —2 Weir 18
	8004 " " —22 C N 1111	8065 " " —22 C N 1111	8126 " " —2 Weir 18
	8005 " " —22 C N 1111	8066 " " —22 C N 1111	8127 " " —2 Weir 18
	8006 " " —22 C N 1111	8067 " " —22 C N 1111	8128 " " —2 Weir 18
	8007 " " —22 C N 1111	8068 " " —22 C N 1111	8129 " " —2 Weir 18
	8008 " " —22 C N 1111	8069 " "	

R

8019 Ramballi 11 A J 185	8080 Ramasing 2 H R 819	8128 Ramabai—13 C N 1091	8202 Rohit Ramreddy
8020 Ramchand Rat 42	8081 Ramsoddy 20 W R 110	8129 Rao Ramaswami—14 CP 110	8203 Roldon—6 M 250
8021 Ramchandra Rat 1	8082 Ramsoodas—1 C L 50	8130 " Sadayasa—9 C P 37	8204 Rohly—13 C R 76
8022 " " 110	8083 Ramtalal 5 W R 65	8131 Raag Fulechand—6 B R 31	8205 " Venkayya
8023 " " 137	8084 Ramtohal 36 C 385	8132 " Moreshwar—Rat 159	
8024 " " 562	8085 Ramva 7 S 100	8133 " Sakharum—	
8025 " " 19 B 719	" " 7 A 461	" " Rat 712	8206 Reid—14 C 361
8026 " Rat 591	8086 Ramzan Cr R 7 of	8134 " Rat 213	8207 " —5 L B 21
8027 Ramcharan (15) A N 40	" " 25 B 2	8135 Rapaka—14 C 261	8208 " (Ignatio)—(C)
8028 Ramdas 12 B 11 (C C) 217	8087 " (21-100) L R 70	8136 Raru—19 M 452	
8029 Ramdyaal 21 W R 47	8088 " G B 1 (S N) 15	8137 Rasal—7 H R 175	8209 Reily—28 C 431
8030 Ramdhara 10 W R 5	8089 " Ah 1 L R 138	8138 Rashi Babari—1 Pat J 130	8210 Reis (13) U B 1
8031 Ramdhar 11 A J 745	8090 " 30 C 110	8139 " —1 Pat W 258	8211 Rickha 21 C 504
8032 Ramdhan Mundla	8091 " Bichel 7 S 200	8140 " —1 M J 90	8212 Remeios 34 B 8
" " 18 W R 39	8092 " Kunja 22 C 116	" (Jonn)	8213 Remjit 7 C N 19
8033 " Singh 1 W R 24	8093 Rama Dhanu 37 A 353	8141 " Das—20 C 82	8214 Remmanal 5 M 7
8034 Ramdhal J C N 174	8094 Ramchod Bawla 37 B 309	8142 " Lal—35 C 1070	8215 Reulal—14 C 57
8035 Ramdin Rat 728	8095 " Dava 2 B H 317	8143 " —12 C N	8216 Reurbu 22 C N 10
8036 Rames Chandra 46 C 615	8096 Ramchoddas 1 B 11 (C C) 37	8144 " 117	8217 Reurbu Rat 606
8037 " Chandra 17 C 95 (C)	8097 Ronched (17) A N 211	8145 Rashi Behary—7 C R 378	8218 Revappa—4 B 34
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1 22 W R 45	8412 " 3 P R 1905	8477 Sakla Rat 19 A N 20	8537 Samsal 17 Cr (B) 31
1 22 W R 45	8413 " 3 P R 1905	8478 Sakla Rat 19 A N 20	8538 Samsal 17 Cr (B) 31
1 22 W R 45	8414 " 3 P R 1905	8479 Sakla Rat 19 A N 20	8539 Samsal 17 Cr (B) 31
1 22 W R 45	8415 " 3 P R 1905	8480 Sakla Rat 19 A N 20	8540 Samsal 17 Cr (B) 31
1 22 W R 45	8416 " 3 P R 1905	8481 Sakla Rat 19 A N 20	8541 Samsal 17 Cr (B) 31
1 22 W R 45	8417 " 3 P R 1905	8482 Sakla Rat 19 A N 20	8542 Samsal 17 Cr (B) 31
1 22 W R 45	8418 " 3 P R 1905	8483 Sakla Rat 19 A N 20	8543 Samsal 17 Cr (B) 31
1 22 W R 45	8419 " 3 P R 1905	8484 Sakla Rat 19 A N 20	8544 Samsal 17 Cr (B) 31
1 22 W R 45	8420 " 3 P R 1905	8485 Sakla Rat 19 A N 20	8545 Samsal 17 Cr (B) 31
1 22 W R 45	8421 " 3 P R 1905	8486 Sakla Rat 19 A N 20	8546 Samsal 17 Cr (B) 31
1 22 W R 45	8422 " 3 P R 1905	8487 Sakla Rat 19 A N 20	8547 Samsal 17 Cr (B) 31
1 22 W R 45	8423 " 3 P R 1905	8488 Sakla Rat 19 A N 20	8548 Samsal 17 Cr (B) 31
1 22 W R 45	8424 " 3 P R 1905	8489 Sakla Rat 19 A N 20	8549 Samsal 17 Cr (B) 31
1 22 W R 45	8425 " 3 P R 1905	8490 Sakla Rat 19 A N 20	8550 Samsal 17 Cr (B) 31
1 22 W R 45	8426 " 3 P R 1905	8491 Sakla Rat 19 A N 20	8551 Samsal 17 Cr (B) 31
1 22 W R 45	8427 " 3 P R 1905	8492 Sakla Rat 19 A N 20	8552 Samsal 17 Cr (B) 31
1 22 W R 45	8428 " 3 P R 1905	8493 Sakla Rat 19 A N 20	8553 Samsal 17 Cr (B) 31
1 22 W R 45	8429 " 3 P R 1905	8494 Sakla Rat 19 A N 20	8554 Samsal 17 Cr (B) 31
1 22 W R 45	8430 " 3 P R 1905	8495 Sakla Rat 19 A N 20	8555 Samsal 17 Cr (B) 31
1 22 W R 45	8431 " 3 P R 1905	8496 Sakla Rat 19 A N 20	8556 Samsal 17 Cr (B) 31
1 22 W R 45	8432 " 3 P R 1905	8497 Sakla Rat 19 A N 20	8557 Samsal 17 Cr (B) 31
1 22 W R 45	8433 " 3 P R 1905	8498 Sakla Rat 19 A N 20	8558 Samsal 17 Cr (B) 31
1 22 W R 45	8434 " 3 P R 1905	8499 Sakla Rat 19 A N 20	8559 Samsal 17 Cr (B) 31
1 22 W R 45	8435 " 3 P R 1905	8500 Sakla Rat 19 A N 20	8560 Samsal 17 Cr (B) 31
1 22 W R 45	8436 " 3 P R 1905	8501 Sakla Rat 19 A N 20	8561 Samsal 17 Cr (B) 31
1 22 W R 45	8437 " 3 P R 1905	8502 Sakla Rat 19 A N 20	8562 Samsal 17 Cr (B) 31
1 22 W R 45	8438 " 3 P R 1905	8503 Sakla Rat 19 A N 20	8563 Samsal 17 Cr (B) 31
1 22 W R 45	8439 " 3 P R 1905	8504 Sakla Rat 19 A N 20	8564 Samsal 17 Cr (B) 31
1 22 W R 45	8440 " 3 P R 1905	8505 Sakla Rat 19 A N 20	8565 Samsal 17 Cr (B) 31
1 22 W R 45	8441 " 3 P R 1905	8506 Sakla Rat 19 A N 20	8566 Samsal 17 Cr (B) 31
1 22 W R 45	8442 " 3 P R 1905	8507 Sakla Rat 19 A N 20	8567 Samsal 17 Cr (B) 31
1 22 W R 45	8443 " 3 P R 1905	8508 Sakla Rat 19 A N 20	8568 Samsal 17 Cr (B) 31
1 22 W R 45	8444 " 3 P R 1905	8509 Sakla Rat 19 A N 20	8569 Samsal 17 Cr (B) 31
1 22 W R 45	8445 " 3 P R 1905	8510 Sakla Rat 19 A N 20	8570 Samsal 17 Cr (B) 31
1 22 W R 45	8446 " 3 P R 1905	8511 Sakla Rat 19 A N 20	8571 Samsal 17 Cr (B) 31
1 22 W R 45	8447 " 3 P R 1905	8512 Sakla Rat 19 A N 20	8572 Samsal 17 Cr (B) 31
1 22 W R 45	8448 " 3 P R 1905	8513 Sakla Rat 19 A N 20	8573 Samsal 17 Cr (B) 31
1 22 W R 45	8449 " 3 P R 1905	8514 Sakla Rat 19 A N 20	8574 Samsal 17 Cr (B) 31
1 22 W R 45	8450 " 3 P R 1905	8515 Sakla Rat 19 A N 20	8575 Samsal 17 Cr (B) 31
1 22 W R 45	8451 " 3 P R 1905	8516 Sakla Rat 19 A N 20	8576 Samsal 17 Cr (B) 31
1 22 W R 45	8452 " 3 P R 1905	8517 Sakla Rat 19 A N 20	8577 Samsal 17 Cr (B) 31
1 22 W R 45	8453 " 3 P R 1905	8518 Sakla Rat 19 A N 20	8578 Samsal 17 Cr (B) 31
1 22 W R 45	8454 " 3 P R 1905	8519 Sakla Rat 19 A N 20	8579 Samsal 17 Cr (B) 31
1 22 W R 45	8455 " 3 P R 1905	8520 Sakla Rat 19 A N 20	8580 Samsal 17 Cr (B) 31
1 22 W R 45	8456 " 3 P R 1905	8521 Sakla Rat 19 A N 20	8581 Samsal 17 Cr (B) 31
1 22 W R 45	8457 " 3 P R 1905	8522 Sakla Rat 19 A N 20	8582 Samsal 17 Cr (B) 31
1 22 W R 45	8458 " 3 P R 1905	8523 Sakla Rat 19 A N 20	8583 Samsal 17 Cr (B) 31
1 22 W R 45	8459 " 3 P R 1905	8524 Sakla Rat 19 A N 20	8584 Samsal 17 Cr (B) 31
1 22 W R 45	8460 " 3 P R 1905	8525 Sakla Rat 19 A N 20	8585 Samsal 17 Cr (B) 31
1 22 W R 45	8461 " 3 P R 1905	8526 Sakla Rat 19 A N 20	8586 Samsal 17 Cr (B) 31
1 22 W R 45	8462 " 3 P R 1905	8527 Sakla Rat 19 A N 20	8587 Samsal 17 Cr (B) 31
1 22 W R 45	8463 " 3 P R 1905	8528 Sakla Rat 19 A N 20	8588 Samsal 17 Cr (B) 31
1 22 W R 45	8464 " 3 P R 1905	8529 Sakla Rat 19 A N 20	8589 Samsal 17 Cr (B) 31
1 22 W R 45	8465 " 3 P R 1905	8530 Sakla Rat 19 A N 20	8590 Samsal 17 Cr (B) 31
1 22 W R 45	8466 " 3 P R 1905	8531 Sakla Rat 19 A N 20	8591 Samsal 17 Cr (B) 31
1 22 W R 45	8467 " 3 P R 1905	8532 Sakla Rat 19 A N 20	8592 Samsal 17 Cr (B) 31
1 22 W R 45	8468 " 3 P R 1905	8533 Sakla Rat 19 A N 20	8593 Samsal 17 Cr (B) 31
1 22 W R 45	8469 " 3 P R 1905	8534 Sakla Rat 19 A N 20	8594 Samsal 17 Cr (B) 31
1 22 W R 45	8470 " 3 P R 1905	8535 Sakla Rat 19 A N 20	8595 Samsal 17 Cr (B) 31
1 22 W R 45	8471 " 3 P R 1905	8536 Sakla Rat 19 A N 20	8596 Samsal 17 Cr (B) 31
1 22 W R 45	8472 " 3 P R 1905	8537 Sakla Rat 1	

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5503 " None 23 M 544	5567 Barwar, 30 P R 1441	5620 Sockaya, 13 M 21	5684 Shama Chari
5504 Sankaran, 2 Weir 175	5568 Barwel Rat 245	5620 Sockaya Jalap	5685 " "
5505 Sankarappa—2 Weir 260	5569 Sassi Bhawan 1 C 623	5620 Sockaya Jalap	5686 " "
5506 Samala (F2) A N 146	5570 Sasi Bhawan 1 C N 623	5621 Sambature 41 M 102	5687 " "
5507 Sani Bhaksh 10 O C 167	5571 Sat Naray 3 A 292	5622 Sockaya Jalap of Madras	5688 " "
5508 " Sani 26 P R 1549	5572 " 22 C 1045	5623 " 7 M T 43	5689 " "
5509 Santa Cruz 16 Cr 602 (M)	5573 Satish Chandra 22 Cr 21	5624 " 5 Area	5690 " "
5510 " Sath 171 PL 1413	5574 " Das Bow 250 174	5625 " 6 M T 232	5691 " "
5511 Sartaram Rat 315	5575 " Chandra 29 C 157	5626 " 5 Area	5692 " "
5512 Sathikam 2 Weir 679	5576 " Panday 22 C 456	5627 " 2 Weir 148	5693 " "
5513 Sathappa 49 M 791	5577 " Rat 25 C 746	5628 Satal Chander 3 W R 61	5694 " "
5514 Sathilal 42 A 129	5578 " Roy 11 C N 79	5629 Satal Chander 26 M 201	5695 " "
5515 Sathwal 2 A 5	5579 " Saka 2 B 477	5630 Satal Chander 22 W R 12	5696 " "
5516 Sathwala (F2) A N 146	5580 " Sato 3 W R 11	5631 Saw Blak 25 C 1005 (N)	5697 " "
5517 Sathuram Rat 311	5581 Sathidabak 3 C N 607	5632 " Pread 9 C N 15, 21	5698 " "
5518 Sathu Gowd 14 C P C	5582 Sathappa 15 M 1	5633 Shabaramdas (04) A N	5699 " "
5519 Sathul 20 B 537	5583 Sathya Rat 19	5634 Shabharan 17 C N 825	5700 " "
5520 Sathulawa 7 O C 25	5584 Sathya Charam 3 C N 17	5635 Shabharan 2 W R 32	5701 " "
5521 Sathuram 33 M 413	5585 Sathya Charam 29 C N 1014	5636 Shabharan 22 W R 12	5702 " "
5522 Sathuram 22 C 189	5586 Sathuram 31 P R 1917	5637 Shabharan 22 W R 12	5703 " "
5523 Sathuram 6 C N 927	5587 Sathuram 10 P R 1549	5638 Shabharan 22 W R 12	5704 " "
5524 Sathuram 27 C 184	5588 Sathuram 0 B R 379	5639 Shabharan 19 A 20	5705 " "
5525 " 27 C 179	5589 Sathuram 1 Weir 111	5640 " Mahomed 3 W R 70	5706 " "
5526 " 4 C N 602	5590 Sathuram 5 B 137	5641 " Mahomed 19 P R	5707 " "
5527 " Chandra 20 C N 623	5591 Sathuram 2 Weir 391	5642 " 13 P R	5708 " "
5528 " Lal 29 G 211	5592 Sathuram Aye 2 Weir 202	5643 " 1105	5709 " "
5529 " Mitra 15 C N 14	5593 Sathuram 42 M 115	5644 " Nawas 1 S 40	5710 " "
5530 " Mukht 187 709 (FE)	5594 Sathuram 2 Weir 372	5645 " Sookant 22 W R 19	5711 " "
5531 " Ray Chowdhurani	5595 Sathuram (37-40)	5646 Shababuddin 133 P L	5712 " "
5532 " 1 C N 623	5596 " Kado (25-30)	5647 " 1912	5713 " "
5533 Sathuram 7 C N 231	5597 " L B 219	5648 Shabab 13 W R 42	5714 " "
5534 Sathuram 17 C N 221	5598 Sathuram 11 B 475	5649 Shabab 17 O C 209	5715 " "
5535 Sathuram 10 P R 1549	5599 Sathuram 2 Weir 109	5650 Shabab 20 P R 1519	5716 " "
5536 Sathuram 3 P R 1901	5600 Sathuram 27 C 7	5651 Shabab 4 C N 825	5717 " "
5537 Sathuram 2 P R 1917	5601 " Nali Cr E 37 of	5652 Shabab 75 P R 1549	5718 " "
5538 " 2 P R 1549	5602 " Sajjad (06) A N	5653 Shabab 9 B R 161	5719 " "
5539 " Allam 5 Bur T 127	5603 " 201	5654 Shabab Ali (03-02) L B	5720 " "
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5541 " Dyal 4 P R 1549	5605 " 201	5656 " 201	5722 " "
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5543 " Khan 21 P R 1931	5607 " 201	5658 " 201	5724 " "
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5548 Sathuram 6 P R 1549	5612 " 201	5663 " 201	5729 " "
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5553 Sathuram 11 A 231	5617 " 201	5668 " 201	5734 " "
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5555 " (07) A N 64	5619 " 201	5670 " 201	5736 " "
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5558 " Prasad 9 B 25	5622 " 201	5673 " 201	5739 " "
5559 Sathuram 2 A 18 (P B)	5623 " 201	5674 " 201	5740 " "
5560 Sathuram 22 C 920	5624 " 201	5675 " 201	5741 " "
5561 Sathuram (81) A N 167	5625 " 201	5676 " 201	5742 " "
5562 Sathuram 2 C J 612	5626 " 201	5677 " 201	5743 " "
5563 Sathuram 2 C J 702	5627 " 201	5678 " 201	5744 " "
5564 Sathuram 6 B R 821	5628 " 201	5679 " 201	5745 " "
5565 Sathuram 10 A 272	5629 " 201	5680 " 201	5746 " "
5566 Sathuram 9 C 65	5630 " 201	5681 " 201	5747 " "
5567 Sathuram 14 A J 270	5631 " 201	5682 " 201	5748 " "
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214		do	1884	107 (11 : 59 : 62 : 109 : 125 : 127) : 110 (100 : 103 : 111 : 151) : 112 (4 : 5 : 11 : 29) : 114 (8) : 115 (3)	6559	509	(F. B.)	do	do	122 (101) : 459 (253)	7835

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19		Brodhurst.	1881	35 (11 : 21 : 40 : 55) : 235 (9 : 42)	2152	235	(F. B.)	Oldfield Brodhurst, Petheram, Mahmood.	1885	162 (23)	127
44		Straight and Duthoit	do	243 (31 : 237 (25 : 29 : 30) : 851 (4)	2881			Straight, Mahmood.	do	32 (6 : 17 : 21 : 10) : 59 (Note) : 235 (6 : 9 : 41 : 12) : 319 (23) (23 : 93)	7216
67		Brodhurst, Mahmood and Duthoit.	do	106 (1) : 119 (1 : 9)	1583	411	=(F. B.) (85) A. N. 107	Petheram, Oldfield, Brodhurst, Mahmood Duthoit	do	107 (253)	8085
134	=(81) A. N. 256	do	do	437 (129) : 434 (120) : 439 (14 : 184)	4913			Petheram.	do	191 (13)	1861
135		do	do	435 (120) : 45 : 83 : 188 : 215 (25A) : 236 (29) : 271 (25A) : 236 (29) : 233 (4 : 9) : 234 (9)	8984	461	=(F. B.) (85) A. N. 117	Straight, Oldfield, Brodhurst, Mahmood.	do	316 (7) : 370 (115A : 246) : 434 (1) : 439 (8)	2465
160	=(80) A. N. 11	Petheram and Duthoit	do	237 (101 : 339 (23 : 233 (4 : 9) : 234 (9)	4306	661	(F. B.)	Petheram and Brodhurst.	do	273 (27) : 215 (9)	5122
174	(F. B.)	Petheram, Oldfield, Brodhurst, Mahmood, Duthoit.	do	162 (27)	4128	672		do	do		
179	Muprint for 7A 285 (F. B.)					799	=(85) A. N. 169				

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77	=(F.H.) (85) A. N. 195	Petheram, Strauch, Brod- hurst Tyrrell.	do	35 (14 17 : 21 : 40 12 : 53) 253 (42)	7907	862	Straight	do	266 (18) 288 (5 23 : 23 : 31, 33)	1256
78	=(F.H.) (85) A. N. 257 (F. H.)	do	do	17 (2) 316 (23) : 250 5148 (30) : 175 (76 : 10 : 12) : 125 (16) 437 (125)	871	871	Petheram, Straught, Tyrrell, Brodhurst Tyrrell	do	105 (29 : 33 94 : 215 : 231) : 200 (3) 176 (1 10 30 183 181)	3716
					901	901		do	286 (6)	9027

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14	=(85) A. N. 294	Brodhurst.	1885	310 (3) : 123 (109 : 178) : 156 (16) 123 (109)	9231	293	Oldfield	1886	63 (3) 73 (5 21 537 : (53)	3907
20	Memorandum for A. N. 120					306	Straught and Tyrrell	1885	297 : 304 (68 103) 350 (107)	7899
14	=(85) A. N. 323	Brodhurst.	1885	195 (23) : 210 (67 : 68)	2718	282	Straught	1886	105 (7) : 132 (318)	4172
20	=(80) A. N. 27	Oldfield.	1886	133 112 (316 : 75 224) 141 (17) : 111 (25 : 25 : 141) : 107 (10)	4093	549	do	1886	297 : 308 (68 103) 339 (107)	1005
120	=(80) A. N. 7	Petheram.	1885	297 : 304 (102) : 239 107 (10)	5579	511	Brodhurst	do	370 (82 : 88 : 166) : 421 (2) : 259 (27)	7847
20		Straught Brodhurst	1886	107 (10)	7150	665	Edge	do	4 (17) : 25 (11) 193 (2) 236 (1) : 227 (23) : 237 (14) 540 (9)	1611
22		Straught Brodhurst	1886	227 (17)	5231	668	Edge and Straught	do	298 : 313 (75A) : 216 (5 : 7) : 291 (7)	7607
24	(F. B.) (80) A. N. 24	Straught Brodhurst, Tyrrell.	do	431 (115)	5281	672	Edge	do	512 (5 : 14)	3717

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12	=(F. B.) (80) A. N. 24	Edge, Straught, Brodhurst.	1886	14 (80) : 117 (2 : 5 : 12 : 33 : 55 : 92) 200 (14)	2011	104	Edge, Straught, Brodhurst, Oldfield, Tyrrell	1886	145 (111 : 416)	11160
20	Memorandum for A. N. 22									
25	=(80) A. N. 107	Brodhurst.	do	200 (17 : 63) : 267 (6 : 8 : 25 : 229) : 137 (68A)	7170	131	do	do	403 (20) : 427 (62A) : 130 (217 : 523)	1076

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191	=(P. C.) 171 A. 111	Lerle Watson Hobhouse, Peacock, Conch.	do	298 213 (46) : 226 (25) : 231 (8)	5161	523	=(87) A. N. 131	Edgar and Brodhurst.	1887	177 (17) : 179 (10) : 180 (2)	1724
210	=(87) A. N. 54	Edgar, Straight and Oldfield.	1887	193 (219) : 253 : 259 : 260	6123	525	=(87) A. N. 123	Straight.	do	255 (5) : 257 (3)	7043
252	=(87) A. N. 61	Straight.	1887	155 (125) : 157 (70) :	8465	528	=(87) A. N. 125	Edgar, Straight and Brodhurst.	do	164 (63) : 203 : 207 : 208 : (99) : 219 (107) : 417 (10 : 22)	7925
120	=(87) A. N. 27	Straight and Tyrrell.	do	267 268 267 : 226 321 : 118 (3) : 151 (5)	5786	609	=(87) A. N. 113	Mahomed.	do	353 (4) : 357 (95)	6381
132	=(87) A. N. 111	Mahomed.	1886	107 17 : 107 : 110 : 126 : 129 : 129 : 131 : 135 : 109 (120) : 119 (70) : 73 : 163 : 117 : 215 : 274 (12)	72	626	=(87) A. N. 114	Edgar and Brodhurst.	do	35 (11 : 35 : 41) : 235 (12)	1551
						720	=(87) A. N. 228	Mahomed	do	100 191 (50) : 209 (11 : 19 : 21 : 36 : 40) : 237 (29 : 22)	6394
								Falke	do	351 (7) : 360 (13) : 369 (1)	8227

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29	=(87) A. N. 264	Brodhurst.	1887	41 176 (257) : 198 (111 : 107) : 200 (10)	2256	150	=(P. H)	Edgar, Straight, Brodhurst, Tyrrell, Mahomed.	do	123 112	8214
53	=(87) A. N. 280	Mahomed.	do	207 (17 : 17 : 18)	3827	174	=(88) A. N. 11	Edgar and Tyrrell.	do	311 (1 : 7) : 290 (11 : 15) : 269 (1)	7252
24	=(87) A. N. 274	do	do	35 17 : 6 : 11 : 21 : 35 : 37 (24) : 255 (31 : 33) : 323 (1)	599	850	=(88) A. N. 92	Mahomed.	1888	103 (211)	279
74	Memorandum for 10A 174			200 (18)		411	=(88) A. N. 129	Tyrrell.	do	299 (6 : 16) : 297 : 208 (1) : 300 (11 : 21 : 24)	4517
113	=(88) A. N. 25	Mahomed.	1887	111 (37 : 117 : 118 : 127)	8346	125		Brodhurst and Mahomed	1888	198 (12)	2205
166	=(88) A. N. 5	Straight and Brodhurst.	do	5 (3 : 11 : 24 : 25 : 66) : 455 (125) : 457 (50)	10072	562	=(89) A. N. 271	Edgar, Straight, Tyrrell.	do	195 (257)	7285

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79	=(89) A. N. 249	Straight.	1888	229 (10 : 23 : 25) : 40 (1)	2744	298	=(89) A. N. 271	do	do	295 (13 : 7)	6847
262	=(89) A. N. 85	Straight	1889	100 266 (23 : 40) : 12 (23) : 265 (13) : 370 (15)	3927	331	=(89) A. N. 288	Two Rivers.	do	490 (130) : 201	7911
						297	=(89) A. N. 152	do	do	221 (62)	1621
						180	=(89) A. N. 162	do	do	188 (110 : 205)	8204

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64	=(90) A. N. 7	Straight.	1880	192 (10) 319 (21) 230 (3) : 229 (5) : 236 (3)	7213	131	=(90) A. N. 90	Straight.	1889	135 (100) 102 (136)	7276
69	=(90) A. N. 202	Straight and Tyrrell.	do	323 (10) : 189 (120) : 202 : 206 (1) : 18 : 20 : 21	11115	191	=(F B) = (90) A. N. 173	Edge, Straight, Tyrrell, Mahmood.	do	107 (102) 138 (20)	723
79	= 10 A. N. 25 (C. 10)	Edge, Mahmood.	do	101 (11)	11318	520		Edge and Mahmood.	1890	15 (18)	11186
105	= 10 A. N. 10 (C. 10)	do	do	101 (11)	11316	531		Young.	do	226 (6) 227 (1) 230 (13)	2191
115	=(90) A. N. 22	Edge and Tyrrell.	do	286 (3)	9160	503	=(90) A. N. 199	Edge and Young.	do	361 (8)	7289

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177	=(90) A. N. 30	Edge, Straight, Mahmood and Young.	1891	110 (11) : 120 (1) 121 (13) : 13 : 160 : 122 (1) : 171 (3) : 27 : 280	7233	348	=(91) A. N. 115	Knex.	1891	177 (28) 168 (10) 17	7596
215	=(91) A. N. 102	Straight.	do	208 (1) : 203 (1)	9291	222		Edge, Straight, Mahmood, Tyrrell.	do	115 (280)	1813
		do	do	196 (10) : 110 (18) : 286 (13) : 312 (11) : 13 : 98	2465	419	(F B)	do	1890	107 (23)	2967
				261 (78) : 37 (8)		377	=(91) A. N. 169	Straight.	1891	132-132 (118) 114 (12)	1540

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22	=(91) A. N. 179	Straight, Knex.	1901	227 (28) (215) : 221 (2) : 131 : 109 (18) : 106 (2) : 122 (1) : 111 (1) : 491 (24)	2208	256	=(92) A. N. 21	Knex.	1892	215 (77) 329 (73) 93	9224	
101		do	do	167 (28)	45	346	=(92) A. N. 10	Straight	1892	192 (17) : 320 (3) : 523 (33)	2161	
212	= 31 A. N. 61	Edge and Straight, Knex.	do	Presamble (3) : 112 (12) : 197 (12) : 286 (16) : 272 (3) : 299 (17)	197	324	=(92) A. N. 32	Straight	1892	177 (3) : 11	526 (12)	5497
212	= 31 A. N. 97	Edge, Tyrrell, Knex.	do	298 (17) : 72 : 73 : 287 (12) : 299 (27) : 212 (11) : 48 : 98 : 102 : 264 (1) : 266 (16) : 270 (2) : 8 : 29 : 91 : 337 (99) : 341 (6)	3313	521	=(92) A. N. 110	Edge and Blair	1892	229 (11) : 17 : 235 (38) : 233 (1) : 233 (3) : 321 : 223 (1) : 231 : 337 (16) : 11 : 208-213 (7) : 259 (11)	9179	
						783	(F. B) Migrant for 185 (F. B)	Knex.	do	111 (71)		

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6	=(92) A. N. 114	Tyrell and Blair.	1892	208-213 (3) : 286 (6) : 11-23	1083	295	Edgo and Aikman.	1893	127 (92) : 138 (138) : 439 (254)	5733
11	=(93) A. N. 141	Edgo and Tyrell.	do	161 (1 : 7)	1329	310	Lord Chancellor, Watson, Morris, Couch & Deuman Aikman.	do	101 (2) : 123 (209)	5250
25	=(92) A. N. 212	Edgo, Knox.	do	162 (8 : 14)	2880					
61	=(92) A. N. 212	Edgo, Knox.	do	163 (15) : 370 (70 : 121)	5803	317	=(93) A. N. 101	do	Addenda (s 35)	5187
136	=(93) A. N. 50	Tyrell & Aikman	1893	268 (8) : 293 (8) : 309 (32) : 428 (17)	7529	328	Edgo and Aikman.	do	200 (46)	7587
141	=(93) A. N. 63	Knox	do	183 (0-7)	757					
143	=(93) A. N. 63	Edgo, Tyrell.	do	183 (116) : 404 (1)	5189	305	Tyrell	do	110 (329) : 250 (34 (9))	5026
192	(F.B.)=(90) A. N. 79	Knox, Blair, Burkitt & Aikman.	do	558 (20 : 39 : 75 : 83)	2735	392	Aikman	do	176 (41 : 41)	5067
						391	do	do	145 (1 : 55) : 146 (6)	5717

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7		Burkitt.	1893	73 (5) : 109 (329) : 177 (20) : 326 (8)	294	58	Edgo.	1893	279 (28) : 282 (2) : 283 (3) : 451 (1) : 185	4023
80	=(94) A. N. 9	Aikman	1892	4m. (5e.) : 476 (156 : 177 : 179 : 196)	5729	207	Knox and Burkitt.	1894	162 (11) : 172 (12)	6726
84	(F.B.)=(94) A. N. 7	Edgo, Tyrell, Knox, Blair, Burkitt, Aikman.	1893	208-213 (3) : 296 (6 : 8)	2462	212	Tyrell and Blair.	do	417 (10) : 123 (70)	8231
						389	Edgo and Tyrell.	do	179 (17 : 41) : 180 (7)	8611

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36	(F.B.)=(94) A. N. 195	Knox, Blair and Burkitt	1894	180 (3) : 331 (12)	2635	166	Edgo and Burkitt.	1895	Addenda (s. 144)	9113
51		Edgo, Blair, Burkitt, Aikman.	do	125 (279 : 289 : 293)	16906	211	Edgo, Burkitt, Aikman.	do	370 (88)	6116
57	=(94) A. N. 202	Edgo and Blair.	do	196 (13) : 424 (10 : 17)	3781	185	Edgo, Burkitt, Aikman.	do	111 (80)	7611
173			1895	222 (11)	4771	221	Edgo and Aikman	do	271 (284) : 287 (10)	7276

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20	=(90) A. N. 117 (Civil)	Knox and Aikman.	1903	153 (20)	1915	=(90) A. N. 14	Judge and Burkhall
78	=(90) A. N. 27	Knox and Banerji.	do	164 (112) 257 (13) 297-308 (31)	220	=(90) A. N. 74	Aikman
96	=(90) A. N. 212	Aikman.	do	309 (70) 71	263	=(90) A. N. 96	Judge and Blumer
156	=(90) A. N. 15	do	do	188 (15) 74; 87, 22	3516		Blumer
203	=(90) A. N. 31	Edgewood and Banerji.	1906	157 (11) 112	4782		Judge
213	=(90) A. N. 32	Aikman.	do	195 (19) 217 (13)	1002	=(90) A. N. 94	Aikman
221	=(90) A. N. 55	Knox and Blair.	do	195 (19) 175 (17) 190 (1) 201-208 (18) 192-215 (22) 216 (2) 337 (23)	1008	=(90) A. N. 111	Judge and Blair
			do		4201	=(90) A. N. 119	Blair and Banerji.

50	=(F. B.) (90) A. N. 173	Knox, Aikman, Blumer and Banerji.	1903	141 (2) 468 (146) 117	8649	=(97) A. N. 2	Judge, Banerji and Aikman
61	=(90) A. N. 177	Banerji and Aikman.	do	151 (250) 489 (1)	290	=(97) A. N. 21	Blair
73	=(90) A. N. 180	Edgewood and Aikman.	do	415 (2) 110 (120) 526	2002	=(97) A. N. 20	Judge, Blair and Banerji
74		do	do	(68, 94) 119	3013		Edgewood
109		do	do	250 (59) 73	1617		Blumer
111	=(90) A. N. 191	Edgewood and Blumer.	do	188 (14) 15 (17) 52	7072	=(97) A. N. 1	Judge, Knox, Blair and Aikman
112	=(90) A. N. 192	Edgewood	do	(8)	6990	=(97) A. N. 1	Blumer
		Aikman	do	179 (3) 13	6229	=(90) A. N. 115	Judge and Blair
114		Banerji and Aikman	do	250 (59) 212 (69) 517		=(97) A. N. 111	do
119	=(90) A. N. 192	Edgewood and Blumer.	do	517 (1) 517 (1)	1058	=(97) A. N. 111	do
			do	12 (69) 40 (1) 350 (7)	1292	=(F. B.) (97) A. N. 112	Judge, Knox, Blair and Banerji

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1	(P. B.)	Knox, Burdett and Aikman.	1897	75 (92)	3714	169		Edgewood and Burdett.	1897	439 (82)	2129
40	=(97) A. N. 113	Knox and Burdett.	do	209 (23) ; 329 (12)	1937	161		do	do	576 (16)	2264
45	=(97) A. N. 196	Knox.	do	4 (10) 13 (21)	3073	206	=(98) A. N. 21	Edgewood.	1898	1108 (236) ; 271 (273)	2307
107	=(97) A. N. 214	Knox and Burdett	do	433 (61) ; 103	10054	254	=(98) A. N. 72	Knox.	do	112 (12) ; 211 (17)	235
129	=(97) A. N. 314	Banerji and Aikman	1897	110 (118)	3919	279		Burdett.	do	208-213 (5) ; 20 ; 14 ; 71 ; 215 (27) ; 317 (6)	256
124	=(97) A. N. 220	Edgewood and Burdett.	do	89 (1) ; 370 (133)	2891	426	=(94) A. N. 102	Dillon.	do	157 (52) ; 61	2542
221	=(97) A. N. 224	do	do	218 (7) ; 279-283 (5) ; 114	5771	459	=(98) A. N. 117	Kershaw and Knox.	do	342 (19) ; 491 (9)	2783
155	=(97) A. N. 224	do	do	288 (26)	10070	501	=(98) A. N. 141	Blair and Aikman	do	439 (247)	2912
159		do	do	439 (82)	3494	529	=(98) A. N. 132	Kershaw and Aikman.	do	131-142 (48) ; 118 ; 213	1012
170		do	do	439 (82)	10042					215 (70) ; 379 (5) ; 81	

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23	=(98) A. N. 156	Banerji.	1898	405 (41)	7737	153	=(98) A. N. 11	Banerji.	1898	923 (8) ; 173 (3)	1045
89	=(98) A. N. 102	Kershaw and Burdett.	do	514 (37)	5537	175		Strachey and Knox.	1899	258 (13) ; 27 ; 31 ; 39	1054
106	=(98) A. N. 199	do	do	288 (4) ; 257 (1) ; 2 ; 31	811	177	=(98) A. N. 15	do	do	309 (53) ; 121	2494
107	=(98) A. N. 185	do	do	107 (35) ; 212 ; 110 (327) ; 119 (7) ; 121 (18) ; 349 (2) ; 457 (8)	6250	184		Knox.	do	Addenda (see 370)	5313
109	=(98) A. N. 185	do	do	100-131 (54)	116	211	=(98) A. N. 71		do	253 (11) ; 11 ; 53 (61) ; 370 (131)	6712
111	=(98) A. N. 185	do	do	288 (5) ; 6 ; 20 ; 35 ; 38	3946	245	Memorandum for 21A 111	Blair.	do	288 (6)	7227
122	=(98) A. N. 185	Knox and Banerji.	do	417 (9)	6557	291	=(98) A. N. 61	Strachey, Knox and Banerji.	do	201 (7) ; 208 213 (5)	7546
127		Aikman.	do	273 (11)	11096		133			473 (52) ; 339 (52)	

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100	=(99) A. N. 211	Blair and Burdett	1899	293 (50) ; 252 (17) ; 403 (118) ; 577 (68)	191	216	=(99) A. N. 23	Blair.	1900	87 (13) ; 89 (1) ; 81 ; 112 (113) ; 161 ; 164	116
113	=(99) A. N. 215	Knox and Aikman.	do	133-132 (209)	6117	257	=(99) A. N. 89	Aikman.	do	123 112 (117)	1088
117	=(99) A. N. 207	do	do	161 (101) ; 110 ; 277 (29)	4750	445	=(99) A. N. 110	Knox and Blair.	do	150 (149) ; 287 (10)	1438
214	=(99) A. N. 22	Knox and Blair.	1900	145 (412) ; 409	1796			Blair & Henderson	do	288 (12) ; 27 ; 31 ; 37 ; 39 ; 212-208 (11540) ; 370 (55)	1584

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=(100) A. N. 102 =(100) A. N. 201	Hodgson. Aikman	1900 do	271 (28, 131) 104 (67, 68, 85, 102, 103), 109 (43), 110 (29), 270, 272, 321)	2064 8195	219 = (101) A. N. 79	Strachan	1901	192 (18, 128, 200), 425 (104, 141, 143, 196), 500 (20, 41, 141), 502 (50, 25)	715
=(100) A. N. 208 =(100) A. N. 205 =(101) A. N. 30	do do Blair and Aikman.	do do 1901	113 (109, 127 (1) 139 (9) 33 (12, 18, 60) 125, 112 (60, 110, 122, 172)	4500 2716 4541	219 Akerman for 23A 219 125 = (101) A. N. 114 197 = (101) A. N. 174	Blair and Aikman Blair and Aikman	do do	192 (18, 128, 200), 425 (104, 141, 143, 196), 500 (20, 41, 141), 502 (50, 25) 125 (12, 18, 60) 125, 112 (60, 110, 122, 172)	150 838

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=(101) A. N. 205 =(101) A. N. 203 =(102) A. N. 41 =(102) A. N. 45	Knox. Aikman Stanley. do	1901 do 1902 do	107 (53, 512), 110 (327), 119 (21), 127 (6) 107 (29), 217, 110 (28), 320, 177 (29), 192 (6) 223 (5, 7), 206 (1) 222 (13), 224 (79), 231 (16) 54 (4), 177 (10), 189 (15, 16), 232 (6)	2020 6170 3173 4219	206 = (102) A. N. 107 315 = (102) A. N. 71 516 = (102) A. N. 80 143 = (102) A. N. 111 171 = (102) A. N. 122 511 = (102) A. N. 142	Knox Stanley Knox and Blair do Aikman	1902 do do do do	121 (197), 262 (106, 71), 145 (23), 111 (16), 134 (73), 139 (217, 219), 145 (172, 173), 110 (271, 273), 33 (110), 43 (16)	157 633 957 725 654 252
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=(102) A. N. 127 (Harbans). =(102) A. N. 219 =(102) A. N. 197 (Sub). =(102) A. N. 194 =(102) A. N. 224 =(102) A. N. 7 =(102) A. N. 21 =(102) A. N. 22 (Total). =(102) A. N. 22 (Bachhary).	Barkitt. do do do Knox Stanley. Blair. do Baker.	1902 do do do do 1903 do do	195 (227 (7)) 128 (73), 129 (127, 217, 219, 225) 197 (193), 119 (277) 198 (18) 488 (82, 172, 196) 489 (53), 490 (1) 194 (19, 22) 195 (179 (7)) 110 (293), 122 (5, 7) 107 (105, 142), 119 (119, 122, 137, 172), 117 (1)	3523 5266 8096 2520 7779 269 3311 9583 1609	315 = (102) A. N. 27 311 = (102) A. N. 70 8096 = (102) A. N. 79 534 = (102) A. N. 100 537 = (102) A. N. 102 515 = (102) A. N. 103	Baker do do Blair. Baker.	1903 do do do 1903 do	270 (11), 537 (111), 537 (11), 517-518 (61, 97), 110 (99), 123 (18), 201 (21), 437 (8, 22), 194 (13), 123 (99, 104), 107 (31, 206), 125 (14, 127), 91, 94, 101, 128, 113, 116, 479, 483, 453 (20), 489 (253, 271)	9258 247 (1) 2639 2601 3290 5356 128
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Page of Report	Corresponding Reports	Judges	Section and Note	Table of Names	Page of Report	Corresponding Reports	Judges	Section and Note	Table of Names
166	=(00) A N 17=1Cr. 167	Knex and Akman	195 (13) 269 114 (129) 118 (11) 132 (133) 126 (24)	6337	249	(F R) = (00) A N 15 = 1Cr 71	Standley, Blair and Burety	1903	135 (23) 139 (39) 176 (10) 71 83 337
168	=(00) A N 21=1Cr. 169	do	114 (129) 118 (11) 132 (133) 126 (24)	3373	270	=(00) A N 25=C 1A J 19=1Cr 81	Alkman	1901	317 (23) 280 (13)
171	=(00) A N 21=1Cr. 172	Standley	208 (12) 337 (6) 16 (3) 7 (24) 20 (3)	6071	314	=(00) A N 12=1Cr. 137	do	do	188 (158) 162 (278)
180	=(00) A N 21=1Cr. 181	do	208 (12) 337 (6) 16 (3) 7 (24) 20 (3)	2857	371	=(00) A N 52=1Cr 190	Knex and Akman.	do	319 (1A) 3)
182	=(00) A N 21=1Cr. 183	do	110 (234) 268	7335	380	=(00) A N 11=C 1A J 20=1Cr 111	Knex and Akman.	do	110 (282) 122 (3) 10 7)
184	=(00) A N 21=1Cr. 185	do	107 (72) 71 71 100	1160	382	=(00) A N 11=C 1A J 20=1Cr 111	Knex and Akman.	do	110 (282) 122 (3) 10 7)
186	=(00) A N 21=1Cr. 187	do	211 (2) 21) 337 (13)	2624	512	=(00) A N 11=C 1A J 20=1Cr 111	Standley and Burety.	do	170 (82)
188	=(00) A N 21=1Cr. 189	do	211 (2) 21) 337 (13)	2624	512	=(00) A N 11=C 1A J 20=1Cr 111	do	250 (2)	1511
190	=(00) A N 21=1Cr. 191	do	180 (9) 181 (9)	9510	514	=(00) A N 21=1Cr 235	Knex.	do	1A (54) 192 (18) 170 (77) 168 (10)
192	=(00) A N 21=1Cr. 193	Knex and Akman	107 (202) 121 (9) 214 (21) 58	7618	796	=(00) A N 21=1Cr 235	do	do	257 (10) 256 (11) 100
211	=(00) A N 1=1Cr. 212	do	271 (1) 131 (7)	1619	564	=(00) A N 125= 1A J 20=1Cr 111	Knex and Akman.	do	208 (219) 117 (17) 131 (31) 2623

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11	=(00) A N. 10=1Cr 105	Blair	1903	884 (275) 189 (9)	1678	278	=(00) A N. 236= 1A J. 20=1Cr 111	Alkman	1901	386 (19)	3184
12	=(00) A N. 15=1Cr 106	Knex	do	437 (131) 178 (24)	7928	262	=(00) A N. 236= 1A J. 20=1Cr 111	Knex and Alkman.	do	108 (70) 110 (251)	3672
13	=(00) A N. 15=1Cr. 61	do	do	356 (34) 376 (27) 87	6401	292	=(00) A N. 236= 1A J. 20=1Cr 111	Knex.	do	175 (283)	8097
14	=(00) A N. 15=1Cr. 62	do	do	208 (213) 222 (13)	3718	294	=(00) A N. 236= 1A J. 20=1Cr 111	do	do	110 (251) 1057	1057
15	=(00) A N. 15=1Cr. 63	do	do	271 (10) 254 (16)	6301	296	=(00) A N. 236= 1A J. 20=1Cr 111	do	do	110 (251) 1057	1057
16	=(00) A N. 10=1Cr 1A J. 10=1Cr 710	Alkman	do	107 (9) 217 110 (20) 179 (108) 429 (8)	6301	300	=(00) A N. 236= 1A J. 20=1Cr 111	do	do	110 (251) 1057	1057
17	=(00) A N. 20=1Cr 1A J. 20=1Cr 807	Knex	do	282 119 (10) 10 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	7928	292	=(00) A N. 236= 1A J. 20=1Cr 111	do	do	110 (251) 1057	1057
17	Me-print for 26A 177			282 208 213 (9)						467 (27) 1901 (217)	2799 2311

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Page of Report.	Corresponding Reports.	Judges	Year of Decision.	Section and Note.	Table of Materials.	Corresponding Reports	Judges	Year of Decision.	Section and Note.	Table of Materials.
7	=(1904) A. N. 215=3 A. J. 545=1 Cr. 59	Richards.	1906	203 (59) : 22. (54) : 253 (17) : 403 (121) : 437 (68)	5382	434	Knox and Richards.	1907	271 (29A) : 287 (10) : 330 (107) : 45 (11) : 58 (77) : 532 (54)	16049
94	=(1904) A. N. 228=3 A. J. 415=1 Cr. 112	Waring and Akshen	do	113 (256) 329 (83)	5672	563	Akshen and Dillon.	do	31 (28)	7163
117	=(1906) A. N. 306=4 Cr. 431	Barnes and Akshen.	1906	203 (61) : 215 (27 : 68) : 220 (21)	1223	567	Dillon.	do	Addenda. (a 155)	9622
177	=(1907) A. N. 91=5 Cr. 277	Richards.	1907	46 (9) : 54 (1 : 3 : 28 : 32)	9224	740	Knox and Dillon.	do	111 (61)	11062

I. L. R. Allahabad Series—Vol. 30. (1908).

11	=(1907) A. N. 205=4 A. J. 705=5 Cr. 373	Richards	1907	115 (1 : 87 : 97 : 117 : 121 : 107 : 412) : 537 (113)	2235	243	Akshen and Keramat Husen.	1907	105 (155) (150A) : 227 (0) : 250 (15 (21) : 528)	8021
17	=(1907) A. N. 208=7 Cr. 215	Dunckel and Akshen.	do	110 (329) : 177 (20) : 203 (67) : 526 (8)	5392	331	Keramat Husen.	do	115 (21) : 528	6995
52	=(1907) A. N. 288=4 A. J. 725=6 Cr. 390	Knox	do	105 (51A : 68) 427 (61) : 479 (57)	9373	331	Stanley and Akshen.	do	35 (101) : 106 (77) : 123 (6)	9621
73	=(1908) A. N. 11=3A. J. 47=7 Cr. 19	Knox.	do	105 (34A) : 101 (1)	4497	331	Stanley and Akshen.	do	223 (167) : 223 (15) : 231 (13) : 18 (13)	5692
100	=(1908) A. N. 28=4 A. J. 896=6 Cr. 154	Knox, Ramey and Richards.	do	42 (6 : 7)	468	264	Knox.	do	133 : 112 (58 : 93 : 103 : 101 : 112 : 113 : 163)	7713
116	=(1908) A. N. 25=7 Cr. 19	Knox.	do	193 (259)	7794	225	Knox.	do	402 (7)	10624
131	=(1908) A. N. 61=5 A. J. 111=7 Cr. 331	Stanley and Burkh	do	453 (176 : 24 : 17 : 109) : 129 (22 : 21) : 107 (85 : 86)	8615	210	Lords Robertson, Akshen, Collins, Sir Andrew Scoble and Sir Arthur Wilson.	do	271 (28) : 242 (28A)	9652

I. L. R. Allahabad Series—Vol. 31. (1909)

13	=(1909A) N. 272=8A J. 712=9 Cr. 77=1 C. 50 (53A)	Richards and Graham.	1908	195 (260) : 622 (58) : 489 (59)	5785	48	Akshen and Keramat Husen	1908	105 (276 : 300)	1292
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Page of Report	Corresponding Reports	Judges	Year of Decision	Section and Note.	Table of Names	Corresponding Reports	Judges	Year of Decision	Section and Note	Table of Names
130	=6A J. 112=9Cr 382 =1 C. 762 =6A J. 231=9Cr. 294 =1 C. 182	Knox Karamat Hussain	1908	112(11) : 116(1) : 117(63) 435 (21) : 437 (56) 1000	1911	=6A J. 685=10Cr 297 =1 C. 162	Richards and Alton	1909	173, 112 (56) : 121, 122 (115)	1909
303	=6A J. 126=9Cr. 236 =1 C. 182	Alkman	1908	1000	1000	=6A J. 882=10 Cr. 171 =1 C. 24	Tudball and Alton	do	315 (28)	1909
317	=6A J. 265=9Cr. 236 =1 C. 219	do	do	190 (17) : 202 (17) : 71 438 (22)	4302					1909

L. R. Allahabad Series—Vol. 32 (1910)

30	=6A J. 603=10 Cr. 421 =31 C. 432 =6A J. 941=11Cr. 36 =1 C. 769	Richards and Alton. Tudball	1909	120 (1) : 2) : 302 (9) 476 (25) 110 (9) : 61 : 256	119	=7A J. 121=11Cr =30 C. 1 C. 68 =7A J. 225=11Cr =30 C. 1 C. 68	Knox and Karamat Hussain Tudball	1909	515 (11) : 121 (125) 171 (14) 1910	1909
37	=6A J. 971=11Cr 53 =1 C. 809	Richards	do	231 (2) : 271 (4) : 19) 537 (53)	9459	=7A J. 319=11Cr =37 C. 64 C. 53	do	do	177 (25) : 179 (3) (1) : 231 (10)	1909
71	=6A J. 983=11Cr 497 =1 C. 163	Knox and Karamat Hussain. Tudball.	do	176 (30)	1871	=7A J. 482=11Cr =33 C. 1 C. 53	Richards and Tudball.	do	107 (6) : 111 (7) : 71 (1) : 168 (140)	1909
78	=7A J. 1011=11 Cr 51 =1 C. 176	do	do	198 (29)	2079	=7A J. 719=11Cr =17 C. 71 C. 111	Chamber.	do	250 (6) : 29 (7)	1909
132	=7A J. 571=11Cr. 141 =31 C. 71	Knox and Karamat Hussain	1909	145 (81) : 94 : 97 : 98 : 121 : 416	2755	=7A J. 819=11Cr =11 C. 61 C. 871	Tudball	do	119 (225)	1909

L. R. Allahabad Series—Vol. 33. (1911).

26	=7A J. 697=11Cr. 442=71 C. 186 =7A J. 910=11Cr. 190=71 C. 112	Tudball and Chamber.	1910	222 (15) : 271 (16) : 18)	3639	=8A J. 439=12Cr. 171=91 C. 182 =8A J. 535=12Cr. 325=10 C. 159	Richards. Tudball.	1911	195 (256)	1909
48		do	do	100 (36)	2316		do	do	118 (21) : 227 (10)	1909
50		Stanley and Banerj.	do	485 (167)	10159	=8A J. 630=12Cr. 401=11 C. 53	Richards and Tudball.	do	177 (15) : 401 (8)	1909
385	=8A J. 162=12Cr. 46=91 C. 278	Karamat Hussain.	1911	276 (2) : 39 : 27 (111)	1627	=12Cr. 561=12 C. 632	do	do	153 (76) : 77 : 149	1909
230	=9A J. 240=12Cr. 10=91 C. 497	Knox and Karamat Hussain.	do	475 (11) : 78)	4363	=8A J. 625=12Cr. 103=11 C. 339	do	do	122 (26)	1909
240	=8A J. 534=12Cr. 339=11 C. 233	Tudball.	do	108 (1 : 1A : 5) : 415 (2)	314	=12Cr. 170=13 C. 922	Knox. Higgin.	do	105 (1 : 5 : 10 : 23 : 29) 107 (85 : 86 : 163)	1909

I. L. R. Allahabad Series—Vol 34. (1912)

Page of Report	Judges.	Year of Decision	Section and Note	Table of Names	Report	Corresponding Report	Judges	Year of Decision	Section and Note	Table of Names
115	Ct.	1913	123 (81, 104)	11561	363	=9 A.J. 181	Karamat Hossein and Chatter.	1912	478 (29, 78, 148, 149)	3753
118	do	do	104 (8)	7851	419	=9 A.J. 583=14Cr	Knox	do	107 (34, 200) - 117 (40)	4100
107	Chatter.	do	103 (16, 19, 276, 284)	10198	551	=9 A.J. 64=13Cr	do	do	177 (12)	2741
103	Chatter.	do	12 (69) 531 (11)	3761	187	=7 A.J. 15=13Cr	Karamat Hossein	do	179 (2-11)	2757
244	Richards	do	107 (4)	5672	522	=7 A.J. 15=14Cr	Karamat Hossein and Tudball	do	Adenda (8, 107)	2351
207	Karamat Hossein, Tudball.	1912	103 (29, 41, 12)	176	533	=10 A.J. 2=13Cr	Karamat Hossein and Tudball	do	145 (16, 139) - 546 (1)	7823
313	do	do	135-112 (85)	1333	602	=10 A.J. 14=13Cr	do	do	142 (14, 134 (6)) - 376 (34A)	1750
324	Knox.	do	270 (2, 4, 11)	7823	674	=10 A.J. 29=13Cr	Knox.	do	195 (78 (b), (c), (m))	5131

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1	=10 A.J. 235=12Cr	1912	75 (10, 15, 70)	3560	109	=11 A.J. 7=14Cr	Tudball	1912	81 (7)	1646
5	=9 A.J. 17 C. 579	do	526 (62)	7819	156	=11 A.J. 9=11Cr	do	1913	265 (85)	7917
8	=10 A.J. 57=13Cr	do	44 (107)	2233	174	=11 A.J. 11=14Cr	do	do	198 (9)	9625
22	=10 A.J. 431=13Cr	do	179 (3, 13)	5112	173	=11 A.J. 14=14Cr	do	do	265 (1, 22, 71)	2383
28	=10 A.J. 462=13Cr	do	Adenda (8, 116)	7870	200	Adenda for 209	Giffin and Chatter	do	164 (17)	3146
62	=10 A.J. 478=13Cr	do	273 (3) - 344 (1)	877	269	=11 A.J. 28=14Cr	do	do	331 - 364 (19)	346
73	=10 A.J. 531=14Cr	do	206 (50)	391	371	=11 A.J. 11=14Cr	Ryves	do	517 225 (35)	817
91	=11 A.J. 11=14Cr	do	195 (23, 42, 222)	1296	107	=11 A.J. 29=11Cr	Tudball.	do	55 (3)	7004
102	=11 A.J. 13=14Cr	do	14 (1) - 1m (63)	7214	270	=11 A.J. 9=13Cr	Knox and Ryves.	do	284 (1, 7)	2548
161	=11 A.J. 6=14Cr	do	107 (23, 1180, 1125)	1067	575	=11 A.J. 51=15Cr	Ryves	do	514 (131)	4662

Page of Report.	Corresponding Reports.	Judges.	Year of decision.	Section and Note.	Volume of the Series.	Year of decision.	Corresponding Reports.	Judges.	Year of decision.	Section and Note.
1	=11 A. J. 308=15Cr	Ryves	1913	199 (4)	1211	213	Whitprint for 50A 212	Ryves and Pigott.	1914	135-120(13), 179, 170
4	=64=23, C 308	Ryves	do	145 41(1), 215 (3), 403	8533	233	=12 A. J. 314=15Cr.	Knox	do	145 41(1), 403, 452(21)
6	=11 A. J. 307=15Cr.	Rafiq.	do	(47), 436(22)	3019	239	=57=23 1 C. 325		do	110 (20), 320, 117
13	=179=23 1 C. 755	Knox.	do	54 (6, 16)	5553	253	=12 A. J. 325=15Cr.		do	(14), 237 (11), 526
19	=11 A. J. 306=15Cr		do	540 (14, 13)	2154	315	=215=23 1 C. 906		do	110 (50), 229, 112 (17), 23 (34)
53	=164=23 1 C. 1749	Ryves and Pigott.	do	107 (82), 145 (61, 91), 22, 21, 277, 323, 471, 478, 528,	4694	378	=12 A. J. 319=15 Cr.	Chamier.	1914	379 (3), 423 (11, 30)
129	=12 A. J. 1=15Cr.	Barnes and Ryves.	1914	203 (20)	7711	382	=12 A. J. 306=15 Cr.	Pigott.	do	107 (313), 259 (34)
132	=12 A. J. 106=15Cr	Ryves and Pigott	do	250 (42-44, 45), 537 (114)	2387	403	=12 A. J. 307=15 Cr.		do	135 (223), 425 (52), 423 (77)
143	=12 A. J. 118=15Cr	Ryves	1913	107 (102, 206), 145 (62, 102, 206, 470)	7849	403	=12 A. J. 311=15 Cr.	Knox.	do	17 (16)
145	=12 A. J. 105=15Cr	Ryves	do	110 (325), 119 (2), 437 (8-52)	4649	469	=12 A. J. 307=15 Cr.	Rafiq and Pigott.	do	10520
147	=275=23 1 C. 171	Pigott and Ludball	do	102 (1)	1163	481	=12 A. J. 307=15 Cr.		do	1159
163	=12 A. J. 107=15Cr.	Knox and Ludball	do	417 (4)	10337	495	=12 A. J. 307=15 Cr.	Chamier.	do	6436
163	=12 A. J. 22=15Cr.	Ryves and Pigott	1914	133-142 (157)	3994	496	=12 A. J. 307=15 Cr.	Pigott.	do	1022
209	=12 A. J. 23=15Cr		do	133-142 (157)	6073	513	=12 A. J. 307=15 Cr.		do	1023
213	=12 A. J. 27=15Cr.		do	133-142 (153, 159, 170)			=12 A. J. 307=15 Cr.	do	do	6243

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20	=12A. J. 117=10Cr	Chamier	1914	107 (29, 30)	2944	33	=13, J 121=10 Cr.	Pigott.	1914	107 (6, 7, 22, 72, 86), 129, 134, 143
26	=12A. J. 121=16 Cr.	Pigott	do	133-142 (2-24, 93)	5200	107	=13A J. 121=16 Cr.	Tollball.	do	403 (46, 47)
30	=12A. J. 121=16 Cr.	do	do	107 (22, 23, 25, 121, 127, 439, 453)	6136	110	=13 A J 53=16 Cr	Chamier and Pigott.	do	537 (10)
31	=12A. J. 134=16 Cr.	do	do	421 (219), 439 (46-284), 502 (11)	2843	127	=13A J. 501=16 Cr.	Knox.	do	3197
							=2F=23, C 103			315 (41), 423 (135), 429 (13)

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Page of Report	Corresponding Reports.	Judges	Year of decision	Section and Note	Table of Names.	Page of Report.	Corresponding Reports.	Judges	Year of decision	Section and Note	Table of Names.
129	=13 A. J. 102=17 Cr =13 A. J. 102=17 Cr =13 A. J. 102=17 Cr	Tudball	1914	122 (1-3-5)	10699	375	=13 A. J. 497=16 Cr =13 A. J. 497=16 Cr =13 A. J. 497=16 Cr	Piggot	1915	208 212 (51-20)	8965
130	=13 A. J. 58=16 Cr =13 A. J. 58=16 Cr =13 A. J. 58=16 Cr	Piggot	1915	105 (11-20)	7670	419	=13 A. J. 630=16 Cr =13 A. J. 630=16 Cr =13 A. J. 630=16 Cr	Chamier and Piggot	do	315 (27)	7231
131	=13 A. J. 518=16 Cr =13 A. J. 518=16 Cr =13 A. J. 518=16 Cr	Tudball	do	107 (63) ² , 66, XLV (110), 537 (3-121)	10662	139	=13 A. J. 685=16 Cr =13 A. J. 685=16 Cr =13 A. J. 685=16 Cr	Piggot	do	155 (132 (1), 233 (33))	7578
132	=13 A. J. 518=16 Cr =13 A. J. 518=16 Cr =13 A. J. 518=16 Cr	Knox.	do	104 (13)	119	171	=13 A. J. 719=16 Cr =13 A. J. 719=16 Cr =13 A. J. 719=16 Cr	Chamier.	do	108 (8)	3273
133	=13 A. J. 518=16 Cr =13 A. J. 518=16 Cr =13 A. J. 518=16 Cr	Chamier and Piggot	do	333 (73-74-79)	2712	628	606=29 I C 158	Richards and Piggot	do	537 (158)	1184
134	=13 A. J. 518=16 Cr =13 A. J. 518=16 Cr =13 A. J. 518=16 Cr	do	do	478 (53-78-149-149)	11729	634	=13 A. J. 932=16 Cr =13 A. J. 932=16 Cr =13 A. J. 932=16 Cr	Tudball.	do	145 (252; 901)	4531

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15	=13 A. J. 979=16 Cr =13 A. J. 979=16 Cr =13 A. J. 979=16 Cr	Richards and Rana	1915	155 (5)	10113	311	=13 A. J. 314=17 Cr =13 A. J. 314=17 Cr =13 A. J. 314=17 Cr	Knox.	1916	110 (320)	1111
29	=13 A. J. 1045=16 Cr =13 A. J. 1045=16 Cr =13 A. J. 1045=16 Cr	Richards and Rana	do	512 (8)	8296	393	=13 A. J. 445=17 Cr =13 A. J. 445=17 Cr =13 A. J. 445=17 Cr	Piggot	1916	113 (2-3)	5070
32	=13 A. J. 1050=16 Cr =13 A. J. 1050=16 Cr =13 A. J. 1050=16 Cr	Tudball	do	202 (156)	1107	395	=13 A. J. 518=17 Cr =13 A. J. 518=17 Cr =13 A. J. 518=17 Cr	do	do	233 (1), 231 (5), 230 (21)	5074
42	=13 A. J. 1050=16 Cr =13 A. J. 1050=16 Cr =13 A. J. 1050=16 Cr	Richards.	do	222 (163-168)	1202	458	=13 A. J. 700=18 Cr =13 A. J. 700=18 Cr =13 A. J. 700=18 Cr	Piggot and Walsh.	do	231 (9)	11521
131	=14 A. J. 61=17 Cr =14 A. J. 61=17 Cr =14 A. J. 61=17 Cr	Tudball and Walsh.	do	370 (115A-117-120)	2945	468	(F. N.)=Cr. Rev. No. 105 of 1916	do	do	107 (72; 129; 176)	8453
103	=14 A. J. 71=17 Cr =14 A. J. 71=17 Cr =14 A. J. 71=17 Cr	Tudball and Piggot.	do	135 (71-72)	1331	635	=14 A. J. 656=17 Cr =14 A. J. 656=17 Cr =14 A. J. 656=17 Cr	Walsh.	do	176 (154; 199)	4525

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129	=14 A. J. 1076=17 Cr. =14 A. J. 1076=17 Cr. =14 A. J. 1076=17 Cr.	Walsh.	1916	107 (27); 110 (29)	6175	253	=14 A. J. 136=18 Cr =14 A. J. 136=18 Cr =14 A. J. 136=18 Cr	Knox.	1916	113 (7)	3645
141	=14 A. J. 1106=17 Cr =14 A. J. 1106=17 Cr =14 A. J. 1106=17 Cr	do	do	502 (36)	30	305	=14 A. J. 130=18 Cr =14 A. J. 130=18 Cr =14 A. J. 130=18 Cr	do	1917	359 (72; 73; 81)	4655
147	=14 A. J. 1076=17 Cr. =14 A. J. 1076=17 Cr. =14 A. J. 1076=17 Cr.	Richards & Banerji	do	135 (282)	11475	318	=14 A. J. 203=18 Cr =14 A. J. 203=18 Cr =14 A. J. 203=18 Cr	Walsh.	do	370 (72; 73; 118 (7); 253 (6))	5634

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367	=15 A. J. 315=18 Cr 686=51 C 818	Knox	1917	175 (72-188)	1922	612	=15 A. J. 256=19 Cr 828=11 C 622	Knox	1917	115 (411, 416, 417, 412)	1779
369	=15 A. J. 254=18 Cr 569=30 C 791	Tudball & Rafter	do	364 (260)	5022	623	=15 A. J. 291=19 Cr 794=11 C 294	do	do	do	1577
440	=15 A. J. 404=18 Cr 630=30 C 945	Richardson & Banerji	do	123 (1 6 7), 179 (22)	5919	637	10 B. 1=15 A. J. 721=14 Cr 855=12 C 167	Knox, Pigott and Walsh.	do	105 (276)	1928
519	=15 A. J. 374=18 Cr 681=10 C 352	Pigott	do	413 (3)	1153						

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21	=15 A. J. 811=19 Cr. 1=12 C 915 (err)	Banerji	1917	195 (129(a), 211)	3331	149	=16 A. J. 22=19 Cr 188=11 C 601	Knox	1917	Addenda (a, 107, 125, 128)	5167
24	=15 A. J. 815=19 Cr 18=12 C 927	Pigott	do	476 (7)	10604	141	=16 A. J. 64=19 Cr 201=11 C 617	Tudball	do	195 (250)	7591
28	=15 A. J. 817=19 Cr 5=12 C 917	Banerji	do	144 (28)	5382	267	=16 A. J. 217=19 Cr 378=11 C 682	Pigott & Walsh	1918	354, 1+2, 16; 557, 2, 2	7774
32	=15 A. J. 803=19 Cr 30=12 C 1009	do	do	178 (1 2)	846	238	=16 A. J. 223=19 Cr 287=11 C 779	Richardson & Banerji	do	195 (212)	11710
39	=15 A. J. 822=19 Cr 2=12 C 914	do	do	123 (16)	7817	264	=19 A. J. 189=19 Cr 298=11 C 673	Walsh	do	115 (411, 419, 437, 142), 453 (21)	9284
41	=15 A. J. 835=19 Cr 12=12 C 924	do	do	16 [6 (22)], 196A (3)	9487	372	=16 A. J. 298=19 Cr 331=11 C 653	Pigott.	do	110 (119)	5641
70	=15 A. J. 879=19 Cr 76=13 C 104	Tudball	do	270 (8)	963	116	=16 A. J. 293=19 Cr 401=11 C 929	do	do	157 (31, 153)	99
81	=15 A. J. 897=19 Cr 115=13 C 441	do	do	529 (221)	5311	699	=16 A. J. 893=19 Cr 71	do	do	270 (9)	6953
106	=15 A. J. 912=19 Cr 148=13 C 196	Knox	do	476 (7 13), 478 (2)	4711	615	=16 A. J. 966=19 Cr 706=16 C 290	Knox	1918	398, 212 (15, 32), 259 (7)	5267
138	=16 A. J. 31=19 Cr 28=13 C 622	Banerji	do	137 (72-61A)	5176	611	=16 A. J. 662=19 Cr 983=17 C 815	Banerji	do	16 (71) (22a), 476 (182)	8814

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116	=16 A. J. 891=19 Cr. 109]=19 C 311	Pigott.	1918	15 (3), 16 II (2-3), 350 (11)	5717	197	=16 A. J. 926=20 Cr. 3=13 C 673	Tudball.	1918	477 (2)	3251
164	=16 A. J. 897=20 Cr. 8=14 C 183	do	do	Addenda (S.191)	11065	217	=17 A. J. 189=20 Cr. 214=19 C 77=1 U.P. 86 (A)	Knox.	do	123 (10, 189)	2403

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201	= 17 A J. 117=1 U. 89 (A)=20 Cr. 20 = 19 A J. 64	Piggott.	1913	107 (123), 117 (16)	8520	422	Lindsay.	1919	158 (20)	6127
202	= 17 A J. 102=20 Cr. 44 (A)=1 U. 237	Knox.	do	Allahabad (8 115, 103)	8118	424	do	do	254 (1)	1519
203	= 17 A J. 211=20 Cr. 211=10 U. 653	Knox.	1910	Allahabad (8 150)	11719	425	do	do	55 (1), 27 (4)	5170
204	= 17 A J. 103=20 Cr. 57=2 U. 61	Lindsay.	do	250 (21, 22)	2882	427	do	do	139 (17)	5610
205	= 17 A J. 38=1 U. 11. 161 (A)=1 Cr. 42	do	do	250 (20)	11722	428	Wiggott.	do	125 (1 + 2)	6723
	511 (C. 120)						Madame.	do		

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12	= 17 A J. 80=20 Cr. 61=25 U. 418	Piggott.	1910	211 (15), 275 (20), Ch. XIV (10)	850	211	Piggott and Walsh.	1919	435 (25)	6290
21	= 17 A J. 80=20 Cr. 61=25 U. 418	do	do	230 (20)	4893	314	do	1920	Allahabad. (a. 42)	4102
25	= 17 A J. 80=20 Cr. 61=25 U. 418	Walsh.	do	425 (50)	1184	315	Piggott.	do	100 (10 + 20 + 21)	2318
67	= 17 A J. 107=20 Cr. 61=25 U. 418	Walsh.	do	Allahabad. (a. 100)	6369	316	do	do	215 (11), 429 (48)	7753
90	= 17 A J. 103=20 Cr. 61=25 U. 418	do	do	188 (10)	6206	317	Tudball.	do	Allahabad. (a. 110)	2000
123	= 17 A J. 103=20 Cr. 61=25 U. 418	Hyatt.	do	437 (47)	11617	322	Walsh.	do	Allahabad. (a. 110)	2710
170	= 17 A J. 103=20 Cr. 61=25 U. 418	do	do	105 (10, 11)	8314	323	Neara.	do	Allahabad. (a. 110)	7621
177	= 17 A J. 53=1 U. 11. 174 (A)=2 U. 81	Piggott and Walsh.	do	465 (5)	5907	618	Walsh.	do	Allahabad. (a. 110)	2913
292	= 17 A J. 103=20 Cr. 61=25 U. 418	Piggott	do	218 (21), 245 (49)	4145	619	Knox.	do	139 (20)	

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10		West and N. Haridas	1875	297-308 (7 : 16, 318 : 321, 325)	4623	232 (F B)	Westropp, Sargent, Green, Melville and N. Haridas.	1876	275 (2) : 462 (1)	5131
50		do	do	179 (10) : 180 (3) : 181 (6) : 223 (8)	5029	311	do	do	215 (1 : 31 : 53) : 476 (21 : 170) : 177 (31 : 57 (1) : 74)	5956
64		do	do	503 (50 : 215) : 3 : 20 : 2972	2972	339	do	do	476 (170) : 477 (3) : 437 (2 : 7)	7157
82	Cr. R.—18—1—73 (F. B.)	Westropp, Kemball, West and N. Haridas	1876	153 (203)	10791	340	do	do	75 (12) : 185 (5)	5173
147		do	do	345 (1 : 11 : 53)	7001	462	Kemball and N. Haridas.	do	276 (1)	5079
164		do	do	456 (50) : 459 (110)	10031	475	Westropp and N. Haridas.	do	257 (10) : 297 : 309 (93) : 104 (173)	1687
175		do	do	419 (3) : 20 (3) : 59 : 43 : 764	4559	610	Melville and Kemball.	1877	222 (9) : 233 (11) : 234 (7) : 237 (17) : 239 (3) : 11 : 55 : 110 (1) : 242 (91) : 243 (31) : 244 (1)	5294
214	(F. B.)	Westropp, Kemball, West and N. Haridas	1875	35 (53) : 235 (36)	9613	630	Kemball and N. Haridas.	do	51 (2) : 517 : 525 (10) : 118 : 150 : 179 : 165)	5203
219		do	1876	164 (17 : 118 : 157) : 364 (17 : 26 : 28 : 29 : 47)	8925	633	Melville and Kemball.	do	376 (11)	5945
223		do	do	35 (105) : 413 (8)	7917					

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10		Westropp and N. Haridas.	1876	Preamble (2)	826	525	Westropp and Melville.	1877	297-308 (283)	1373
61		Westropp, Atkinson and Sargent.	1877	297-308 (338) : 418 (11)	7290	534	Melville and Kemball.	1878	253 (22) : 437 (21 : 97) : 438 (264)	3102
112		West and Pinkey.	do	221 (6) : 223 (11)	825	564	Westropp, Melville and Kemball.	do	423 (221) : 431 (1) : 432 (93 : 101) : 440 (6)	2119
134		Melville and Pinkey	do	17 (3) : 195 (236)	7027	613	Kemball and Pinkey.	do	164 (2 : 18 : 48)	5515
157	(Cr. R.)	Westropp and Melville.	1878	133-142 (220) : 144 (149)	8579	633	do	do	218 (9)	6220
451		West and Pinkey.	1877	195 (279 : 293) : 157 (1 : 28) : 200 (16)	5038					

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12 129		West and Pinhey do	1878 do	163 (3) 417 (16) : 439 (30) : 439 (217 : 223 : 225)	7918 5905	227 234	(Civil)	Sargent. do	1878 do	188 (16) 503-508 (26)	11049 10547

I. L. R. Bombay Series—Vol. 4, (1880).

15 101		Westropp Kimball and Mcville.	1877 1879	164 (12) : 254 (20) 370 (1140) : 421 (19) 21) : 439 (2) : 431 (84)	8991 5460	237 257		Pinhey and Mcville. West and Pinhey.	1879 do	178 (1) 197 (5 : 93)	7383 1711
219		Pinhey and Mcville.	1880	423 (162)	11494			M. Mcville and F. D. Mcville.	1880	195 [77(6)] : 197 (3)	2840
240 (F. D.)		Sargent. M. Mcville. Kimball, Pinhey and F. D. Mcville	do	208 (9) : 319 (1A : 2 B)	132	479 489		West.	do	158 (3)	9335
					624				do	123 (220) : 215 (3)	11734

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25 (Civil)		Westropp and M. Mcville.	1877	145 (357)	10363	338	(F. D.)	Sargent, Mcville and West.	1881	177 (8 : 10) : 161 : 179 (7) : 186 (1) : 181 (8) : 183 (23) : 503-508 (3)	6015
80		Sargent and M. Mcville.	1880	271 (28) : 287 (10) : 412 (11)	3786			West.	do	145 (311 : 510)	5141
137		Kimball and T. Mcville.	1880	135 [8 (10)] : 476 (90)	8290	387		Pinhey and N. Haridas.	do	204 (25) : 403 (57) : 437 (57)	8462
252		Mcville and N. Haridas	1881	511 (2)	3604	465					

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14		M. Melville and P. Finley.	1881	4r (81; 310 (12); 110 (4; 5); 122 (8); 123 (12; 13); 417 (21)	8923	102		Melville and N. Harbise, Melville and Kemball and Finley.	1869	107 (5; 54)	8174
25	Misprint for 126										
100	(Civil)	Melville and Kemball.	1881	158 (10)	41161	179		Kemball and Finley.	1882	177 (3); 187 (11); 235 (12; 13)	10815
124		do	1882	287 (10); 312 (13)	5003	622		Westropp and F. Melville.	do	181 (5); 143 (9; 14)	12412
126		Melville and Kemball.	1882	417 (21)	3700A	670		Melville and West.	1880	175-112 (229; 231)	1572
285		Sergeant	do	500 508 (12; 25)	1041	672		Melville and Finley	1882	123-149 (250; 251)	1001
288		West and Finley	do	16107-112; 118-153-157; 261 (28)	2111	731			do	277-294 (52)	11029

J. L. R. Bombay Series—Vol. 7. (1893).

12		Kemball and Finley	1882	107 (80); 127 (3; 1; 5; 6)	8009	189		Sergeant and Melville.	1883	433 (118; 153; 203; 210); 194 (1)	791
126		Melville and Finley	1883	430 (54)	925						

J. L. R. Bombay Series—Vol. II. (1884).

95	Misprint for 3 H 11. 63			190 (1)	8900	312		West and N. Harbise.	1884	177 (37); 206 (23); 293-313 (40); 216 (37; 83); 288 (33); 167 (37; 59); 531 (7)	9179
107		Kemball and Finley.	1883	435 (95; 103; 117)				do	do	517-525 (10; 115; 120)	1000
200	(E. D)	Sergeant, Hayley and Scott	1884	4 (160); 157 (6); 221 (1); 223 (2); 227 (1; 6; 9); 237 (18; 54; 60); 267-308 (240); 431 (3)	646	233		Bayley and Finley.	do	1 (13); 177 (12); 185 (1)	911
216		Finley and Scott.	1883	161 (1)	7461	260		do	do	517-525 (89; 156)	120
207		West and N. Harbise	1884	403 (28; 35; 63; 100); 438 (65; 217; 530; 6; 7; 15)	3015	575					

L. L. R. Bombay Series—Vol D. 1986.

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L. L. R. Bombay Series—Vol. 10. 1880.

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438		do	1886	123 : 124 : 143	629		do	do	169 (1) : 135 (2-3 (0) :	993
473		Sargent & Haridas.	1887	125 (273 - 289 : 293) :	469	(F. R.)	Sargent, West and Haridas.	1887	161 (161 : 179)	122
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				287 (12)						

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36		West & Birdwood	1887	1 (18) 10 - (m) 1 (m) 1	9636	377	Birdwood and Parsons.	1888	54 (23 : 25 : 26 : 29) :	1887
63		do	do	133 [8 (8)]: 183 (2)				do	172 (1) : 173 (96 : 97)	
101		do	do	460 (12A : 13)	7468	110	Bayley, Birdwood and Parsons.	do	173 (123) : 174 (6) : 141	
167		do	do	133 (3) : 200 (24A) 292	2913	561	do	do	(2)	
				(30) : 203 (6 : 16)				do	183 (3)	27-29
				203 (35)	3536			do	1 (11) : (12) : 172 (91) :	7104
									23 (7 : 9 : 10 : 13)	
									143 (1)	

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100		Birdwood and Parsons.	1888	125 (61 - 331) : 200 (3) :	2689	502	Jachino & Cundy.	1889	293 13 (28) : 295 (16) :	2713
117		do	do	176 (156 : 168 : 177 :		506	Jachino and Cundy	1889	316 (1 : 5) : 330 (17)	2725
316		Birdwood and Jardine.	do	188 (12 : 9 - 21)	2209		Sargent C. J.	do	417 (26) : 124 (100)	2729
334		do	do	46 (2) : 89 (3)	2638	500	Bayley, Scott, and N. Harliffe.	do	Preamble (2) : 203 (6 : 7 : 27)	2729
380		Scott and Parsons	do	127 (39 : 35)	10190		Scott and Jardine	do	1 (b) (2) : 190 91 (230) :	2728
			do	125 (348) : 176 (38) :	8769	600		do	203 (29 : 41) : 185	
			do	178 (7)		6196			(3 : 4)	
			do	402 (7) : 225 (23)						

C. L. B. Holiday Series - Vol. 11. (1980).

[illegible]

L. L. R. Bombay Marine Vol in (mod),

[illegible]

111. E. Hentley Hopley Vol 18, (1102),

(12)	Measured vs. $\frac{1}{\text{area}}$	1000	1000	Pattern	1000	FFT (V _{eff} and I _{eff}) mag. dB (100, 10, 1, 0.1 V) 100, 10, 1, 0.1 V	tbl 59
10-7		1000	1000				

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260	Jardine & Parsons	1891	489 (1, 6, 9, 72, 120, 200, 205)	3144	589
297	Bayley	do	491 (14), 552 (16)	8895	
357	Jardine & Parsons	do	376 (3)	10196	
359	do	do	281 (3), 297-309 (16)	6480	
268	Jardine & Telang.	1892	370 (133)	7682	661
372	do	do	100 (67, 75, 85), 107 (193, 199), 109 (43), 110 (7, 137, 139, 250), 271, 323, 123 (1)	7913	
	do	do	227 (7), 223 (26), 234 (8), 245 (19, 231), 260 (11, 21), 117 (11), 229 (6)	9761	
114		do			229

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127		1892	198 (12)	821	269	Jarline & Telang.	1892	177 (1; 10; 43); 227	1674
299	(F. B.)	do	35 (3; 4; 21; 10; 53) 235 (6; 12)	1666	485	do	do	(10); 237 (31); 238 (7)	111
293		1892	133-142 (29; 271)	3971	741	Telang & Filton. Birdwood and Parsons	1893 1894 (12) 1891	198 (12) 3m (23); 235 (21)	1665 1117
324		do	998 (13)	10749	748	Parsons & Telang	1892	317-35 (7; 10; 17; 62; 108; 113; 130)	9164

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L. R. Bombay Series—Vol. 19 (1895)

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51	Migrant for 10 R. 51	Jardine & Rannade	1894	197 (23) : 225 (6) : 417 (24)	4458 : 714 : 723		Jardine, Rannade.	1894	431 (3) : 161 (117 : 148 : 152) : 2835	6295
57		Jardine, Rannade.	1894	24 (9) "	6195 : 732		do	do	298 (7)	2835
72		do	do	177 (8 : 10) : 188 (22)	2777		do	do	293 (20) : 370 (124) : 421	1416
100		do	do	371 (28) : 387 (10)	7080 : 735		do	do	(31) : 430 (2)	5277
190		Jardine, Farran.	do	346 (4) : 509 (17)	562 : 1199		do	do	297, 308 (8 : 161) : 236 : 227 : 215 : 219 : 233	10802
340		do	do	(9) (124)	4014		do	do	144 (83)	5925
523		Jardine, Rannade.	1893	537 (124)	2816 : 730		Jardine, Fenton.	1895	223 (11) : 297, 308 (7 : 63 : 70 : 73 : 231) : 418 (11 : 12) : 423 (74 : 113 : 125 : 207 : 215) : 503-8 (30)	5925
524	Cr. R. 22 of 1894	do	1894	237-303 (103 : 105)	1416					
543	Cr. R. 23 of 1894	do	do	430 (8)	7559					
545		do	do	1 (12 : 19) : 45 (24)	517-55					
561		do	do	517-55 (129 : 123 : 158 : 166)	3777A					

L. R. Bombay Series—Vol. 20. (1896).

145		Jardine, Starling.	1895	411 (1)	3198		Candy, Rannade.	1895	523 (5) : 555 (28 : 79)	5978
215		Jardine, Rannade.	do	238 (8 : 17) : 297, 308 (12 : 14 : 15 : 50 : 159 : 161 : 225 : 236 : 227 : 222)	2279 : 540 : 541		do	do	110 (230) : 370 (80)	6227
					6235		do	do	110 (230) : 112 (31) : 435 (29) : 439 (53 : 107 : 118 : 121)	

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405		Strachey.	1896	1 (10) : 161 (23 : 72 : 99) : 526 (99 : 122 : 145) : 364 (10)	526		Jardine, Rannade.	1896	th (2)	6591
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412	Dal Gangadhar Thak	Strachey.	1897	th 16 (10); 196 (1, 7; 18); 197 (38); 522 (9-11); 515 (7)	1023 717 719 720 61801 6181	711 717 719 720 811		Parsons, Remade. do do	1896 do do	173-112 (213) 545 (1, 21) 112 (1)	2251 1157 1729
225 438		Strachey, Fulton do	1896 do	do (11) 515 (7)	6531 61801 6181	720 811		Parsons, Remade.	1896 do	173-112 (213) 545 (1, 21) 112 (1)	2251 1157 1729
528	(P. C.) Dal Gangadhar Thak	Lord Chancellor, Lords Hobhouse, Dwyer and Sir Richard Couch	1897	297-308 (166)	10019	811		do	1897	51 (2); 121 (113; 109); 517-25 (16; 45; 119; 121; 111)	222
549		Parsons, Remade	1896	129 (267); 127 (1-3); 258 (26); 523 (31-37); 529 (5) 162 (1-21) 209 (19) 280 (68) 211 (1-27); 217 (3); 218 (1, 14); 258 (5); 403 (53-40)	8321 832 915	831 832 915		do do do	do do do	245 (4) 259 (28; 77) 100 (63); 5-0 (3)	6728 8408 2906 5311
596		do	do		1027	919		Farran, Remade	do	171-183	5261
711		do	do		8463	968		Parsons, Remade.	do	th 17 (45); 31 (9); 195 (26); 115 (23); 207 (20); 370 (116; 117) 125-142 (159; 161; 171; 171-183)	10722

22		Parsons, Remade	1897	61 (2); 107 (28-235); 110 (30; 36); 167 (3-7); 211 (2; 42) 155 (389); 370 (12); 420 (14); 429 (8) 287 (17); 312 (19-21; 22); 391 (1) 164 (53; 89-92); 361 (21; 23-31-40-41; 19); 553 (5-8) 164 (1129); 288 (7); 297-308 (45; 75; 111-183) 423 (17)	4800 190 192 403 404 613 626 706	484 490 492 493 494 613 626 706		Parsons, Remade do do do do do do do	1898 do do do do do do do	158 (15; 235-210; 277); 490 (7) 537 (1) 193 (8); 215 (32); 237-238 (83) 425 (189); 517-25 (32; 33; 36-58; 100; 107-1) 237-208 (272 (1); 273; 274; 281-281A); 290 (38) 323 (1-11; 60-70; 111); 235 (6; 49)	1638 1943 1371 6169 3883 5328
50		do	do		10397	192		do	do	do	1943
213		Candly.	1898		2457	403		do	do	do	1371
221		Parsons, Remade.	do		7262	613		do	do	do	6169
216		do	do		2762	626		Parsons, Remade. Candly.	do	do	3883
270		do	do		1754	706		Tyabjee, Fulton, Russell, Starling.	do	do	5328

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287	= 1 B. R. 573	Ramade, Crowe	1900	177 (10), 10; 188 (11), 15; 241 (13), 252 (6)	1077 527	= 2 B. R. 84	Ramade, Crowe	1900	144 (6), 130, 145 (20), 27, 60, 21, 94, 105, 125 (20), 27 (56)	7100
471		Ramade, Parsons.	do	1 (7), 435 (115)	8174					

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40	Microprint for 2511 44	Parsons, Ramade.	1900	297, 298 (257), 310 (1)	292	= 2 B. R. 1095	Fulton, Batty.	1900	Preamble (4)	1227
48	= 2 B. R. 739		do	107 (248), 110 (259)	422		Candy, Ramade.	do	297, 298 (115), 310 (1)	2610
60	= 2 B. R. 637	Ramade, Fulton	do	27, 31 (5), 60	166	= 3 B. R. 122	Candy, Whitworth	1901	194 (1), 210 (20)	6460
131	(F. D.) = 2 B. R. 603	Jenkins, Ramade, Fulton and Batty.	do	25 (3), 294, 31 (29), 27, 15, 253 (17), 573 (13), 537 (9)	656	= 3 B. R. 271	Candy, Fulton.	do	161 (60), 112, 130 (11), 291, 605 (18), 20 (3), 22 (3)	1912
104	= 2 B. R. 701	Fulton Batty	do	345 (71), 294 (4, 5)	1970	Microprint for 25 B. 650	Ramade, Fulton.	1907	1 (17)	8173
175		Jenkins, Tyabji.	do	10 (275), 107, 129 (17), 316 (7)	667	(C. R.)	Candy, Fulton.	1901	297, 298 (27, 20, 75, 87)	970
179	= 2 B. R. 755	Jenkins, Batty	do	168 (39)	694	= 3 B. R. 271	Fulton, Crowe.	do	298 (4), 297, 298 (253), 418 (6)	7130
				13, 16, 183, 220, 435 (21), 226, 18, 9, 60, 628 (6)	702	= 3 B. R. 282	Candy, Fulton.	do	298 (7), 272 (2), 282 (1, 3), 257 (150)	2943
							Candy, Chandraravkar.	do	517, 25 (31, 37, 152)	4500

I. L. R. Bombay Series--Vol. 26, (1002).

50	= 3 B. R. 558	Candy, Fulton.	1901	277 (52), 226 (129), 289 (2), 253 (6), 316 (9), 237 (18)	8417 523	= 1 B. R. 271	do	do	16 (2), 222 (2), 227 (23), 45 (3, 8), 255 (11), 27 (8, 11, 13, 15), 294 (11), 293 (17), 717, 27 (115)	1627
150	(F. D.) = 1 B. R. 580	Jenkins, Candy, Chandraravkar.	do	41 (6 (13)), 4 (11), 173 (2), 100, 51 (52), 250 (7)	8317 532	= 1 B. R. 276	do	do	517, 25 (29)	2652
167		Fulton, Crowe.	do	217, 6 (102), 116 (56)	5771 719	Microprint for 8 C. R.	Jenkins, Batty.	do	115 (312)	2008A
331	Microprint as 283 = 3 B. R. 316				5317 757	AT page 761	do	do	Preamble (2)	12110
418	= 1 B. R. 59	Candy, Fulton.	do	11, 110 (69), 237 (5), 11, 7, 17 (64)	7150 785	= 1 B. R. 618	Crowe, Batty.	do	125 (78), 110 (30), 176 (26), 158, 164, 154	1018

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81	= 1B. R. 779	Crowe, Aston	1902	208 (132-53); 223 (79); 435 (106); 136 (106) (25); 437 (126); 439 (51); 60; 104; 189; 223 (19); 239 (20)	258	Misprint for 27B 611	227-209 (163)	Table of Name of Report.
125	Misprint for 135	do	do		575	= 5 B. R. 562	Canly, Chandravarkar.	1903	119 (1)	73
130	= 4 B. R. 910	Chandravarkar, Aston.	do	135 (251)	2061	= 5 B. R. 599	Jacob.	do	227-209 (63); 271; 23; 73; 219; 119 (50); 121 (131)	9077
135	= 4 B. R. 980		do	233 (21-26); 235 (16-19; 45); 239 (19; 20); 337 (46)	8887	= 1 B. R. 983	Jenkins, Batty.	do	227-209 (11; 73; 163); 113 (21)	1507

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129	= 5 B. R. 803	Chandravarkar, Jacob.	1903	75 (17; 20); 116 (122); 289 (4); 310 (4); 312 (38)	361	Misprint for 28B 179	435 (93); 439 (7)	...
814		Jenkins, Aston	1904	517-525 (15)	11638	= 6 B. R. 321	Jenkins, Batty.	1904	435 (93); 439 (7; 110)	1022
720		do	do	315 (1)	2131	= 6 B. R. 379	Jenkins, Chandravarkar Aston.	do	223 (6); 225 (2); 237 (9; 10; 20; 30); 270 (83); 325 (13; 93); 329 (4; 12; 121)	1031
412		do	do	238 (15; 50); 297-303 (8-219)	4778					

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226		Batty, Aston.	1904	4 (0) (3)	9967					
= 7 B. R. 227		Russell, Aston	1905	235 (16-30); 279 (3; 18; 18; 50); 423 (61); 537 (13; 55; 63)	3072	= 7 B. R. 101	Batty.	1901	7 (9); 9 (7); 119 (1); 255 (25)	255

I. L. R. Bombay Series—Vol 30. (1908).

40	= 7 B. R. 613	Batty, Jenkins.	1905	293 (14); 233 (20); 235 (23 (16; 19); 239 (14; 75)	2188	523	(P. O.)=3 B. R. 705 (P. O.)=4 O. J. 181	Jenkins, Russell, Batty.	1906	4 (m) (6)	1852
3	= 8 B. R. 23	Jenkins, Russell.	do	4 (0) (6)	3614	611	= 8 B. R. 740=4 O. 316	Aston, Beaman.	do	227-303 (11; 11; 20; 20; 20; 20; 71; 80)	4310
= 8 B. R. 421		Batty.	1906	232 (2; 16)	1367						

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218	=9 B. R. 118=5 Cr. 164	Batty, Heaton.	1906	159 (10-16): 227 (6): 228 (11)	3793	433	=9 B. R. 625=6 Cr. 60	Chandraravkar and Pratt.	1907	5 (3): 65 (1): 105 (1:2)	1269
253	(P. C)	do	1907	54 (31: 29): 132 (1)	10026			Chandraravkar and Heaton.	do	6 (4) 18 (3)	3861
381		Loxia Robertson, Collins and Sir Arthur Wilson.	do	179 (115)	10998	611	=9 B. R. 957=6 Cr. 240				

I. L. R. Bombay Series—Vol. 32. (1908).

10	=9 B. R. 105=7 Cr. 238	Chandraravkar and Knight.	1907	6 (4)	10701	181	=10 B. R. 23=7 Cr. 33	Chandraravkar and Knight.	1907	178 (34: 59: 60: 63: 78: 119: 119: 163: 176)	3025
111	=9 B. R. 789=6 Cr. 164	Russel, Chandraravkar, Batty, Parat and Beaman.	do	162 (1-8: 15-23): 227-308 (333): 418(11)	6175	207	=10 B. R. 95=7 Cr. 120	do	1003	105 (54: 231: 315)	3014
162	=10 B. R. 93=7 Cr. 119	Chandraravkar and Knight.	1908	123 (122): 529 (235)	1981	449	=10 B. R. 233	Batchelor and Heaton.	do	513 (3): 514 (62)	10020

I. L. R. Bombay Series—Vol. 33. (1909).

22	=6 B. R. 255=1 Cr. 353=1 C. 378	Chandraravkar and Aston.	1904	4 (9) [3 (27) + (6) (4): 425 (33)]	10326	221	=10 B. R. 973=9 Cr. 236=2 L. C. 277	Scott and Batchelor.	1908	223 (3): 234 (2): 237 (3: 4)	1029
23	=10 B. R. 1120=8 Cr. 407=1 C. 357	Chandraravkar and Heaton	1908	4 (9) [3 (32)]: 4 (9) (1): 425 (33)	1032	240	=10 B. R. 1046=8 Cr. 426=2 L. C. 283	Scott and Batchelor.	1908	1 (15): 480 (1): 495 (1)	6452
33	=10 B. R. 2648 Cr. 262	Scott and Knight	do	421 (185)	1373	423	=11 B. R. 350=19 Cr. 39=2 L. C. 480	Chandraravkar and Heaton.	1909	297-303 (276)	5779
77	=10 B. R. 501=8 Cr. 377=1 L. C. 641	Chandraravkar and Heaton.	do	221 (16): 225 (1): 283 (1): 274 (1-8): 237 (15-44)	3595						

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88	=11 B. R. 835=10 Cr. 431=11 C. 962	Scott and Datchelor.	1900	195 (313), 178 (7)	6333	378	=12 B. R. 21=11 Cr. 189=81 C. 612	Chandraravkar and Heaton.	1900	435 (105)	2719
326	=12 B. R. 129=11 Cr. 271=51 C. 861	do	do	100 (52), 123 (6)	667	589	=12 B. R. 65=11 Cr. 542=71 C. 533	do	1910	162 (1 : 8)	285

I. L. R. Bombay Series—Vol. 35. (1911).

177	=12 D. R. 901=11 Cr. 621=81 C. 623	Datchelor and Rao	1910	565 (6)	2661	253	=13 B. R. 131=12 Cr. 109=91 C. 917	Chandraravkar and Heaton.	1911	179 (22), 517-25 (77), 83 (91)	5155
183	=11 Cr. 692	do	do	208 213 (59)	921	271	=13 B. R. 260=12 Cr. 257=101 C. 842	do	do	123 (19 : 21)	115
225	(S B.)=13 B. R. 295=12 Cr. 356=101 C. 946	Scott Chandraravkar and Heaton	do	51 (17), 103 (17) : 177 (43) 188 (6)	9995	901	=13 B. R. 360=15 Cr. 339=111 C. 611	do	do	107 (53), 243 (110), 27-119 (1 : 2), 437 (9)	819
213	Nugent for 33D 253				118	118	=13 B. R. 550=15 Cr. 31=111 C. 615	Chandraravkar, Heaton and Hayward.	do	113 (4)	4291

I. L. R. Bombay Series—Vol. 36. (1912).

524	=14 D. R. 147=11 B. C. 88=13 Cr. 456=11 C. 970	Chandraravkar and Datchelor	1912	177 (6) 179 (8) 186 (4)	1931						
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I. L. R. Bombay Series—Vol. 37. (1913).

146	=14 D. R. 897=11 B. C. 195=13 Cr. 842=17 C. 714	Datchelor and Rao.	1912	297-308 (8)	3952	369	=15 B. R. 61=2 B. C. 17=14 Cr. 77=181 C. 413	Datchelor and Rao.	1912	218 (1), 238 (1 : 3), 315 (3)	8604
152	"	Datchelor and Heaton.	do	1 (7)	1915	376	Memorandum as 377=15 B. R. 19=2 B. C. 5=14 Cr. 73=181 C. 411	do	do	250 (2)	{ 2909 3026 }
178	=14 B. R. 933=13 B. C. 500=13 Cr. 849=17 C. 753	Datchelor and Rao.	do	123 (6-7 (11))	9922	659	=15 B. R. 691=2 B. C. 101=11 Cr. 453=291 C. 453	Datchelor and Shah.	1913	403 (1)	8180

I. L. R. Bombay Series—Vol 38 (1914).

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114	=15 B. R. 993=2 B. C. 106=14 Cr. 609=21 I. C. 657.	Heston and Shah.	1913	297 (7, 19); 298-313 (81)-215 (23; 67)	6412	642	(F. B.)=16 B. R. 416=15 Cr. 581=25 I. C. 336	Scott, Batcherlor and Heaman.	1914	476 (73)	7454
136	=15 B. R. 974=14 Cr. 625=21 I. C. 673	Macleod, Heston and Shah.	do	297-298 (115B).	2761	719	=23 I. C. 157	Heston and Shah.	1914	349 (15); 523 (12; 37)	9897

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53	=16 B. R. 603=15 Cr. 606=26 I. C. 133	Heston and Shah.	1914	162 (1)	3297	310	=16 B. R. 678=16 Cr. 99=27 I. C. 147	Heston and Shah.	1914	8, 195	6159
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I. L. R. Bombay Series—Vol 40. (1916).

97	=17 B. R. 891=16 Cr. 761=31 I. C. 361	Batcherlor and Hayward	1915	235 (64); 237 (7) - 403 (31; 42; 46)	10829	593	=18 B. R. 553=18 Cr. 143=37 I. C. 405	Batcherlor and Shah.	1916	311 (4)	516
186	=17 B. R. 902=16 Cr. 783=31 I. C. 383	do	do	8, 517	7085						

I. L. R. Bombay Series—Vol 41. (1917).

540	=19 B. R. 354=18 Cr. 608=40 I. C. 316	Batcherlor and Shah.	1917	439 (217; 222)	2595	667	=19 B. R. 537=18 Cr. 762=41 I. C. 158	Batcherlor and Heston.	1917	189 (1-2; 6)	7237
431		do & Heston.	do	195 (222)	(744)						

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172	=20 B. R. 80=19 Cr. 312=44 I. C. 454 =20 B. R. 117=19 Cr. 332=44 I. C. 318	Heston and Shah. do	1917	197 (38 : 47) : 208-213 (37)	1414	231	=20 B. R. 103=19 Cr. 333=44 I. C. 577	Heston and Shah.	1917	195 (312)	7169
190	=20 B. R. 87=19 Cr. 379=44 I. C. 183	do	do	185 (213 : 220)	7880	100	20 B. R. 379=19 Cr. 607=45 I. C. 511	Shah and Martin.	1918	514 (7)	3564
202	=20 B. R. 124=19 Cr. 336=44 I. C. 342	do	do	370 (122A)	5653	661	20 B. R. 305=19 Cr. 597=45 I. C. 204	do	do	517-525 (74 : 77)	4668
254		do	do	344 (23)	105						

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131	=20 B. R. 629=19 Cr. 771=40 I. C. 691 =20 Cr. 71	Shah and Martin	1918	471 (2)	9070	554	=21 B. R. 270=20 Cr. 543=51 I. C. 783 =21 B. R. 277=20 Cr. 316=50 I. C. 192	Heston and Pratt. do	1919	106 (1 : 2 : 5 : 22 : 41) : 110 (161)	5029
147		do	do	197 (33) 215 (1)	5276	607	=21 B. R. 752=20 Cr. 702=52 I. C. 670	Heston and Shah.	do	135 (31) : 429 (1)	5273
200	=20 B. R. 108=20 Cr. 439=51 I. C. 257	Heston and Hayward	do	470 (60A : 120)	9971	864	=21 B. R. 705=20 Cr. 687=52 I. C. 607	do	1919	S. 435-439	10353
310	=20 B. R. 100=20 Cr. 31=48 I. C. 674	do	do	496 (41)	6207	885	=21 B. R. 708=20 Cr. 699=52 I. C. 607	do	do	489 (13)	1835
503	=21 B. R. 290=20 Cr. 300=50 I. C. 1007	do	do	195 (279 : 300)	9928	888		Macleod and Pratt.	do	265 (51)	2768

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42	=21 B. R. 1084=21 Cr. 50=51 I. C. 423	Shah and Hayward.	1919	6 (51) : 190 (72)	9925 A	400	=23 B. R. 151=21 Cr. 309=53 I. C. 819	Shah & Hayward.	1919	15 (10) : 16 (11 : 7)	5960
285	=22 B. R. 190=21 Cr. 377=45 I. C. 857	do	do	110 (2 : 374) : 122 (3 : 44)	3969	463	=22 B. R. 195=21 Cr. 380=53 I. C. 869	Shah and Crump.	do	250 (34 (3))	9770

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297	=25 W. R. 84	Smith and Panton.	1870	163 (1), 164 (3), 162 (1)	3501	292	=25 W. R. 30	Macpherson, Mackay and Morris.	1870	253 (23), 137 (47), 139 (254)	3150
310	(P. R.) = 25 W. R. 27	Garth C. J., Macpherson, Panton and Morris.	do	138 (11), 134 (5), 320 (24)	10673	354 356		Macpherson, Panton and Mackay.	do	18, 520 (23), 52, 520 (23)	11144 8729A
381		Macpherson and Morris.	do	417 (22)	2950	450		Macpherson and Morris.	do	105 (91), 318 (170), 11, 31, 73 (188)	940

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23	=25 W. R. 57	Macpherson and Morris.	1876	1546 (8), 1648 (1), 229 (39), 286 (2), 327 (17), 337 (17), 107, 530 (2), 5, 8, 22, 869	1115	253	(F. R.)	Garth C. J., Kemp, Macpherson, Mackay and Alabie.	1876	211 (21), 339 (11)	2906										
110		Mackay and Mitter	do	100 (67), 107 (103), 110 (27), 271 (31), 323 (39), 11, 71, 152, 189	1159	281	Misprinted as 536	Mackay and Alabie.	1877	168 (1)	1115										
117		do	do	10 (7, 8)	7492	605		Mackay and Mitter.	do	105 (97), 107 (103), 110 (27), 271 (31), 112 (103), 118 (17), 233 (23), 530 (23), 544 (17), 541 (17), 543 (17), 544 (17), 545 (17), 546 (17), 547 (17), 548 (17), 549 (17), 550 (17), 551 (17), 552 (17), 553 (17), 554 (17), 555 (17), 556 (17), 557 (17), 558 (17), 559 (17), 560 (17), 561 (17), 562 (17), 563 (17), 564 (17), 565 (17), 566 (17), 567 (17), 568 (17), 569 (17), 570 (17), 571 (17), 572 (17), 573 (17), 574 (17), 575 (17), 576 (17), 577 (17), 578 (17), 579 (17), 580 (17), 581 (17), 582 (17), 583 (17), 584 (17), 585 (17), 586 (17), 587 (17), 588 (17), 589 (17), 590 (17), 591 (17), 592 (17), 593 (17), 594 (17), 595 (17), 596 (17), 597 (17), 598 (17), 599 (17), 600 (17), 601 (17), 602 (17), 603 (17), 604 (17), 605 (17), 606 (17), 607 (17), 608 (17), 609 (17), 610 (17), 611 (17), 612 (17), 613 (17), 614 (17), 615 (17), 616 (17), 617 (17), 618 (17), 619 (17), 620 (17), 621 (17), 622 (17), 623 (17), 624 (17), 625 (17), 626 (17), 627 (17), 628 (17), 629 (17), 630 (17), 631 (17), 632 (17), 633 (17), 634 (17), 635 (17), 636 (17), 637 (17), 638 (17), 639 (17), 640 (17), 641 (17), 642 (17), 643 (17), 644 (17), 645 (17), 646 (17), 647 (17), 648 (17), 649 (17), 650 (17), 651 (17), 652 (17), 653 (17), 654 (17), 655 (17), 656 (17), 657 (17), 658 (17), 659 (17), 660 (17), 661 (17), 662 (17), 663 (17), 664 (17), 665 (17), 666 (17), 667 (17), 668 (17), 669 (17), 670 (17), 671 (17), 672 (17), 673 (17), 674 (17), 675 (17), 676 (17), 677 (17), 678 (17), 679 (17), 680 (17), 681 (17), 682 (17), 683 (17), 684 (17), 685 (17), 686 (17), 687 (17), 688 (17), 689 (17), 690 (17), 691 (17), 692 (17), 693 (17), 694 (17), 695 (17), 696 (17), 697 (17), 698 (17), 699 (17), 700 (17), 701 (17), 702 (17), 703 (17), 704 (17), 705 (17), 706 (17), 707 (17), 708 (17), 709 (17), 710 (17), 711 (17), 712 (17), 713 (17), 714 (17), 715 (17), 716 (17), 717 (17), 718 (17), 719 (17), 720 (17), 721 (17), 722 (17), 723 (17), 724 (17), 725 (17), 726 (17), 727 (17), 728 (17), 729 (17), 730 (17), 731 (17), 732 (17), 733 (17), 734 (17), 735 (17), 736 (17), 737 (17), 738 (17), 739 (17), 740 (17), 741 (17), 742 (17), 743 (17), 744 (17), 745 (17), 746 (17), 747 (17), 748 (17), 749 (17), 750 (17), 751 (17), 752 (17), 753 (17), 754 (17), 755 (17), 756 (17), 757 (17), 758 (17), 759 (17), 760 (17), 761 (17), 762 (17), 763 (17), 764 (17), 765 (17), 766 (17), 767 (17), 768 (17), 769 (17), 770 (17), 771 (17), 772 (17), 773 (17), 774 (17), 775 (17), 776 (17), 777 (17), 778 (17), 779 (17), 780 (17), 781 (17), 782 (17), 783 (17), 784 (17), 785 (17), 786 (17), 787 (17), 788 (17), 789 (17), 790 (17), 791 (17), 792 (17), 793 (17), 794 (17), 795 (17), 796 (17), 797 (17), 798 (17), 799 (17), 800 (17), 801 (17), 802 (17), 803 (17), 804 (17), 805 (17), 806 (17), 807 (17), 808 (17), 809 (17), 810 (17), 811 (17), 812 (17), 813 (17), 814 (17), 815 (17), 816 (17), 817 (17), 818 (17), 819 (17), 820 (17), 821 (17), 822 (17), 823 (17), 824 (17), 825 (17), 826 (17), 827 (17), 828 (17), 829 (17), 830 (17), 831 (17), 832 (17), 833 (17), 834 (17), 835 (17), 836 (17), 837 (17), 838 (17), 839 (17), 840 (17), 841 (17), 842 (17), 843 (17), 844 (17), 845 (17), 846 (17), 847 (17), 848 (17), 849 (17), 850 (17), 851 (17), 852 (17), 853 (17), 854 (17), 855 (17), 856 (17), 857 (17), 858 (17), 859 (17), 860 (17), 861 (17), 862 (17), 863 (17), 864 (17), 865 (17), 866 (17), 867 (17), 868 (17), 869 (17), 870 (17), 871 (17), 872 (17), 873 (17), 874 (17), 875 (17), 876 (17), 877 (17), 878 (17), 879 (17), 880 (17), 881 (17), 882 (17), 883 (17), 884 (17), 885 (17), 886 (17), 887 (17), 888 (17), 889 (17), 890 (17), 891 (17), 892 (17), 893 (17), 894 (17), 895 (17), 896 (17), 897 (17), 898 (17), 899 (17), 900 (17), 901 (17), 902 (17), 903 (17), 904 (17), 905 (17), 906 (17), 907 (17), 908 (17), 909 (17), 910 (17), 911 (17), 912 (17), 913 (17), 914 (17), 915 (17), 916 (17), 917 (17), 918 (17), 919 (17), 920 (17), 921 (17), 922 (17), 923 (17), 924 (17), 925 (17), 926 (17), 927 (17), 928 (17), 929 (17), 930 (17), 931 (17), 932 (17), 933 (17), 934 (17), 935 (17), 936 (17), 937 (17), 938 (17), 939 (17), 940 (17), 941 (17), 942 (17), 943 (17), 944 (17), 945 (17), 946 (17), 947 (17), 948 (17), 949 (17), 950 (17), 951 (17), 952 (17), 953 (17), 954 (17), 955 (17), 956 (17), 957 (17), 958 (17), 959 (17), 960 (17), 961 (17), 962 (17), 963 (17), 964 (17), 965 (17), 966 (17), 967 (17), 968 (17), 969 (17), 970 (17), 971 (17), 972 (17), 973 (17), 974 (17), 975 (17), 976 (17), 977 (17), 978 (17), 979 (17), 980 (17), 981 (17), 982 (17), 983 (17), 984 (17), 985 (17), 986 (17), 987 (17), 988 (17), 989 (17), 990 (17), 991 (17), 992 (17), 993 (17), 994 (17), 995 (17), 996 (17), 997 (17), 998 (17), 999 (17), 1000 (17)		do	do	117 (3, 19), 229 (23), 61 (163), 520 (23), 163	1130 2794	526	(F. R.)	Garth C. J., Kemp, Macpherson and Alabie.	do	105 (12), 117 (21)	1161
273		Jackson and McDowell.	1877		1130																
278		White.	do		2794																
290		Macpherson.	do	526 (23), 163	2989																

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20	(F. R.)	Garth C. J., Jackson, Mackay and Alabie.	1877	114 (108)	11411	180		Macpherson and Mitter.	1877	238 (17), 297 (208), 310	3200
						720		Alabie and	do	115 (292)	9404

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366	(F B) = 1 C. L. 412	Garth C. J. Kemp, Jackson, Markby and Ainslie - McDonell	1878	265 (10 - 26)	926	622	= 2 C. L. 304 = 3 C. L. 59	Markby and Princep. do do do	1878	556 (88)	2746
379	= 1 C. L. 329		1877	94 (13) - 104 (39) - 515 (39) - 517-522 (31a) 33 34 77 - 131 (161)	4076	712			do	297-298 (298, 299)	8374
389		Jackson and Cunningham	1878	268-13 (76) - 552 (5)	4680	751	= 2 C. L. 263		do	1m (36 - 66) : 171 (26), 290, 175 (1)	2601
495		do	do	207 (4) - 251 (1) 258 (13) 317 (2)	4891	756		Markby and Princep	do	1k (5 - 7), 15 (9), 115 (429)	9221
510	= 1 C. L. 175	Ainslie and McDonell.	do	231 (11)	7815	757	= 2 C. L. 403	Markby and Princep	do	161 (12 - 56, 1-57), 556 (9) : 561 (50)	2922
573	= 2 C. L. 62	Jackson and Cunningham	do	403 (2) 429 (22)	2532	758	= 2 C. L. 530	Ainslie and Broughton	do	107 (205), 121 (152), 123 (220), 179 (72), 181 (127), 183, 511 (50)	6979
631	= 2 C. L. 80	Markby and Mitter.	1877	69 (3)	1156	765		Ainslie and White. Mitter and Maclean.	do	197 (12)	6163

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16		Markby and Princep	1878	495 (9 26 31) 137 (33)	3140	601	= 3 C. L. 87	Markby and Princep	1878	S. 15 (17, 18) - 212 (1)	183
18	= 1 C. L. 11	Ainslie and Broughton	do	265 (16)	26	623		Markby and Broughton.	do	41 (2), 15 (1, 3)	8609
20	= 1 C. L. 91	do	do	439 (179) 503 8 (20) 145 (18)	3506	617		Ainslie and Broughton.	1879	223 (22) : 197 (97)	2351
319	Re-printed as 42C 29	Jackson and Tottenham	do	188 [1 (8) 135 211]	5061	650	= 3 C. L. 531	do	1878	115 (99 - 63 : 70 - 110 - 139 - 158, 223)	4934
371		Ainslie and Broughton	do	115 (25 291 321)	5253	650		Jackson and McDonell.	do	75 (25) - 537 (32)	11212
378		Jackson and McDonell	do	145 (265 - 289)	5911	696		Morris and White	1879	161 (46 : 80 : 117 : 131) - 301 (23)	5653
417		Maclean	do	107 (1) 271 (28A) - 297 (10 - 11) 297-306 (28 115b 210)	725	712		Jackson and Tottenham	1878	195 (228 : 319)	6882
493	(F B)	Garth C. J. Jackson, Markby and Ainslie and McDonell.	do	361 (257)	2668	805	Maprint for 865 before		do	107 (301)	
495	Maprint for 695			145 (227)	2666	865	(F B) = 1 C. L. 213	Garth C. J. Jackson, Pontifex, Ainslie and Birch.	1879	107 (294) - 121 (10 : 11) - 511 (35)	6910
570	= 3 C. L. 59	Mitter and Maclean.	1879	177 (3) - 522 (6)		869	= 1 C. L. 113	Ainslie and Broughton.	do	195 (203)	3685

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63	= 4 Shome 57 (Civil)	Garth O. J., Prinsep & Wilson	1851	439 (9) : 526 (153)	29	648	(N)=1 C. L. 1 (F. B.)	Garth O. J., Kemp, Jackson and Macpherson.	1877	161 (125)	9568
121	= 10 C. L. 131	do	do	203-13 (3) : 211 (11) : 252 (8) : 296 (6, 11- 14) : 280 (20) : 297- 303 (133)	2312			McDonnell and Field.	1882	233 (41) : 234 (11)	9749
134	= 10 C. L. 51	do	do	151 (5) : 162 (9) : 172 (9)	4253	644		do	do	123 (27 (1)) : 383 (11) : 453 (78 : 91) : 458 (28)	5172
166	= 10 C. L. 190	Tottenham and Broughton	do	371 (5) : 548 (1-6)	1087	721		McDonnell and Field.	1882	107 (61) : 225 : 238 : 110 (59) : 308 : 112 (3) : 291 : 123 (10) : 259 (35)	5
195		Mitter and Maclean.	do	205 (61-62)	7548			do	do	488 (21 : 63)	5231
211	= 10 C. L. 11	Pontifex & Field.	do	162 (21) : 232 (6) : 509 (11 : 12) : 516 (6) :	8466	736	= 11 C. L. 237	do	do	172 (3 : 9) : 276 (3) : 288 (51) : 297-308 (15- 30 : 42) : 168 : 204 : 373 (7) : 505 (3 : 24) : 537 (112)	4016
331		Mitter and Maclean.	1882	512 (4) 513 (12)	8735	739		do	do	358 (7)	2374
393	= 10 C. L. 279	do	do	523 (31)	9146			do	do	435 (156) : 438 (50)	7831
435	= 10 C. L. 49	Pontifex & Field.	do	195 (38 : 137 (11) : 151 : 164 (9) : 348) : 476 (67)	3114	851		Prinsep and O'Keenally.	do	133-143 (70 : 240) 181 (10) : 139 (217) 245-268 (43-47) 1 (3) : 188 (21) : 104 (1) : 231 (4)	3743 3305 2901 1670
450	= 10 C. L. 421	Morris and O'Keenally.	do	226 (3) : 233 (32) : 234 (7 : 14)	9101	875		do	do		
491	= 4 Shome 282	Mitter and Maclean	do	225 (2 : 13 : 68)	407	883	Civil	Garth and Boso.	do		
580	= 11 C. L. 114	Currantham and Tottenham.	do	144 (24 : 60) : 378 (123) : 430 (276)	1620	896	(F. B.)	North Pontifex, Morris, Mitter and Prinsep.	do		
616		do	do	161 (55 : 125) : 361 (39- 48)	6186	985			do		

53	= 11 C. L. 169	Maclean and Norris.	1882	297-308 (8 : 251 : 319, 321 : 322)	298	298		Wilson and O'Keenally.	1882	104 (1)	3507
96	= 11 C. L. 423-5	Maclean and Macpherson.	do	265 (89 : 91) : 407 (2)	3109	363	= 12 C. L. 490	Mitter and O. J. and Maclean.	do	556 (50)	10318
103		Wilson and O'Keenally.	do	144 (6 : 35)	7407	371	= 11 C. L. 522	Field and Norris.	do	233 (29) : 234 (9) : 237 (2) : 188 (21) : 104 (1) : 231 (4)	5616
215	= 5 Shome 21	Maclean and Macpherson.	do	123 (3 : 4)	9100	297	Not printed as 237	do	do	107 (170 : 178) : 273 (1) : 5-6 (163)	1947

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8		Wilson and Macpherson.	1884	173 112 (16)	319		Tottenham and Chase.	1885	15 (1, 17, 35, 10, 19, 25, 63)	240
10		do	do	207-208 (160)	365		do	do	145 (272, 280, 362, 363, 371)	241
11		do	do	109 (15), 110 (55, 72, 78, 81, 87, 202); 112 (5)	3722		Fidd and Beverley.	do	271 (16)	242
22		do	do	117 (28)	413		do	do	115 (51, 55, 53)	243
27		do	do	120 (5)	1830		Piggott and O'Keefe.	do	370 (71, 121, 7)	244
29		do	do	154 (6), 345 (61, 62)	752		Pringle and Piggott.	1885	123 (161, 163, 179, 124, 3)	245
44		Mitter and Nair	do	234 (12, 110)	9682		do	do	115 (89)	246
45		do	do	237-208 (231)	3753		Tottenham and Agnew.	do	195 (78 (19))	247
51		Wilson and Nair	do	211 (25), 217 (3), 226 (1), 228 (5), 237 (6), 241 (1), 247 (62)	7701		Pringle, Wilson, O'Keefe, and Norris.	do	195 (78 (19))	248
100		Mitter and Nair	do	221 (1), 237 (62)	1270		do	do	195 (78 (19))	249
111	(P. C.) = L. R. II L. A. 180	Lord Watson, Sir Macpherson, Sir R. P. Collyer, Sir R. Garth, Sir A. Macpherson, Sir A. Beverley.	do	65 (1), 75 (5)	5204		do	do	195 (78 (19))	250
226		do	1885	265 (19, 20)	7983		Mitter, Macpherson, and Pringle.	do	104 (171), 287 (161, 329, 111)	251
271		Tottenham and Chase.	do	193 112 (29)	619		do	do	15 (36)	252
275	(Civil)	Garth C. J. and Wilson	do	135 (10)	5100		Mitter and Norris.	do	195 (162)	253
			do		11208		Pringle and Grant	1885	107 (23, 32)	254
			do		762		do	do	115 (195, 215)	255

24 (F. R.)	Garth C. J., Pringle, Wilson, O'Keefe, and Wilson.	1885	195 (27, 30 (e))	1865	229 (Civil), 115 (Civil)	Mitter and Pringle.	1885	8, 135 (53)	256
141	do	do	107 (28, 32, 117), 116 (29)	2719	173 (F. R.)	do	do	104 (10)	257
157	do	do	134 (12, 18, 26, 161, 173)	711		Garth C. J., Mitter, Wilson, Tottenham and Pringle.	do	10 (10), 17 (1, 2), 120 (10), 135 (10), 140 (10), 146 (10), 147 (10)	258
190	do	do	181 (1)	495		do	do	115 (195, 215)	259

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1	McDonnell and Beverley	1886	110 (61) - 139 134 224 225 240	2523	526		McDonnell and Beverley	1886	1 (13) - 453 (261) - 423 (226) - 430 (115)	2415
1	Toftenden and Agnew	1885	115 (272 289)	2070	539		do	do	115 (54) - 58 - 257 - 259	1837
2	Mutter and Agnew	do	437 (2) 4 23 23	2469	559		do	do	115 (5) - 16 (9) - 350 (10)	5791
3	McDonnell and Beverley	1886	138 (189 216) 489 (12)	9725	686		Prinsep and Grant	do	1173 - 412 (31)	5117

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24	Wilson & Porter	1886	238 (20)	4224	270		Mutter & Grant	1883	165 (84)	5356
25	Norris and Macpherson	do	370 (5) 123 (5)	7577	272		Prinsep and Beverley	do	255 (61) - 370 (123) - 190 (181)	10020
26	O'Keefe and Agnew	do	350 (12)	296	275		do	do	134112 (110)	2061
27	Prinsep and Grant	do	114 (125) 145 (27 169) 407	2985	305		Prinsep & Agnew	do	310 (2 - 20)	127
28	O'Keefe and Agnew	do	115 (34)	628	334		do	do	290 (17 - 24) - 202 (2)	9700
							do	do	281 293 (6 16)	

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29	Petheram, Mutter and Wilson	1886	317 (5) 370 (115 4)	2858	164		Petheram C J and Beverley	1886	297-208 (45 - 129) - 423 (74)	5370
30	Macpherson and Grant	do	149 (11) 374 (7) 439 (8 9)	2852	169		do	do	145 (220) - 278 - 443 - 435 (193) - 439 (125)	7641
31	Prinsep and Beverley	do	131112 (230)	4672	171		do	do	370 (132)	6027
32	Petheram C J	do	231 (11 - 16 39) - 279 (50)	5247	215		Trevillian	do	111 - 291 (2)	1382
33	Mutter and Grant	do	235 (46) 292 (27 32 33 41 46 A) 293 (5 - 35 - 19 41)	939	276	(Civil)	Prinsep and Beverley	do	483 (63) - 231 - 225 - 239 241 246 - 400 (4)	5127
34				355	355		Petheram C J and Norris	1887	319 (3 - 4)	1834

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25		Petheram and Revert C. J.	1886	292-213 (79) - 229 (12)	865	707	(F. B.)	Petheram, Wilson, Tottenham, Norris and Glove	1887	4(h) (d) (13A) - 154 (8) - 178 (8) - 194-191 (18) - 251 - 195 (27) - 28 - 31 a - 68 - 82 - 200 (49) - 203 (18) - 68 - 215 (70) - 176 (67) - 115	8677
26		Petheram C. J. and Glove	1887	145 (1) - 102 - 220 - 312 - 441 - 415 - 146 (2) - 43 - 439 (125 11)	8206				do	310 (4)	1062
27	Misprint for 261	Petheram C. J. and Glove	1887	247 (11) - 229 (15 33)	1807	211	(F. B.)	Petheram C. J., Princep, Piggott, Glove and Beverley	do		
28	Misprint for 11A 502	Tottenham and Glove	1887	164 (55) - 80 - 123 - 154 - 361 (39 - 45) - 353 (13)	2537			Lord Watson, Fitz Gerald and Sir B. Peacock	do	215 (68 - 80)	10176
29	(F. B.)	Mitter, Princep, Tottenham and Norris	do	41 (1 8)	2667	710	(P. C.)	Piggott and Princep	do	51 (2) - 517-525 (10) - 114 - 130 - 130	1178
30		Petheram C. J. and Glove	do	549 (7)	3743	887		Piggott	do	438 (14) - 429 (22, 41)	8215

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31		Piggott and Macpherson	1887	115 (11 42)	4965	564		Princep & Piggott	1888	135-112 (81 - 109 - 161 - 164 - 166 - 167)	2218
32		Norris and Beverley	do	94 (1 - 2 - 4 - 5 - 10 - 12) - 109 (2) - 164 (5)	5448	589		Wilson	do	174 (15 C)	2804
33	(Civil)	Princep and Piggott	do	198 (12) - 528 (167)	1469	505	(F. B.)	Petheram C. J., Wilson, Piggott, O'Kinealy and Glove	do	116 (1) - 134 (2) - 164 (87) - 364 (10 32) - 553 (8)	6875
34	Misprint for 564	Wilson and Tottenham	do	297 308 (315 318 - 323)	3752	609	(F. B.)	Petheram, Princep, Wilson, Tottenham, Norris, Piggott, O'Kinealy and Glove	do	4 k (2 - 8) - 251 (5) - 253 (22) - 256 (18) - 404 (2) - 435 (91) - 438 (5) - 21 - 46 - 137 (5 - 17 - 28 - 27 - 29 - 38) - 439 (J 54) - 440 (1)	3100
35		Wilson and O'Kinealy	do	193 142 (164) - 265 (9)	7070			Wilson and Tottenham	do	107 (3)	2124
36	(F. B.)	Tottenham, Norris, Piggott and Glove	1888	495 (6) - 528 (42 - 47 - 18 - 72 B)	2813	712		O'Kinealy and Ranjani	do	488 (192) - 503-508 (10)	2373
37		Princep & Piggott	do	154-162 (251)	2853	775					
38			do	145 (1 - 57 - 267 - 302)	8534						

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	Mitter and Macpherson.	do	144 (2 - 70 - 139)	6		Trevelyan and Beverley.	do	1 (5) - 177 (3, 36) - 182 (1 - 2) - 401 (1) 531 (1 - 1) - 552 (8)	1186
	Macpherson and Trevelyan	do	4 K (9) 487 (14) - 526 (155)	5300		do	do	265 (17)	2977
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	Wilson and Norris	do	145 (78 - 221 - 271)	2906		do	do	103 (27 - 88 - 163 d) - 123 (212) - 176 (11 - 51 - 61 - 150 - 196).	1651
	Trevelyan	1889	161 (1)	911		Petheram, C. J.	do	68 (6) - 476 (161) - 177 (55) - 187 (11) - 526 (153)	8590
(F 11)	Macpherson	do	33 (2 - 17 - 35 - 43) - 235 (6 - 37 - 42)	6377	(F. B.)	Tottenham, Trevelyan, Gibbo and Beverley	do	104 (96 - 97) - 198 (85)	711
	Petheram C. J.	do	100 (9) - 532 (2 - 5 - 8)	169		Trevelyan and Beverley	do	4 h (7 b) (11) - 310 (2) - 188 (35 - 86 - 190 - 203 - 204)	4941
	Mitter and Macpherson	do	145 (1 - 53 - 79 - 166)	154		Trevelyan and Beverley	do	312 (1)	8049
	do	do	200 - 298 (32)	781		do	do		
	Trevelyan and Hill	do	162 (11 - 15) 165 (3)	1495		do	do		
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127		Norman and Gordon	do	357 (7), 360 (15), 369 (3, 4).	417, 118	(P. C.)	Macpherson and Inverch, Jacobs Watson, Holthouse Morris, and Coombes, Pringle and Beverley.	do	44 (5), 47 (3), 526 (20), 75, 117), 1891 107 (270).	10017 10380
166		Pringle and Wilson.	do	437 (125), 438 (70, 28).	3736, 549			do	164 (84, 96, 92), 264 (31)	3491

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84		Tottenham and (those).	do	198 (110)	5704, 315	Miniprint for 315		1892	198 (33)	6734
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111		Wilson.	do	286 (1), 288 (10), 293, 308 (3, 1, 36, 39)	390, 3762, 616		do	do	472 (1), 410 (1)	3507
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122		Pringle and (those).	do	295 (371), 375 (7), 388 (189)	1351			do	111, 145, 51)	1012
124		do	do	379 (72, 100), 577 (68)	8213, 478		do	do	380 (19)	1011
113		Piggott and Ramphal.	do	67 (1)	9899, 183		do	do	186 (75), 208 (11)	1011
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517		Prinsep, Pigott and Hill.	1892	208-213 (79), 233 (9, 11), 230 (50)-236 (95)	1809	725		do	do	1 m (6 d), 1 o (3 (4))	7444
523		Prinsep, and Amir Ali	1893	208 213 (67), 403 (35), 423 (51A, 68); 436 (5, 11, 18)	931	857		Trevelyan and Rampini.	do	1 m (6 d), 1 o (3 (4))	7444
612		Trevelyan and Rampini	do	161 (5, 7), 162 (115), 173 (3)	8878	867		do	do	1 m (6 d), 1 o (3 (4))	7444
657		Prinsep and Trevelyan.	do	413 (9)	5251	870		do	do	1 m (6 d), 1 o (3 (4))	7444

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522		do	do	370 (88, 89), 421 (1)	8151	612		Prinsep and Amir Ali	1891	208-213 (11), 250 (11), 287 (3), 288 (18-29), 312 (45), 351 (31-39), 353 (2)	8261
527		Pigott	do	235 (1), 273 (2)	9231	727		Paterson C J and Rampini.	1891	147 (4, 5, 17-18, 21-23, 29, 69)	1185
561		Prinsep and Trevelyan	1893	218 (1, 5), 345 (11, 15, 17, 18, 26, 33)	6299			O'Keefe and Hill	do	1 (11)	3189
621		Prinsep, Trevelyan, O'Keefe and Trevelyan	do	366 (3, 11, 16), 370 (2), 537 (97)	2143	782		Paterson C J and Rampini.	do	223 (2), 270 (3), 479 (25), 537 (68)	1105
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592		Trevelyan and Rampini	do	185 (1)	5943	929		Prinsep and Amir Ali	1891	526 (68-173), 528 (1-5), 556 (18-59), 601	3373
601		Pelham C J	do	290 (8)	7747	971		do	do	145 (93), 129 (125)	7716
604		Trevelyan and Rampini	do	170, 276, 295, 385)	1298			Unverley and Bennerjee	do	225 (2), 277 (7), 297-309 (223), 370 (83)	3976
598		Prinsep and Amir Ali	do	353 (42), 488 (193)	1177	935		do	do	118 (3, 9), 423 (75), 137, 537 (6)	7716
601		Prinsep and Hill	1891	145 (31), 148 (7, 8-9), 164 (12-15, 19, 55)	1125			do	do	250 (3, 38, 70, 71, 74, 76e), 386 (3)	9013
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121	Missprint for 131	Petheram C. J. and Beverley.	1894	33 (62) : 110 (320) : 112 (31) : 435 (29) : 439 (58 : 107) : 386 (20)	1833	487	Missprint for 23 e 103		1895	105 (115) 195 (135 e : 204 : 205 : 209) : 435 (102) : 437 (25 A : 63) : 438 (31)	1900
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170		Petheram C. J. and Beverley.	do	139 (217) : 215 (29) : 233 (11) : 437 (15) : 536 (121)	11183	642	Missprint for 21 e 612 (Civil)	do	do	273 (58) 256 (11) 215 (8)	1942
227	Missprint for 237	Banerjee and Sale	1894	145 (267) 370 (60) : 63 : 76 : 79 : 423 (7)	2599	759		Petheram C. J. and Beverley.	do	537 (39)	2315
241		Trevallyn and Banerjee.	1893	221 (10) : 223 (1) : 297 : 308 (150) : 537 (52)	8314	761		Sale	do	517-25 (104 : 121) 399 (29)	11610
296		Banerjee and Sale	1895	80 (3)	11001	805		Norris and Beverley.	do		5373
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384		Beverley and Banerjee.	1895	146 (51)	2900	1004		Macpherson and Banerjee.	1895	115 (238 : 443) : 435 (13 : 43 : 108) : 438 (4) ; 179 (18) : 125 : 218 : 225) 195 (13) : 476 (5) : 478 (2) 196 (3) : 277 (48) : 228 (6 : 8 : 17 : 19) : 257-308 (310)	4548
387		Beverley and Banerjee.	1895	147 (7-9 : 13) : 148 (10)	1345	1006		do	do		289
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37	Macpherson and Banerjee.	1895	146 (51) : 147 (9)	5835	55	1895	147 (7 : 9 : 29 : 35 : 36)	2440
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219		Macpherson and Banerjee	do	129 (61); 250 (33); 205 (20)	3333			Lords Macpherson, Naghten Morris and Sir H. Conch O'Kinealy and Banerjee.	do	Preamble (1)	6501
250		Ghose and Hill	do	435 (130); 433 (29)	4128	563	(P. C.)	Ghose and Rampuri.	do	101 (2); 465 (8; 9)	4182
253		Banerjee and Hill	do	289 (17; 537 (80; 147. (160)	3612	601		Banerjee, Ghose and Rampuri.	do	176 (176; 172; 195)	7653
290		Macpherson and Hill	do	401 (12 A - 14)	4007	610		Petherman and Beverley.	1895	110 (127; 125; 151); 127 (14; 16)	7613
300		Macpherson and Banerjee	do	1 (12); 102 (21)	9633	621				436 (5)	..
328		Macpherson and Banerjee	do	101 (50); 537 (10); 554 (27; 33; 33; 47; 48)	9219	631	Mcprint for 206 633			145 (160; 344)	4061
317		Trevellman and Beverley	do	417 (8; 421 (11 A); 421 (17; 38) 430 (52)	5403	731	(F. B.)	Petherman, Macpherson, Trevellman, Ghose and Rampuri.	1896	Preamble (4)	4092
350		do	do	423 (123)	5893	739	(F. B.)			558 (27)	11595
361		Ghose and Hill	do	172 (2); 293 (8; 17; 20)	341	890		O'Kinealy and Banerjee.	1896	44 (19; 407 (50); 493 (8; 81; 83; 86; 90; 138); 539 (21; 25)	3735
372		Beverley and Gordon	1895	517 525 (19)	10342	971		Ghose and Gordon.	do	201 (50; 233 (17); 403 (118); 537 (67; 69); 537 (2; 13; 16)	6878
420		Ghose and Rampuri	do	370 (81)	2900	975					
421		do	do	4 (4) (4)	732	857	Mcprint for 206 857				
413		do	do	28 (11); 192 (29; 21)	7560	890					
493		Ghose and Rampuri.	1896	107 (115; 110 (92; 327); 123 (18; 19); 340 (3); 312 (30); 427 (40); 437 (9)	4011	971					
495		Banerjee and Gordon	do	110 (329); 526 (68; 72)	2456	975					
499		Hill and Rampuri	do	173 (42; 2; 95; 98; 101); 356 (68; 109)	9721	983	=1 C. N. 57				
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155		tee.	do		429		do	do	4 (v; w) . 28 (3) . 207 (1 : 4 : 7) . 208 . 213 (19 : 30) . 215 (19) : 245 (1) . 254 (1 : 6) . 347 (2 : 3)	1540
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183		ly and	do	201 (48) . 540 (3 . 21) : 533 (47)	460	=1 C. N. 415	do	do	162 (11) . 517 . 525 (10 : 53 : 130) . 556 (83)	2920
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187		e and	1897	203 (50) . 253 (17) . 403 (118) : 437 (68)	523	=1 C. N. 370	do	do	6 (4) . 10 (3) : 353 (3)	3185
189		to	do	540 (30)	3010	=1 C. N. 333	do	do	503 . 508 (13 : 17 : 25)	1234
191		o	do	423 (143 . 160 : 172)	11502	=1 C. N. 577	Ghose and Wilkins	do	177 (33) . 188 (163)	1234
193	(N)=Rev case No. 60 of 1893	p and	1893	423 (172)	673		Banerjee	do	4 (93 : 4(m) note : 155 (1) . 165 (6 : 12)	880
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223		do	do	110 (420) : 112 (111 : 135 . 129 : 107 : 108 : 1152)	324	278	(Civil)	do	133 . 142 (22 . 23 : 142 : 161 . 222)	7416
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					227	323		do	488 (240 : 258)	1408
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141	Mistprint for 527	do	do	107 (196 - 204)	121	637	= 2 C. N. 569	do	do	297-298 (29) - 32; 115; 172-137 (167) - 123	9186
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177		Lord Wilson, Hobbonae, Davey and Sir R. Conch	1897	33 (11-92)	2109	736		do	do	107 (1-87-216 - 211; 244) - 110 (204) - 537 (23) - 529 (179)	2452
177		do	do	107 (34- 2965) - 145 (109)	2109	736		Banerjee and Stevens.	do	114 (78) - 297-308 (10A)	7993
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181		do	do	106 (3 4- 24 25 27 31 34 87 164)	9146	863		do	do	4 (4) (6) - 217 (17) - 251 (5) - 264 (18) - 350 (30)	2998
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191		do	do	175 (376) - 220 (2 80)	864	540		do	do	163 (1)	8123
194		Prinsep & Amtur	do	144 (1 19 111) 145 (1 54 75 116 438)	3573	625		Prinsep & Wilkins	do	106 (5, 8, 21, 25 142) 145 (235 - 232 - 327 - 336 - 351)	10255
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194		do	do	175, 175 77 (4) 7 (49)	1826	748		Ghosa & Wilkins.	do	179 (7) - 15) - 423 (69) - 433 (106) - 436 (30) - 46 (1-1) - 75 (5) - 537 (38)	2081
194		Prinsep and Stanley	do		9723			Prinsep & Hall.	do		8577

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76		Ghose & Wilkins.	1899	100 191 (3, 12, 23, 43, 51), 195 (9) (a), (b), 197, 201, 231 (5), 135 (22), 139 (107)	2809	863	= I C. N. 633 Mileprint for 863	Prinsep and Hall.	1899	125 (81, 96) 125 (81) 131, 112 (2, 05, 96, 103, 104, 108) 1 (1)	5084 1202 9081
82		Prinsep & Hall.	do		6303	874	= I C. N. 251	do	do		

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129	Mileprint for 125 = I C. N. 601	Prinsep & Hall.	1899	425 (118), 126 (53) 171, 202 (20), 253 (21), 173 (29), 125 (118), 126 (50), 127 (126), 129 (6), 24 (60)	1816	370	= I C. N. 163	Prinsep and Stanley.	1900	256 (10, 12, 16, 17, 11), 257 (8, 10) 123 (20) 255 (61), 123 (190)	10063 3700 779 8008
131	= I C. N. 201	Prinsep and Pratt	do	250 (11, 22), 265 (3), 231, 270 (113)	759	452	= I C. N. 594	do	do	105 (25), 91 (1), 187 (12), 54 (125), 537 (30, 120)	3569
137		Ramphal and Pratt.	do	230 (77, 83, 81, 100)	6564	455		do	1900	430 (1), 176 (34) 64 (15), 79 (3) 750 (112)	2107 6327
179		Prinsep & Hall.	do	4 (60) (3, 22), 110 (119), 111 (1), 110 (1)	5621	461		do	do	125 (1)	7088
184		Ramphal and Pratt.	do	1 (7), 1 (6)	2253	501		Prinsep, Stevens and Stanley.	do	110 (327) 110 (5)	9072
172	= I C. N. 165	do	do	123 (8, 86, 115, 128), 179 (217)	8374	622	Mileprint for 603	Prinsep and Stanley.	do	107 (25, 115), 110 (217, 214), 121 (18, 19, 27), 210 (2)	6116
174	= I C. N. 307	Sale & Stanley.	do	317, 525 (61, 68)	3205	624		do	do	417 (18, 79, 132) 217 (12, 121 (91, 97), 191 (55)	3113 2039
175		Prinsep & Hall.	do	123 (130, 171)	7711	656		do	do	43 (71) (12), 1 (6) (3, 11), 107 (55, 212), 110 (257), 110 (92), 310 (2), 137 (8, 9)	2651
229	= I C. N. 420	Ramphal & Pratt.	do	142 (25, 279, 287, 302), 314, 411 (25 (20)	9415	658		do	do	105 (5)	228
231	(N) = Cr. R. 552 of 1898	Prinsep and Stanley.	1899	115 (52)	10010	662	= I C. N. 163	do	do		
242		Sale and Stanley.	1898	255 (107) 122 (16)	3767	692		Maclean G. J., and Maclean, son.	do	4 (11) 106 (1, 107, 107 (21), 108 (1), 10 (1, 9), 11, 20, 103)	3294
245	Mileprint of 27A 293 = I C. N. 129	Prinsep & Hall.	1899	101 (109), 102 (6), 164 122 (16) (1, 120), 105 (2, 11) 208 (6), 256 (5, 7, 27, 30), 277, 209 (209) 16 (1), 24 (1, 6), 80 15), 265 (41) 24 (1), 29 (3, 9), 163 (1)	1117	709	Mileprint for 286 709 Mileprint for 286 770 = I C. N. 231	Prinsep and Stanley	do		
290	= I C. N. 311	Prinsep & Stanley	1900	208 (6), 256 (5, 7, 27, 30), 277, 209 (209) 16 (1), 24 (1, 6), 80 15), 265 (41) 24 (1), 29 (3, 9), 163 (1)	1117	709	Mileprint for 286 709 Mileprint for 286 770 = I C. N. 231	do	do		
292	= I C. N. 311	do	do		1117	709		do	do		
293	= I C. N. 311	do	do		1117	709		do	do		
294	= I C. N. 311	do	do		1117	709		do	do		
295	= I C. N. 311	do	do		1117	709		do	do		

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785	= 5 C. N. 562	Prinsep and Handley.	1900	144 (47-51), 145 (397-484), 146 (323-325), 152 (119-14), 202 (41), 203 (123)	1221	221		Prinsep and Handley.	1900	200 (10), 203 (27, 28), 203 (13, 41, 60), 437 (32), 478 (67)	5203
799		do	do	152 (119-14), 202 (41), 203 (123)	1017	273	= 1 C. N. 822	do	do	102 (5), 107, 200 (41), 202 (41), 203 (12), 203 (12), 228 (63)	2278
800	(F. B.) = 1 C. N. 656	do	1890	105 (25), 439 (12, 167), 227 (7), 234 (11), 237 (15, 25)	2171	291		do	do	145 (27), 31, 51, 91, 94, 99, 99	5355
801		Maclean, Prinsep, Ghose, Hampton and Handley.	1900	145 (42), 145 (39-41), 104, 105 (13), 112 (42), 429 (1), 435 (3-20), 436 (50, 60)	2062	293	= 1 C. N. 795	do	do	107 (27), 205 (15, 20, 43)	8307
802	Reprinted for 802	do	do	145 (39-41), 104, 105 (13), 112 (42), 429 (1), 435 (3-20), 436 (50, 60)	2062	293	= 1 C. N. 131	do	do	205 (13)	5169
803	= 1 C. N. 613	Prinsep, Amir Ali and Stanley.	do	145 (39-41), 104, 105 (13), 112 (42), 429 (1), 435 (3-20), 436 (50, 60)	2062	293	= 1 C. N. 21	do	do	205 (13), 423 (58)	7669
804		do	do	145 (39-41), 104, 105 (13), 112 (42), 429 (1), 435 (3-20), 436 (50, 60)	2062	293	= 1 C. N. 21	do	do	107 (27), 110 (20, 22)	4002
805		Prinsep and Handley.	do	145 (39-41), 104, 105 (13), 112 (42), 429 (1), 435 (3-20), 436 (50, 60)	2108	1011	(F. B.) = 1 C. N. 615	Maclean, Prinsep, Ghose, Hampton and Handley	do	180 (9), 181 (7)	6205

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1		Prinsep and Handley.	1900	253 (11), 259 (15), 537 (10), 537 (10)	4378	217	= 5 C. N. 291	Prinsep and Handley.	do	155 (180), 181, 237 (130), 237 (130)	5232
10		do	do	253 (11), 259 (15), 537 (10), 537 (10)	4378	217		do	do	250 (12, 71, 73), 253 (20), 256 (12)	7162
13		do	do	253 (11), 259 (15), 537 (10), 537 (10)	4378	217		Pratt and Brett.	1900	13 (23)	2261
14	= 5 C. N. 810	Prinsep and Stanley	do	116 (20-49)	2269	297		Amir Ali and Stevens	do	535 (183), 129, 130, 130 (71)	5076
15	(Civ. S.) = 5 C. N. 160	Ghose and Harrington	do	253 (11), 259 (15), 537 (10), 537 (10)	1183	302	= 5 C. N. 291	Prinsep and Handley	do	118 (6)	7126
16		Prinsep and Handley	do	253 (11), 259 (15), 537 (10), 537 (10)	4378	217		Amir Ali and Amir Ali	1901	237 (302) (102)	4341
17		do	do	253 (11), 259 (15), 537 (10), 537 (10)	4378	217		Stevens and Handley	1900	162 (8, 14)	3635
18		do	do	253 (11), 259 (15), 537 (10), 537 (10)	4378	217		Amir Ali and Amir Ali	1901	425 (101), 430 (1, 25), 271	9318
19		do	do	253 (11), 259 (15), 537 (10), 537 (10)	4378	217		Stevens and Amir Ali	1901	25 (9), 17, 23, 80 (3), 96 (25)	2229
20		Maclean C. J.	do	253 (11), 259 (15), 537 (10), 537 (10)	4378	217		Pratt and Handley	1900	24 (20), 66 (7)	7871

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46		Rampon & Gupta	1900	107 (249); 145 (27; 30); 70; 91; 94; 109; 110); 433 (3); 458 (17); 431 (82)	3827	629	Memorandum for 627 (F. R. = 5 C. N. 427)	Rampon and Gupta	1901	289 (4)	11761
47	= 5 C. N. 211	Amir Ali and Stevens.	do		5198	622		Maclean C. J., Princep, Ghose, Hall, Saha, Harrington, and Brett	do	293 (20; 26); 233 (18); 288 (10; 13); 306 (5); 403 (119); 436 (35); 437 (7; 48; 126)	2704
48	= 5 C. N. 209	Amir Ali and Pratt.	1901	177 (1; 10)	8360						
49	= 5 C. N. 128	Amir Ali and Stevens.	do	145 (3); 105; 144; 115; 127; 163	420	686	Memorandum for 685 = 5 C. N. 679	Hall and Brett	do	145 (345)	10343
50		Rampon and Gupta	1901	176 (82)	10679	689		Ghose and Taylor	do	310 (11 (30); (4); 312 (58)	6584
51		Amir Ali, Rampon and Pratt.	do	15 (18)	4534	709	= 5 C. N. 749	do	do	44 (1); 107 (53); 110 (320); 145 (15; 16; 536); 178 (1); 182 (4); 190 (6); 328 (9; 68); 330 (328 (6)	2096
52	= 6 C. N. 175	Maclean C. J. and Banerjee	do	88 (10; 29)	2808	724	= 5 C. N. 67	Maclean C. J. and Banerjee.	do	117 (1; 12; 13; 31; 51; 53)	7178
53		Amir Ali and Pratt.	do	246 (15); 257 (20)	8850	734	= 5 C. N. 304	Hall and Harrington.	do	161 (5); 108 (12)	3825
61		Ghose and Taylor	do	165 (10)	10450						

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15		Princep and Stephen.	1901	287; 208 (253; 370; A 315; 316); 451 (5)	2381	379		Stephen and Harrington.	1902	297; 308 (40; 41; 45; 53; 78; 129)	5561
16	(P. O.) = 6 C. N. 280	Lord Macnaghten, Darry, Robertson	do	145 (3; 19; 300)	5299	382		Princep and Stephen.	do	145 (116; 140); 163 (1; 35)	5108.
28	= 6 C. N. 38	Ghose and Taylor	do	145 (5; 317; 322; 324; 330; 336; 351)	4929	385	= 6 C. N. 688	do	do	215 (82); 233 (2; 51); 239 (18; 36; 40; 12); 327 (13; 36; 69; 69)	2941
21	= 6 C. N. 251	Stevens and Harrington.	1902	145 (118)	8528	387	= 6 C. N. 250	do	do	233 (21; 54); 237 (21); 310 (31)	2941
23		Ghose and Taylor	1901	144 (125)	10558	389	= 6 C. N. 522	do	do	12 (31); 107 (29; 30; 51; 316); 310 (4)	11562
24	= 6 C. N. 290	Princep and Stephen.	1902	145 (84; 302); 477 (9)	927	392	= 6 C. N. 295	do	do	110 (16; 17; 21; 54; 110; 325); 117 (5; 5); 146; 151 (1; 52)	3142
26	(F. R.) = 6 C. N. 254	Maclean C. J., Ghose, Banerjee, Hall and Brett.	do	145 (17; 423); 297; 208 (6; 331); 368 (12); 146 (23; 191 (20)	5200	393	= 6 C. N. 678	do	do	100; 151 (1; 52)	1724
27	Memorandum for 367			253 (54)		409	= 6 C. N. 713	do	do	203 (15; 16; 20; 45; 48)	1746.
28	Memorandum for 384			250 (40)							

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110		Prinsep and Stephen	1901	290 (29) - 292 (29) : 204 (7)	1901	724	= 6 C N 713	Sterns and Harrington.	1902	423 (15; 180) : 517-525 (191; 135)	397-4
112	= 6 C N 640	do	1902	403 (38; 50) - 423 (152) - 530 (2; 7)	56	726	(F. W) = 6 C N 633	Maclean O. J., Prinsep, Hoese, Hill and Henderson.	do	273 (1; 50) - 275 (7) : 17; 50; 253 (10); 333 (3); 345 (53) - 348 (2); 67-403 (19; 37; 108; 119); 435 (36); 437 (69)	3571
415	= 6 C N 677	do	do	138 (19) - 159 (1) : 227 (5) - 238 (14; 19)	1882				...	203 (50)	
417	= 6 C N 690	do	do	67 (23) - 88 (2; 29)	1338						
453	= 6 C N 201	Harrington and Hoese	1901	110 (550) - 122 (3) : 125 (45)	7074						
457	= 6 C N 638	Prinsep and Stephen.	1902	203 (21; 22) - 437 (18; 53; 31; 73)	2906	728	(F. H.) Maprint for 725 (F. B.)				
479		do	1901	270 (2; 23)	4722	779		Amir Ali and Pratt.	1901	110 (119; 131; 139; 140; 145; 172)	4272
481	= 6 C N 520	do	1902	253 (2) - 312 (7) - 317 (3) 331 (1) - 338 (3)	1617	782	= 6 C N 533	Prinsep and Stephen	1902	277-306 (87; 112; 180; 193)	5-83
483	= 6 C N 504	do	do	15 (2) - 162 (7) : 164 (1; 3; 7; 23; 163)	6073	885	= 6 C N 378	do	do	145 (26; 512; 517)	3706
493		do	do	439 (8) 465 (6)	10574	887	= 6 C N 112	do	do	195 (100 - 110m)	7317

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99	=6 C. N. 471	Stevens and Harrington	1902	106 (5, 23, 27, 49)	929	285	Harrington and Brett.	1902	4h [7 (6)] · 1h (10)	1905
101	=6 C. N. 472	do	do	106 (81 · 91 · 99)	123	289	Prinsep and Mitra	do	232 (5) · 237 (36) · 123	1902·7
107	=6 C. N. 680	do	do	170 (8) · 514 (17)	8706	306	do	do	(82 · 85 · 97)	1914
110	=6 C. N. 417	do	do	145 (49) · 146 (31)	8000		Stevens and Harrington.	do	110 (164 · 168)	8340
112	=6 C. N. 417	do	do	155 (1, 70, 87, 112, 183, 189)	5005	391	Stevens and Harrington.	do	195 (300) · 407 (4)	8340
120	Mi-print for 30 C.			437 (9)		402	Stevens and Henderson	do	222 (6) · 232 (4)	1579
121	120			147 (32)	2106	415	Stevens and Henderson	do	4h [76 (15) · 10]	3746
121	(F. II) = 6 C. N. 720	Prinsep C. J.	do	244 (8)			Stevens and Harrington.	do	107 (211) · 115 (9) · 91 ·	9246
121		Janetso, Hill, Stevens and Henderson	do	250 (1, 2, 4, 89)	176	1251	Stevens and Mitra.	do	375 · 382 · 394 · 479	7598
121			do	(63)		449	do	do	200 (41a) · 202 (41) ·	
121			do				do	do	203 (13) · 204 (12) ·	
121			do	1153 (9 · 10 · 40 · 115 · 117 · 123)	4840	485	Prinsep and Mitra.	do	433 (49 · 860 · 528 · 15)	6465
121			do					do	297 · 308 (160 · 232 · 212)	

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498		Maclean C. J. and Mitra.	1903	528 (43)	7538	910	(F. B.)=8 C. N. 17=1 Cr. 253	1906	4 h (7 (6) - 101-199 (2); 200 (8); 238 (16))	9413
508	=7 C. N. 404	Stephens and Henderson.	1902	114 (8) : 145-195 : 210; 420-428; 356 (9)	9331					
503	=7 C. N. 300	Harrington and Brett	1902	145 (58-185)	2455	916		..	105 (303)	6174
509	=7 C. N. 624	do	1903	51 (2) - 109 (54) : 517-525 (10; 58; 85)	2919	918	=7 C. N. 510	1903	144 (130) : 145 (132-134; 29)	5453
503		do	do	223 (23) : 523 (26)	2906			do	156 (2); 159 (1-5); 190-191 (60); 200 (17; 18; 19; 22); 202 (2); 203 (6; 7; 14) : 537 (20)	5104
721		Rampal and Handley.	do	145 (155)	2949	923	=7 C. N. 526	do		
701	Misprint for 721			145 (155)						
822		Harrington and Brett	do	253 (53) : 259 (31) : 423 (119)	1529			do		
903		do	do	105 (157 : 178 F.) : 197 (25-26) : 230 (2; 3)	7425	927	=7 C. N. 750	do	137 (6; 60)	2046

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1	=7 C. N. 830=1 Cr. 13	Banerjee and Handley.	1903	174 (7) : 194 (1) : 206 (9) : 215 (5) : 498 (17)	4073	257	=7 C. N. 661=1 Cr. 535	1903	1 (10) : 14 (17) : 55 (7; 11; 20) : 109 (7; 13; 14)	5394
43	(F. B.)=7 C. N. 824=1 Cr. 40	Maclean C. J., Banerjee, Harrington, Pratt and Henderson.	do	145 (148 : 150 : 152) : 147 (23)	2330	664	=8 C. N. 596=1 Cr. 323	1904	470 (1 : 108)	686
142	(F. B.)=1 Cr. 86	Prinsep O. G. J., Hill, Harrington, Brett and Henderson.	1902	288 (23 : 25 : 40)	1007	685	=8 C. N. 596=1 Cr. 323	do	145 (232; 233; 235; 236; 231 : 410)	5662
350	=1 Cr. 354	Harrington and Brett	1904	106 (22) : 107 (1 : 29) : 135 : 140 : 245 : 247 : 1001 (33 : 120 : 320) : 177 (29) : 192 (51) : 238 (4-7) : 530 (4) : 100 (40 : 107)	9332	710	=1 Cr. 797	do	423 (181)	5925
419	=1 Cr. 438	Ghose and Stephens.	do		4507	811	=1 Cr. 830	do	423 (122) : 423 (14) : 459 (5; 2)	5215
424	=1 Cr. 424	do	do		164	858	=1 Cr. 832	do	525 (30 : 42 : 76)	4082
			do					do	109 (49) : 110 (240 : 241)	4154
			do					do	195 (321; 323) : 439 (53; 170) : 440 (5)	3805
			do					do	470 (156)	2706

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929	= 8 C. N. 807	Pratt and Handley.	1904	229 (15) 251 (16)	8167	993	(Civil)	Maclean, C. J., Sala and Bodily.	1904	198 (17)	4835
979	= 9 C. N. 72 = 2 Cr. 11	do	do	132-142 (81-103; 104-163)	5729	1007	= 9 C. N. 717 = 1 Cr. 713	Pratt & Handley.	do	235 (31; 61); 259 (18); 403 (75)	7307
983	= 9 C. N. 830 = 1 Cr. 829	do	do	263 (61) 362 (6); 370 (129-131)	9539	1030	= 8 C. N. 528 = 1 Cr. 431	Geldt.	do	293 (2)	9143
999	= 8 C. N. 731 = 1 Cr. 728	do	do	141 (60) 61-122; 123	8962	1053	= 8 C. N. 715 = 1 Cr. 713	Pratt & Handley.	do	235 (40); 259 (19; 33); 535 (3)	3518
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1	(P. C.)	Lord Darcy and Holerton and Sir Arthur Wilson.	1904	401 (2)	6372	469	= 8 C. N. 853 = 1 Cr. 815	Pratt & Handley	1904	4(b) (5); 103 (135 a); 108; 210 223-330 (61); 313; 337	1213
29	= 8 C. N. 731 = 1 Cr. 729	Pratt & Handley	do	177 (63) 193 (2); 226 (1; 3) 227 (1 a)	1530	559	= 2 Cr. 405	Ghose & Pargiter. Henderson and Geldt.	do	483 (21; 230; 272-233)	2924
80	= 9 C. N. 770 = 1 Cr. 775	Pratt & Handley	1904	107 (113) 186 187-189 110 (52) 119 (6)	7577	552	= 1 C. J. 432 = 2 Cr. 317	do	1905	104 (37; 81; 141); 351	8327
154	= 2 Cr. 168	Harrington and Pargiter	do	496 (317) 497 (6)	9094	602	= 9 C. N. 862 = 2 Cr. 572	do	do	143 (91-92-217; 479; 487 (6); 507)	1102
179	= 2 Cr. 170	do	do	141 (7) 71	2536	736	= 9 C. N. 911 = 2 C. J. 108 = 2 Cr. 459	Monkjee and Oa-pera.	do	115 (183; 365); 148 (11)	7103
180	= 2 Cr. 171	do	do	370 (53) 423 (7)	8522	759	= 9 C. N. 520 = 2 Cr. 259	Henderson and Geldt.	do	193 (12) 526 (117)	2924
210	= 9 C. N. 835 = 1 Cr. 817	Pratt & Handley	do	151 (8) 195 1126 116 (6) 135 (93) 537 (59) 120	771	771	Memorandum for 781	Henderson and Geldt.	do	297-308 (151; 152); 311 (4)	61
287	= 2 C. R. 202	do	do	115 (62) 53 156 271	7556	782	= 9 C. N. 810 = 2 Cr. 524	do	do	145 (27-94; 97; 105)	6500
331	= 9 C. N. 277 = 2 Cr. 74	Pratt and Mitra	1905	143 (68) 118 269 117 (12) 129 (65)	1116	783		Henderson and Geldt.	do	193 (9; 10) 290 (41 a); 204 (12; 13); 455 (19); 426 (5); 433 (101 a); 523 (43)	261
367	= 9 C. N. 251 = 1 O. J. 161 = 2 Cr. 116	Henderson.	do	324 329 (a) 330 (a) 331	1059	793	= 2 Cr. 769	Pargiter and Woodroffe	do	111 (60; 125)	7805
379	= 9 C. N. 321 = 2 Cr. 103	Maclean, C. J., Sala and Harrington	do	44 (4) 105 (222-224-227 (c))	3396	796	= 2 Cr. 761	Henderson and Geldt.	do	145 (317; 327; 330)	3163
423	= 9 C. N. 315 = 1 Cr. 115	Pratt and Handley	1904	123 (4; 6; 8; 9)	9451	935	Memorandum for 23 e 817	do	do	164 (85)	1367
							= 2 Cr. 763	Pratt & Handley	do	146 (30-48)	1367
							216 = 2 Cr. 215	Henderson and Geldt.	1904	133-212 (36; 137; 152)	10600
									1905	141 (1; 26)	4453

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1922	10 C. M. 204=2 Cr. 779	Rampol and Mookerjee.	do	107 (31), 94 265 214-141 (25), 145 (40), 477, 431	8251			do	177 (57, 61, 67, 68, 50, 491)	1920
1923	(C) 101=9 C. M. 817=2 C. J. 295	Harrington and Mookerjee	do	193 (5)	2914	=3 C. J. 43=3 Cr 120	Pargiter and Woodroffe.	do		
1927	7 C. J. 112	Pargiter and Woodroffe.	do	379 (107), 423 (7), 123	9408 1971	=2 C. J. 2-6=2 Cr. 679	Rampol and Mookerjee.	do	145 (6, 94, 417, 185, 199, 273)	1922

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1	(F. D.)=11 C. N. 23=4 C. J. 12=1 Cr. 333	107 (231) - 125 (3)	6297	840	Stephen and Gore.	1907	145 (94 : 120 : 272 : 225 : 229 : 231) : 146 (1 : 15 : 45) : 439 (111) : 147 (21 : 25) : 435 (21)	4767
12	=11 C. N. 12=1 Cr. 469	Mitra and Ormond	1906	435 (23) : 439 (239) : 476 (15 : 196 : 203)	2908			do		
69	Supra for 316 608	Drett and Gupta	1906	297 (203 (238))	1280	848	Mukerjee and Holmwood.	do	195 (21 : 86 : 112) : 476 (155 : 137)	3769
73	=5 C. J. 40=5 Cr. 13	Rampuni and Gupta	1907	173 142 (202 217)	2174			do		
325	=5 Cr. 124	Gupta	1906	233 (3 : 4 : 5 : 8) : 297 : 303 (197) : 423 (88)	2901	897	Rampuni, Drett, Stephen, Woodroffe and Mukerjee	do	111 (120) : 565 (1)	7854
311	=1 Cr. 4/3	Mitra and Holmwood.	1906	435 (311)	8293			do		
317	=5 C. J. 41=5 Cr. 19			169 (51) : 110 (329) : 117 (113) : 517 225 (10 : 29 : 58)				do		
276	Supra for 210 293	Maclean, Harrington, Drett, Mitra and Gupta.	1907	133-112 (81)	918		Mitra and Carpenter.	do	10 (5) : 17 (1 : 8) : 223 (18 : 51)	7389
231	(F. D.)=11 C. N. 568			193 (3 : 4 : 5 : 8) : 27	1217		Mitra and Gore	do	4 (6) [5] 192 (21) : 228 (16)	1074
254	=6 Cr. 273	Stephen and Gore	do	425 (7)	2355	335	Mitra and Carpenter	do	107 (5 : 6 : 7 : 181 : 208)	2369
679	=11 C. N. 606=5 Cr. 427	Gupta.	do	102 (24) : 253 (4 : 5) : 297 (208 (26 : 32 : 53	7025	986	Mitra and Fletcher	do	517 (23 (22 : 36 : 41)	165
				142 182 : 206 (228) : 370 (22) : 512 (4) : 537 (706)	991		do	do	108	1297

114	=7 Cr. 134 (Civl)	Rampuni and Shurafuddin.	1907	476 (37 : 59 : 78)	4461	213	Rampuni and Shurafuddin.	1907	110 (16 : 54 : 64 : 85 : 90 : 121 (21) : 112 (5 : 19) : 122 (4) : 256 (2) : 633 (7) : 529 (5) : 540 (31)	1979
117	=12 C. N. 467=6 C. J. 17=6 Cr. 394	Mitra and Fletcher	do	167 (11 : 31 : 59 : 206)	992			do		
123	(Civl)=7 : 129	Rampuni and Shurafuddin.	1907	115 (51 : 150 : 167)	4116			do		
178	=12 C. N. 171=6 Cr. 47	Carpenter and Chetty.	do	446 (105 : 118)	2869	283		do	131 (142 (26 : 161 : 176)	10880
111	=7 C. J. 40=2 M. T. 10=7 Cr. 10	do	do	279 (76 : 370 (59 : 69 : 102) : 125 (7 : 29)	3115			do	106 (5 : 27)	1793
163	=7 C. J. 62=7 Cr. 47	Rampuni and Shurafuddin	do	148 (13 : 14) : 191 (191 : 198) : 196 (6 : 16 : 20)	656	320		do	145 (454) : 370 (116 : 217 : 122)	7131
			do	253 (113 : 234 (20) : 432 (123) : 577 (43 : 76)	1278	361		do	59 (2)	10405

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281	=12 C. N. 570=7 Cr. 374	Rampini and Sharfuddin.	1903	223 (2) : 225 (2)	5095	718	=8 Cr. 203	Woo Joffe and Coro	1903	370 (27)	5512
400	=7 Cr. 139	do	do	110(250), 253 (275) 122 (1) : 430 (439)	102	374	=12 C. N. 818=8 C. J. 71=8 Cr. 119	Rampini and Sharfuddin.	do	145 (97), 101 : 118 : 123. 232 : 423	296
431	=12 C. N. 752=7 C. J. 602=4 M. T. 310 = 9 Cr. 0	do	do	106 (37) : 319 (17)	5035	735	=12 C. N. 775=8 Cr. 23	do	do	115 (8), 120 : 220 : 247 : 203 : 331	4759
470	=12 C. N. 531=7 Cr. 374	Geddi and Woodroffe.	do	222 (10 1)	11209	909	=8 Cr. 137 (Card)	Rampini and Ryves.	do	170 (156-166)	3182
477	=12 C. N. 416=7 C. J. 438=7 Cr. 220	Rampini and Sharfuddin.	do	192 (137) : 320 (3) : 256 (31) : 528 (11 : 33) :	5034	929	=12 C. N. 492=8 Cr 207	Stephen and Holmwood.	do	107 (120) : 110 (113) :	270
531	=12 C. N. 774=7 C. J. 599=3 Cr. 6	Geddi and Woodroffe.	do	337 (94)	1075	1075	Misprint for 1076	Stephen and Holmwood.	do	90 (8 : 10) : 100 (2) 913 : 90(8-10) : 98(1) :	8132
671	=8 C. J. 68=8 Cr. 128	Rampini and Sharfuddin	do	297 : 208 (26 : 32 : 51 : 93 : 136 : 169 : 182) 107 (21) : 110 (69) : 439 (58)	65505	1066	=12 C. N. 1075=8 Cr 235	do	do	100(41) : 100-101 (34) : 725 (2) : 637 (31) 106 (12 : 15 : 53) : 257 (110) : 310 (17) : 537 (43)	8244

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44	=13 C. N. 71=9 Cr. 291	Brett and Ryves.	1908	423 (130) : 429 (68-165 : 268) : 517-525 (19 : 8765)	271	174	=13 C. N. 51=1 M. 7 : 42=9 Cr. 409=	Mitra and Coro	1903	314 (45) : 496 (1) : 197 (1 : 3 : 12 : 14)	3583
43	=12 C. N. 104=8 Cr. 291	do	do	208 213 (9 : 26-71 60), 513(12-70-8) : 347(6)	7231	281	=13 C. N. 197=9 C. J. 108=5 M. T. 97=	Maclean C. J. and Carunduff.	do	161(9) : 162(1) : 297-308 (25) : 145 : 370 (53-53)	2394
67	=12 C. N. 104=8 Cr. 253=1 C. 319	do	do	205 (17 : 45)	7230	7230	9 Cr. 452=1 C. C. 970	do	do	do	0019
72	=13 C. N. 122=9 Cr 338=1 C. 293	do	do	4 m (5 e- 102(22) : 202 (3 : 40) : 476(110-135) 225 (2)	4371	303	=13 C. N. 502=9 C. J. 394=9 Cr. 59=	Holmwood and Ryves.	1909	515 (46)	0019
158	=12 C. N. 94=8 C. J. 67=8 Cr. 125=1 C.	Rampini and Sharfuddin.	do	105 (13) : 107 (37 : 55 : 251) : 110 (327) : 516 (3 : 47 (3) : Ch. 32	2173	370	13 C. N. 506=9 C. J. 399=1 C. C. 817	Sharfuddin and Coro.	1903	115 (207) : 329 : 341 : 528 (53) : 192 (7) : 525 (6)	4749
163	=1 C. N. 131=8 C. J. 563=5 Cr. 56-353 =11 C. 737	Sharfuddin and Coro.	do	311(139) : 139 : 437 (32 12) : 468 (2 : 1)	3545	385	=13 C. N. 694=9 Cr. 401=1 C. C. 868 =13 C. N. 106=5 M. T. 6=9 Cr. 568=	Holmwood and Ryves.	1900	121 (5 : 7 : 17)	6084
193	=13 C. N. 42=9 Cr. 375=1 C. 733	do	do	7638	415	415	=1 C. N. 506=9 C. J. 399=1 C. C. 817	do	1903	203 (53) : 437 (69 A)	4163

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J. L. R. Calcutta Series—Vol. 38, (1911).

21	11 Cr. J. 50=7 I. G. 794	Harrington and Tesson.	1910	115 (84, 87, 232)	10740	207	=12 Cr. 2=0 I. C. 65	Holmes and Sharfshahn.	1910	270 (68), 123 (9), 123 (13)	374
63	=13 Cr. J. 12=11 Cr. 32=7 I. C. 717	Chatterjee and Tesson.	do	60 (11), 139 (107)	2304	207	=13 Cr. J. 12=12 Cr. 2=0 I. C. 0	do	do	115 (10), 117 (12)	790.2
115	=13 Cr. N. 30=12 Cr. 161=0 I. C. 308	Richardson and Richardson.	do	110 (5), 74, 40, 130, 150, 165, 314	1279	104	..	do	1911	110 (120, 221)	1098.2
211	=12 Cr. 21=10 I. C. 094	do	do	35 (107, 109)	1112	153	=13 Cr. N. 40=12 Cr. 106=0 I. C. 674	Holmes and Sharfshahn.	do	275 (9), 210 (5, 10, 20, 13)	210
202	=11 Cr. J. 12=12 Cr. 0=0 I. C. 15	Clitty and Caraduff.	do	22.0 (30, 11)	3140	194	=13 Cr. N. 100=13 Cr. J. 13=12 Cr. 11=0 I. C. 611	do	do	11 (0, 7, 8), 310 (12)	370.2
201	=13 Cr. N. 210=19 Cr. J. 69=12 Cr. 0=0 I. C. 11	Holmes and Sharfshahn.	do	94 (1, 5), 94 (7, 23), 94 (24, 63)	933	517	=10 Cr. N. 73	Cassara and Sharfshahn.	do	425 (91), 229 (12)	1152.9

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550	(P. N.)=15 C. N. 715 =12 Cr. 346=10 I. C. 946	Hill and Stevens	1898	435 (61) : 526 (12)	5972	828	=13 Cr. 130=13 L. C. 776	1911	253 (7 : 17)	137
552	(S. B.)=15 C. N. 98 =12 Cr. 2=8 I. C. 1029	Jenkins, Brett and Chatterjee.	1911	126 (16-20) : 221 (13- 28) 527-503 (115 b) : 537 (28)	5101	876	=13 Cr. 126=13 L. C. 782	do	133 142 (11 : 215 a : 221) : 144 (1 : 1 : 17 80 : 100)	1356
554	=12 Cr. 609=12 I. C. 983	Caspera and Sharfuddin.	do	423 (1 : 33)	4357	880	=11 Cr. N. 917=11 I. C. O. 311	do	202 (44 : 53) : 526 (167)	2976
559	=15 C. N. 1007=12 Cr. 531=12 I. C. 577	do	do	50 (3 : 4) : 514 (42) 537 (36)	9242	889	=12 Cr. 408=11 L. C. 592	do	145 (134 : 163 : 164 : 271 : 276 : 281 : 392)	3219

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119	=13 Cr. 173=15 I. C.	Caspera and Sharfuddin.	1911	300 (18) 528 (11 530 (7)	8100	469	=16 C. N. 391=13 Cr. 142=13 I. C. 839	1912	145 (478) : 200 (5)	919
120	(P. N.)=16 C. N. 87=11 I. C. 12=12 Cr. 515	Jenkins, Woodroffe, Nukerjee, Carnall and Chatterjee	do	107 (34 : 57 : 170 : 206 : 209 : 210) : 145 (469 477 : 479 : 483 : 517 518) : 165 (13)	8	560	=13 Cr. 181=13 L. C. 1000	do	117 (30)	307
137	(P. N.)=16 C. N. 10 =C. J. 137=12 Cr. 525	do	do	250 (12) 523 (76 177 179) : 471 (4)	5807	690 774	Misraut for 30 a 690 =16 C. N. 645=13 Cr. 191=13 I. C. 1007 =13 Cr. 216=11 I. C. 311	1912	517 525 (53) 401 (3) : 439 (36)	7763
161	=15 C. N. 103=14 C. J. 373=12 Cr. 505	Woodroffe, Nukerjee and Chatterjee	do	191 (2 7)	9138	885	=16 C. N. 115=13 Cr. 771=17 I. C. 1003	do	223 (1 : 2) : 257 (7) : 350 (2 : 3 : 1) : 537 (52)	1897
278	=13 Cr. 201=14 I. C. 708	Stephen and Chatterjee	do	437 (53)	357	931	=16 C. N. 94=13 Cr. 739=17 I. C. 71	do	293 13 (10 : 40 : 60)	1065
541	Misraut for 29 C 382	do	do	116 (31)	2041	933	(P. C.)=16 C. N. 665 =10 C. J. 231=13 Cr. 685=16 I. C. 501	do	265 (70) : 417 (11) : 429 (331)	3729
407	=16 C. N. 149=15 C. J. 78=11 Cr. 161=11 C. J. 493	Holmwood and Sharfuddin.	do	93 (21 25) 98 (1) : 537 (5)	8275	1011	=16 C. N. 885=13 Cr. 481=13 I. C. 481	do	6 (13) : 36 : 94 (9) : 96 (9) : 103 (3 : 4)	2072
424	=16 C. N. 623=15 C. J. 509=13 Cr. 201	Harrington and Brett.	1911	176 (59)	8163	1050	=16 C. N. 811=13 Cr. 608=16 I. C. 126	do	437 (32)	10379
463			do					do	423 (182)	1297

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37	=13 Cr. 287=11 L. C. 760 (Ar.)	Moore and Carnell	1912	105 (110); 123 (200); 125 (220)	237	121	Shaw and Case	1912	312 (22); 235 (167); 238 (67)	1801
41	=13 Cr. 287=11 L. C. 452	Holmes and Inman	do	105 (210); 202 (27); 203 (104-63)	5610	111	Chitty and Richardson	do	226 (107); 228 (57)	1250
51	Cr. 4=13 L. C. 453	do	do	212 (69); 223 (53)	8753	111	Sharfuddin and Gore	do	202 (10); 178 (144); 153	1110
73	=13 Cr. 287=11 L. C. 453	do	do	115 (110); 116 (12); 223 (53)	8802	103	do	1913	170 (11)	7252
111	Misprint for 11	..	..	123 (53)	10017	127	Jenkins, C. J., Harrison, Stephen, Meekjee and Holmes	do	195 (2); 131 (1); 125 (50); 126 (20); 127 (101); 170 (191); 185	2310
123	=13 Cr. 427=15 L. C. 611	Holmes and Inman	do	200 (11); 403 (62)	6554	631	Cox and Chatterjee	do	25 (107)	813
128	=13 Cr. 200=10 L. C. 161	do	do	225 (2); 223 (2); 225 (7); 227 (50)	8097	631	Sharfuddin and Richardson	do	227 208 (50)	..
220	=17 Cr. 287=11 Cr. 200=10 L. C. 167	Holmes and Carnell	do	195 (200); 104 (5)	7253	202	Cox and Chatterjee	do	100 (26)	..
219	=14 Cr. 428=20 L. C. 112	Carnell	do	223 (1); 225; 221 (19); 225 (53); 227	1024	816	Harrison and Cox	do	221 (2); 223; 227 (10)	707
220	=14 Cr. 428=17 L. C. 270	Sharfuddin and Gore	do	116 (11); 212 (10); Chapter XIV (4)	2253	834	Inman and Chapman	do	173 (2); 100 (101); 221 (101); 220 (17)	120
223	=14 Cr. 419=20 L. C. 401	do	do	110 (153); 270 (11); 20	2319	871	do	do	180 (1); 201 (101); 221 (101)	7119
221	=14 Cr. 222=21 L. C. 172 (Corr)	Fletcher	do	105 (23); 206 (226)	9019	903	Harrison and Case	do	173 (2); 221 (101); 221 (101)	1144

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14	=17 Cr. 287=11 Cr. 222=19 L. C. 198	Inman and Chapman	1913	116 (123); 105 (15); 20	7077	173	Jenkins, Stephen, and Meekjee	1913	185 (1)	1055
17	=17 Cr. 287=11 Cr. 101=20 L. C. 226	do	do	29 (14)	7182	201	Richardson and Inman	do	174 (12); 105 (4); 2	1204
63	=19 Cr. 187=13 Cr. 221=22 L. C. 1005	Inman and Chapman	1913	223 (31); 123; 221 (8); 225 (4); 227 (20)	6217	203	Inman and Chapman	do	179 (13); 185 (4); 2	7070
83	=17 Cr. 1150=11 Cr. 222=20 L. C. 124	do	do	109 (250)	2212	220	Woodroffe and Meekjee	do	173 (1); 101 (12); 221 (101)	8319
109	Misprint for 401	400 (109)	..	100	Inman and Chapman	do	174 (12); 19	7161
100	Misprint for 806	110 (217)

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47	= 18 C N 102=15 Cr. 16=21 C 100	Mockerjee and Becheroff	1913	117 (17)	2312	719	= 18 C N 274=15 Cr. 171=21 C 717	Inam and Chakraborty.	1913	104 (11), 107 (21), 215 (11), 218 (11), 224 (10).	1296
55	(P. H.) Migrant for 106 (5 II)	Jenkins C J., Stephen and Choudhury	do	103 (102a)	722	722	= 18 C N 112=15 Cr. 153=21 C 729	Robinson and Sharfuddin	do	224 (106), 180 (21), 211 (11), 212 (11), 214 (9), 217 (25), 200	2379
46	(A. B.)=15 Cr 10=21 C 71	do	do	105 (27-31a, 10-87, 88, 90, 101, 106, 113, 127, 378, 382), Chapter XLV (2)	724	711	= 18 C N 117=15 Cr. 190=21 C 766	do	1914	205 (106), 312 (18, 63), 423 (85), 517 (70), 701	709
104	= 18 C N 117=18 C J. 182=1 C 100=20	Mockerjee and Becheroff	do	122 (13)	3129	754	= 18 C N 280=15 Cr. 90=21 C 1002	do	do	110 (229)	11979
117	= 14 C N 100=18 C J. 111=18 Cr 1=22	do	do	236 37 (10)	1219	761	= 15 Cr 169=22 C 715	do	do	110 (273), 122 (1)	775
60	= 15 C J 71=20 C	Woodroffe and Mookerjee	1907	288 (21, 13)	10890	800	= 15 Cr 353=21 C 721	do	do	110 (71, 87, 97, 150, 307, 317), 112 (27), 11 (2)	1571
122	Migrant for 62	Holwood and Sharfuddin	1913	272, 294, 28, 228, 124, 233 (2), 237 (200)	2562	1013	= 18 C N 241=15 Cr. 516=21 C 954	Sharfuddin and Teunon	do	297 709 (211)	670
62	= 14 C N 102=15 Cr. 13=21 C 71	do	do	231 (7), 239 (11)	1560	1023	(P. C.)=20 C J 161=15 Cr 305=21 C 601	Lords, Shaw, Sarnar, Faruqui, Lodge and Amir Ali Stephen	do	271 (6), 297, 308, 280, 323 (1, 2), 101 (9)	4890

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19	= 18 C N 102=15 Cr. 106=21 C 700	Sharfuddin and Teunon	1914	203 288 (5, 24)	8011	1008	= 19 C N 715=16 Cr. 117=21 C 709	Jenkins O J and Teunon.	1914	208 213 (7), 215 (86)	5109
25	= 16 C J 21=21 C	Holwood and Sharfuddin	do	128 (2)	727	612	= 19 C N 181=20 C J. 516=21 C 112=27	Jenkins O J, Teunon and Fletcher	do	178 (31), 137 (127, 217, 219)	2623
18	= 18 C N 102=15 Cr. 2=20 C 116	Sharfuddin and Teunon	do	111 112 (1, 161)	5006	607	= 16 Cr 607=20 C 733	Sharfuddin and Teunon	do	170 (217)	2910
219	= 18 C N 121=15 Cr. (11=21 C 71)	do	do	329 (1, 4), 470 (54)	1071	607	= 19 C N 132=16 Cr. 115=21 C 709	Jenkins and Teunon	1914	133 112 (81, 123)	8260
25	= 18 C N 110=15 Cr. 13=21 C 212	do	do	217 (61)	177	702	= 19 C N 210=16 Cr. 327=21 C 603	do	do	110 (202), 122 (7)	3223
371	= 18 C N 121=15 Cr. 13=21 C 116	do	do	113 (71)	10884	706	= 19 C N 211=16 Cr. 336=21 C 672	do	do	75 (10)	5331

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737	=19 C.N. 181=16 Cr 120=21 I C. 184	do	do	237 (292); 239 (18)	8197	987	=19 C.N. 676=21 C. 1-331=16 Cr. 497=29 I C. 313	Mahabjee and Richardson.	do	221 (2-12). 239 (21). 256 (20); 312 (85; 95); 360 (5)	146
738	=19 C.N. 181=16 Cr 120=21 I C. 184	Fletcher and Becheroff.	do	297-298 (288)	820						
739	=19 C.N. 181=16 Cr 120=21 I C. 184	Jenkins and Tennon	do	491 (2)	3163	1133	19 C.N. 708=21 C J 301=16 Cr. 9=26 I C. 313	Fletcher and Becheroff	do	239 (21)	3173

13	=19 C.N. 517=16 Cr 329=23 I C. 683	Fletcher and Becheroff	1914	231 (9)	8181	597	=17 Cr. 501=36 I C. 67	Chaudhuri.	1915	185 (62-277)	1877
39	Nieprint for C. 330	do	1915	S. 145 (18)	2160	671	=20 C.N. 197=230 J. 106=17 Cr. 241=31 I C. 961	Greeves and Walmesley.	do	106 (5-8-21-33) 110 (161)	35
173	618=30 I C. 112	Chetty and Chapman	do	110 (30-37)	2758	1021	=20 C.N. 1133=31 C. 51=18 Cr. 408=33 I C. 963	Mookherjee and Sheepshanks.	1916	110 (230-263-273). 122 (1-3; 10; 36-7)	8191
173	=20 C.N. 62=17 Cr. 110=33 I C. 626	Walmesley	do	290 (64-66) - 292 (66) - 476 (100)	9100	1129	=20 C.N. 1170=17 Cr. 118=31 I C. 970	Sankar-on and Walmesley.	do	439 (27)	1029
277	=17 Cr 197=34 I C 309	Sharfuddin and Chapman	do	107 (13)	7140	1029	=20 C.N. 1170=17 Cr. 118=31 I C. 970	do	110 (95)		
126	=20 C.N. 976=17 Cr. 100=35 I C. 983	Sanderson, C. J	1916	292 (2-5)	9100	1129	=20 C.N. 1170=17 Cr. 118=31 I C. 970	Chetty and Walmesley.	1916	110 (121-128 1-5 209-215 226-237).	8740
512	Nieprint for 512	do	do	175 (19)	2758	1021	=20 C.N. 1170=17 Cr. 118=31 I C. 970	Mookherjee and Sheepshanks.	do	345 (41). 191 (48)	712
571	Nieprint for 791	Sanderson, C. J.	1916	175 (19-33)	2758	1021	=20 C.N. 1170=17 Cr. 118=31 I C. 970	Chetty and Walmesley.	1916	110 (121-128 1-5 209-215 226-237).	8740
591	=20 C.N. 190=230 J. 106=17 Cr 251=31 I C. 971	Greeves and Walmesley.	1915	108 (2)	9008	1122	=20 C.N. 120=21 I C. 11=18 Cr 13=36 I C. 845	Mookherjee and Sheepshanks.	1916	110 (121-128 1-5 209-215 226-237).	8740

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70	=20 C.N. 125=18 Cr. 7=37 I.O. 57	Claudhuri.	1916	54 (23) : 501 (3)	1530	737	=21 C.N. 92=18 Cr. 153=20 I.O. 253	Tennon and Beachcroft.	1916	110 (260, 275) : 122 (1)	79
177	(P. B.) =20 C.N. 25= 21 C.J. 100=18 Cr. 25=39 I.O. 915	Spiderson, Woodroffe, Claudhuri, Mukherjee and Newbold.	do	297 208 (107, 128)	2609	816	=21 C.N. 62=25 C. 197=18 Cr. 197= 39 I.O. 663	Spiderson and Mukherjee	do	195 (123, 127a, 226; 249) : 125 (1, 127); 129 (28)	1684
365	(P. B.) =21 C.N. 230 =21 C.J. 163=18 Cr. 91=37 I.O. 145	do	do	135 (1 : 3 : 7 : 9) : 536 (18)	1531	826	(P. O.) =21 C.N. 819 =20 C.J. 17=18 Cr. 171=86 I.P.C. 140	Hollace, Atkinson, Niaz, Parmer and Tennon and Beachcroft.	1917	172 (26, 376 (v))	2120
400	I.O. 837	Spiderson and Walmsley.	do	195 (63 : 78a)	1651	912	=21 C.N. 57=25 C.J. 153=18 Cr. 153=11 I.O. 139	Spiderson and Beachcroft.	1916	179 (2 : 11)	8956
	=21 C.N. 250=18 Cr. 809=13 I.O. 431	do	do	478 (31) : 479 (217)	3739	970	=21 C.N. 23=25 C.J. 115=18 Cr. 377	Spiderson and Richardson.	do	Abhenda (8 P's)	11983
	=21 C.N. 167=18 Cr. 811=39 I.O. 423	Spiderson and Newbold.	do	401 (1)	1611	1002	=21 C.N. 640=25 C.J. 253=18 Cr. 522=79 I.C. 430	do	do	105 (17 : 71)	6552

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103	(S. B.) =19 Cr. 520= 111 C. 338	Spiderson, Woodroffe, Chittiv.	1917	485 (1)	112	729	=22 C.N. 40=27 C.J. 91=19 Cr. 663=45 I.O. 399	Tennon and Richardson	1917	337 339 (31) : 342 (99)	291
326	=22 C.N. 103=27 C.J. 310=19 Cr. 575=44 I.O. 817	Spiderson and Fletcher.	do	195 (8 : 27a)	1893	727	=22 C.N. 105=27 C.J. 91=19 Cr. 105=17 I.C. 611	Richardson and Beachcroft	do	294 : 297 (12) : 403 (11)	5589
557	=22 C.N. 215=27 C.J. 140=19 Cr. 505=44 I.C. 321	Chittiv and Richardson.	do	161 (16 : 127) : 297 : 708 (41 : 115a : 215a)	431	816	=22 C.N. 744=290 J 261=19 Cr. 752=46 I.C. 429	Chittiv and Richardson	do	315 (37)	713
558	=27 C.J. 402=19 Cr. 315=111 C. 331	Tennon and Hinds.	1918	193 (7 : 8 (1))	6293	825	=22 C.N. 616=270 J. 377=19 Cr. 498=45 I.O. 253	Richardson and Beachcroft	1918	360 (11)	10762

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31	=20 Cr 241=10 I O 911	Sanderson and Woodruffe.	1918	431 (2 + 5 + 6) 826 (12)	9381	675	Fletcher and Walsh.	1918	423 (5)	5945
60	Reprinted as 70=20 Cr. 55=50 I O 25	Huda and Sniffier	do	370 (118)	7625	712	Tennon and Cumming.	do	253 (3 27; 239 (61)	7200
207	=21 Cr 710=20 I O 31 =20 Cr 715=14 I O 31	Sanderson and Bescherroft.	do	Abdulla (S 200)	1258	711	Richardson and Huda.	do	279 (15) 537 (13 77)	6004
212	=20 Cr 91=20 I O 11 =20 Cr 22=19 I O 814	Sanderson and Panton	do	423 (195)	1259	807	do	1919	190 191 (60) 200 (21) 202 (20) 537 (21)	1539
215	=21 Cr 197=20 I O 1 =20 Cr 106=16 I O 152	Sanderson and Bescherroft	do	108 17 + 110 (4 + 20 + 11 + 36; 131 150 227)	5993	854	do	do	192 (10 + 12)	449
411	=23 Cr 874=250 I O 504 =20 Cr 21=19 I O 504	do	do	322 (4)	10111	867	do	do	217 (6)	2011
544	=21 Cr 906=20 Cr 170=19 I O 490	Tennon and Cumming	do	417 (18)	9625	893	Walshley and Huda.	do	297-298 (61)	8066
						1056		do	145 (239 + 240) 479 (56)	8170

(83)

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16	=20 Cr 775	Walshley and Huda.	1919	297-308 (58 115 B + 174 + 189) 479 (250)	3160	698	Newbold and Huda.	1919	145 (141) 479 (41) 475 (2 + 12; 123) 139 (2)	5075
117	=21 Cr 720=20 I O 622 =20 Cr 72=23 I O 622	Sanderson and Newbold	do	29 (1)	4199	527	Chaulburi and Newbold.	1920	96 (3 + 6)	7401
174	=31 Cr 125=21 Cr 304=57 I O 294	Huda and Dural	do	110 (329) 113 (10) 244 (42)	4496	795	Sanderson and Walshley.	do	297-308 (114)	5316
164	=21 Cr 701=55 I O 377	Sanderson and Dural	do	296 (15 17)	4746	974	do	do	290 (39 + 74)	6408

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34	M H. C. Pro. 222-1876		1876	423 (1-163)	523	277 (F H)		Impey, Kindersley, Bastien and Innes	1877	73 (1)	604
36	M H. C. Pro. 12-176		do	351 (9)	525			Morgan and Holloway	1876	297 (1) 231 (1) 217 1977	
361		Holloway and Innes	do	287 (11) - 297-293 (95)	395	289 47 H) = 2 Weir 425		Morgan and Holloway	1876	297 (1) 231 (1) 217 1977	
371		Holloway, Innes and Kindersley.	do	1138 260	201			Impey	1877	17 (8) 319 (12) 101 2152	
372	M H. C. Pro. 323	Morgan and Innes	do	180 (9)	849	304		Bastien	do	178 (7) 177 (7) 157 (1) 525	
381	P B	Morgan, Holloway, Innes and Kindersley.	do	743 (26)	1181	399		Morgan and Kindersley	do	110 (18)	295
391	M H. C. Pro. 105	Innes and Kernan.	1877	45 (19-31)	892	391 = 2 Weir 799		do	1874	297 298 (10) 199 (105)	295

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3	M H. C. Pro. 123	Innes and Forbes	1878	45 (1) 164 (50-92) 118	793	126		Morgan and Innes	1879	188 (21)	653
37		Innes and Bastien	1877	351 (28) - 353 (11)	379	140 = 2 Weir 68		Turner C J and Turner	1880	144 (3 52 54)	6215
39	M H. C. Pro. 275	Innes and Forbes	1878	411 (1)	494	161 = 1 Weir 587		Turner and Innes	do	29 (1)	182
44	M H. C. Pro. 276	Innes and Forbes	do	106 (107) : 125 (110)	751	169		Innes and Kernan	1881	121 (3 4) 311 (1 3) 153	679
224	M H. C. Pro. 277			125 (25) 125 217	225	233 = Miqueint for 1 M				106 (1) - 110 (2-3)	

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29	M H. C. Pro. 278	Innes and Ayer	1881	106 (107)	604	112 = 2 Weir 790		Turner and Kindersley.	1881	295 (3) : 350 (12)	9118
44	M H. C. Pro. 279	Ayer		106 (107) 283 (47) - 350 (112) 495 (28) - 400 425 (1-22) : 424 (3)	604	114		do	do	428 (17)	10405

Case No.	Composing Reports.	Judges.	Year.	Section and Note.	Number of Pages.	Character of Reports.	Judges.	Year.	Section and Note.	Number of Pages.
218	22 Weir 54	Turner and Alvar.	1861	100 (1), 1007 (9), 117, 123, 124, 137, 200, 240, 312 (11), 347 (11), 435 (1)	725	Assigned for 751	Turner and Alvar.	1861	111 (21), 122	6254
219	22 Weir 107	Turner.	do		922	22 Weir 240	Turner and Alvar.	do	171 (1), 211, 298, 419, 434, 522, 613, 620 (7), 637 (5)	2557
221	22 Weir 261	Turner, Turner, Rindholm, and Alvar.	do		906	22 Weir 109	Turner and Alvar.	do	111 (21), 64, 139, 177 (2), 187 (11)	2719
224	Assigned for 218			119 (46)		22 Weir 176	Turner.	do	105 (15), 74, 109	

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[illegible]

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124	= 2 Weir 173	James and Ayyar. James and Kernan do do	1882 do do do	253 (22) 105 (34) 1 (13) : 556 (19) : 160 61 (2) : 107 (2) : 552 (1) : 344 (10) : 37 (47) : 197 34 (8) : 140 : 498 (24) : 8	90258 81893	219	= 1 Weir 89	Turner and Ayyar Ayyar James and Kernan Turner and Ayyar	1883 do do do	3 (6) 131 (56) : 221 (7) : 279 (27) : 164 : 174 (80) 198 (11) : 172 : 181 (1)	7057 1000 1000 1000
125	= 2 Weir 40	Turner and Kernan James and Kernan do	do do do	318 (40) : 197 (8) : 498 4r (2A) 105 (284)	7153 10181	316 371	= 2 Weir 629	Ayyar Turner Kernan and Ayyar do	do do do do	215 (23) : 513 214 (25) : 290 (10) : 6 198 (129) : 121 135 (79)	2001 2003 2003 1101
146	= 2 Weir 146	James and Kernan Ayyar and James and Kernan do	do do do	193 (212) 146 (5) : 7 : 217 : 111 (1) : 3 : 4 : 49 : 321 : 167 : 211 : 167 (11) : 15	9911 9291	296	= 2 Weir 324	Turner and Ayyar do	do do	77 (1) : 100 : 298 (21) 186 : 255 (12) : 671 170 (17) : 186 : 187 (96) 186 (18)	1004 1004 1004
147	Not reported for 2 N. 177 F. 11 = 2 Weir 177	Turner, James and Kernan do	1883 do			436		do	do		

148	= 2 Weir 173	Turner and Ayyar do	1883 do	147 (31) : 60 271 (25) : 290 271 (25) : 290 : 179 67 (1)	6159 5063	347 351	= 2 Weir 23	Heath Hutchings	1884 do	1884 do	1884 do
149	= 2 Weir 140	do	do	60 (1) : 106 271 (25) : 290 : 179 74	6165	352 455	= 2 Weir 102	do	do	do	1884
150	= 2 Weir 202	Turner and Ayyar do	do do	271 (25) : 290 : 179 271 (25) : 290 : 179	6165 6165	456 456	= 1 Weir 102	Heath Kernan and Ayyar	do do	do do	1884 1884
151	Not reported for 2 N. 177 F. 11 = 2 Weir 177	do	do					do	do	do	1884
152	= 2 Weir 67	Kernan and Hutchings do	do	271 (25) : 290 : 179 271 (25) : 290 : 179	6171	457	= 2 Weir 151	Turner and Ayyar	do	do	1884
153	= 2 Weir 179	do	do	271 (25) : 290 : 179 304 (1)	6171	458	= 2 Weir 151	Turner and Ayyar	do	do	1884
154	Not reported for 2 N. 177 F. 11 = 2 Weir 177	Turner and Kernan do	do					do	do	do	1884
155	= 2 Weir 202	Turner and Kernan do	do	271 (25) : 290 : 179 304 (1)	6171 6171	459 459	= 2 Weir 151	Turner and Hutchings Kernan and Ayyar Hutchings	do do do	do do do	1884 1884 1884
156	= 1 Weir 202	Kernan and Hutchings do	do	271 (25) : 290 : 179 304 (1)	6171 6171	460 460	= 2 Weir 229	Turner and Ayyar Hutchings	do do	do do	1884 1884

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278 = 2 Weir 51	Turner and Ayyar.	1881	106 (1) - 110 (7) - 9 117 - 233 - 158 - 157 - 210 - 253 - 112 (11)	7207	354	Miniput for 351	1881	114 (24 - 179)	6207
279 = 2 Weir 297	Turner.	do	187 (11)	2292	= 2 Weir 260	Turner and Innes.	do	1881	6207
281 (F. B. = 2 Weir 74)	Turner, Innes, Kerman, and Ayyar.	do	185 (1)	2294	= 2 Weir 90	Innes and Ayyar.	do	1881	6207
284			110 (246)		= 2 Weir 170	Ayyar and Varrant	do	1881	6207

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121 = 2 Weir 114	Turner, C. J. and Innes.	1881	112 (227) - 118 (9) - 147 (3) - 17 19 22 41 61	7187	233		1881	219 (2 11)	9412
120 = 2 Weir 321	Turner and Varrant	do	256 (9 12)	5995	234	= 1 Weir 675	do	1881	9412
111	Kindersley and Ayyar	do	172 (11)	5992	327	= 2 Weir 419	do	1881	9412
227 = 2 Weir 541	Turner	do	163 (1) - 205 (26) - 178 (6)	1661	329		do	1881	9412
220 = 2 Weir 652	Kerman, Kindersley and Ayyar.	do	158 (220A) - 190 (9)	1150	396	= 1 Weir 76	do	1881	9412

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11 = 2 Weir 172	Innes and Kerman.	1882	121 (17) 122 (11)	5743	153		1879	221 (18)	874
20 = 2 Weir 260	Innes and Ayyar.	do	223 (56) - 279 (23 - 70)	7149	169	= 2 Weir 265	1882	245 (2 - 12)	1709
44 = 1 Weir 290	do	do	42 (52 7) - 181 (4)	1693	169	= 1 Weir 80	do	69 (3)	7122
23 = 1 Weir 1	do	do	177 (10 - 23 - 30) - 183 (1) - 188 (15 - 17) - 231 (1) - 272 (8)	1110	201	= 2 Weir 70	do	144 (2 - 52)	7184
25 = Miniput for 23	do	do	177 (54)		378		do	248 (1)	8421
24 = 1 Weir 29	do	do	31 (1) - 23 (16)	1916			do	107 (57) - 107 (26 - 179)	1174
23 = 1 Weir 7	Turner and Ayyar.	1882	100 (158) - 117 (10) - 158 (3)	5976	384	= 2 Weir 316	do	250 (17 - 189)	6918

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25		Imies and Ayyar	1882	253 (22)	9828	249	=1 Weir 89	Turner and Ayyar.	1883	5 (6)*	7977
29	=2 Weir 173	Imies and Kernan	do	135 (31)	8493	252	=1 Weir 116	Imies and Kernan.	do	43 (23), 223 (71), 270 (29), 481, 175 (49)	1891
72		do	do	1 (13), 326 (19), 161 (61), 167 (2), 229 (1), 314 (10), 37, 47, 197	9013	252	=2 Weir 628	Turner and Ayyar.	do	188 (11), 172, 183 (A)	1896
63	=2 Weir 469	do	do	33 (8), 11, 498 (24), 8	5000	253	=2 Weir 716	Ayyar.	do	245 (73), 51	256
69	=2 Weir 413	Turner and Kernan	do	314 (40), 197 (8), 198 (28)	7553	216	=2 Weir 629	Turner.	do	218 (26), 250 (68)	1909
100		Imies and Kernan	do	47 (5)	10161	371	=2 Weir 711	Kernan and Ayyar.	do	188 (120), 121	2552
110	=2 Weir 156	Ayyar and Tarnant	do	198 (283)	9811	372	=2 Weir 711	do	do	153 (29)	1911
190	Abstract for 2M, 100	Turner, Imies and Anderaley -	1883	135 (212)	9291	396	=2 Weir 323	Turner and Ayyar	do	75 (1), 100, 298, 219 (18), 265 (2), 71, 67, 270 (67), 98 (5), 286 (18)	9296
201	(F. H) = 2 Weir 77			107 (6), 7, 21 (3), 114 (1), 3, 4, 49, 52, 145 (321), 147 (11), 15	426			do	do	110 (17)	179

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19	=2 Weir 115	Turner and Ayyar	1882	147 (11), 163	6491	317	=2 Weir 24	Brault	1884		1-24
83	Abstract for 9 M, 83	Hutchins	1883	294, 213 (20)	9861	354	=1 Weir 672	Hutchins	do	177 (8), 32	5009
102	=2 Weir 740	do	do	493 (1)	682	356	=2 Weir 399	do	do	247 (8)	1861
187	=2 Weir 610	Turner and Ayyar	do	488 (104)	10013	136	=1 Weir 102	Brault	do	41 (2), 15 (1), 3, 129	7166
189	=2 Weir 585	do	do	195 (46), 176 (41), 67, 71	9811	154	=2 Weir 571	Kernan and Ayyar	do	223 (5), 211 (1), 253 (21), 251 (15), 437 (70), 91	7115
213	Abstract for 7 M, 191	Kernan and Hutchins	do	297, 308 (26)	3092	160	=2 Weir 101	Turner and Ayyar.	do	115 (229), 170, 117 (10), 29, 64, 63	9156
221	=2 Weir 179	do	do	217 (29), 123 (68)	8141	557	=2 Weir 456	Turner and Hutchins	do	403 (61)	9908
24	Abstract for 25 (4 F, B)	Ayyar and Kinnerley	do	195 (36), 189	8115	560	=2 Weir 180	Kernan and Ayyar.	do	435 (57), 68	1911
271	(F. B) = 2 Weir 129	Turner and Hutchins	do	160 (1)	7997	563	=2 Weir 320	Hutchins.	do	44 (76), 101, 105 (99), 259 (7), 886, 317 (1)	7112
297	=2 Weir 735	do	do	160 (4)	8162						
297	=2 Weir 735	do	do	163 (2)							
297	=1 Weir 185	do	do	154 (8), 173 (8), 200 (19), 207 (68)							

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18 (F. E.) = 2 Weir 540	Turner, Ayyar, Hutchins and Brandt.	1884	17 (2) 350 (3) - 135 (40) 506 (60) 437 (125)	7023	205		Brandt	1885	488 (51)	10509
70	Turner and Hutchins		188 (200 - 283)	1585	296	= 2 Weir 541 = 2 Weir 548	do	do	235 (58 - 59) 403 (87) - 437 (31 - 43 - 81)	2553
110 = 2 Weir 210	Turner and Brandt.		(23 (3) - 203 (60))	2217	326	= 2 Weir 577	Turner and Brandt.		496 (9) - 437 (2 - 4 - 28 - 81 - 128)	424

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55 = 2 Weir 80	Hutchins	1885	15 (11) : 265 (6 - 89) - 407 (2)	6198	271	Maxim for 9 M. T.			107 (40)	
42 = 2 Weir 337	Ayyar and Hutchins	do	207-308 (276 - 282)	5058	282	= 2 Weir 243 = 2 Weir 271	Kernan and Ayyar.	1886	202 (16 - 17 - 18) - 330 (25)	8212
61 = 2 Weir 336	Kernan and Ayyar.	do	237 (34) : 255 (3) 271 (1 - 17)	260	284	= 2 Weir 246	do	do	221 (22 - 26) - 310 (7)	2418
83 = 2 Weir 336	Kernan and Ayyar.	do	208 218 (50) - 268 (17 - 18) - 286 (21 - 22 - 24 : 30) - 299 (2)	9148	356	= 2 Weir 677	Kernan and Parker.	do	524 (35 - 57 - 166)	5607
102 = 2 Weir 115	Brandt	do	230 (38) - 265 (29)	7292	371	= 2 Weir 311	Ayyar and Parker.	do	350 (35) - 265 (29)	1815
201 = 2 Weir 60	Brandt and Parker.	do	134 142 (22 - 23 - 112)	6451	377	= 2 Weir 127	Kernan and Ayyar.	do	219 (5 - 9)	1698
221 = 2 Weir 127 = 2 Weir 407	Brandt and Parker.	1886	104 (46 - 114) - 342 (36 - 53 - 64 - 65 - 72 - 86) - 364 (15 - 36 - 40) - 533 (8)	9997	448	= 2 Weir 213	Parker.	do	197 (6 - 46 - 40)	2155
238 = 1 Weir 780	Ayyar and Brandt	do	404 (14 - 120 (3))	5190	453	= 2 Weir 672	Brandt	do	295 (63) - 401 (3) - 517 - 235 (36 - 58 - 66 - 130 - 137)	2345
							Collins, C. J. and Parker.	do	133 112 (161)	10104

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13 = 2 Weir 635	Brandt	1886	488 (196 - 231) 180 (2)	8116	165	(F. B.) = 2 Weir 30	Collins, C. J., Kernan, Brandt Ayyar and Parker	1887	23 (1)	9509
21 = 1 Weir 671	Parker.	do	177 (35 - 35 (2))	3112	222	(F. B.) = 2 Weir 181 = 2 Weir 162	Collins, Kernan, Ayyar, Brandt and Parker.	do	4m (56) - 154 (8) - 175 (8) 195 (27 - 28 - 30 (4) - 31 (a) - 68 - 121 - 203 (68) - 476 (17) - 508 213 (12) - 287 (2) - 77 - 100	8744
25 = 2 Weir 670	Kernan and Parker	do	517-523 (134)	9885	4343	= 2 Weir 269 = 2 Weir 407	Collins, Kernan and Parker	do		8129
121	Ayyar, Brandt and Parker.	do	342 (10 - 42)	9310	295					
154 = 2 Weir 170	Brandt and Parker	1887	102 (8 (8) 9) : 463 (2)	9310						

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93	=2 Weir 142	Kernan and Brandt	1837	195 (97) 61 (1 2); 167 (2 3) 314 (12)	9149 375	=2 Weir 359 =2 Weir 163	Kernan, Collins and Ayer and Parker	1834	292 (2) 195 (8 (11))	9447
112	=2 Weir 314	Collins, C J and Brandt.	do	259 (21: 30); 265 (89)	1153 411	=1 Weir 210=2 Weir 94	Ayer and Parker	do	51 (33); 54 (7); 233 (11); 371; 273 (71); 337	9462
129	=2 Weir 628	Collins and Parker	do	44 (76 11); 292 (49)	9833 443	=2 Weir 233	Ayer and Parker	do	46 (6 7); 190 191 (69); 200 (11); 337 (29; 25)	9474
229	(F. B)	Collins, Kernan, Ayer, Brandt and Parker	do	1824 145 (111)	11071 477	=1 Weir 536	Collins C J. and Ayer and Parker.	1833	193 (12)	9481
223	Minors for 223	Collins and Parker	do	145 (67)	6991 500	=1 Weir 200=2 Weir 33	Collins and Parker.	do	51 (4; 23); 59 (1; 5)	9479
223	=2 Weir 117		do	145 (77 490) 117 (16 41)			Collins and Parker.	do	105 (9 (7); 78 (4))	9484

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22	= 2 Weir 621=2 Weir 127	Kernan and Wilkinson	1833	493 (194 - 97); 403 (6)	9799	153	=2 Weir 734	Ayur and Parker	1833	162 (6)	2046
22	= 2 Weir 22	Kernan and Ayur	do	25 (7 - 21 - 25 65 64)	6-57	196	=2 Weir 519	Collins C. J. and Ayur	do	297; 293 (93; 290)	677
29	= 1 Weir 10	Ayur and Parker	do	147 (22 (1) 183 (24)	3493	201		Ayur and Parker	1839	195 (8 (9) - 9 (7)); 150 (2)	9041
47	= 2 Weir 161	Collins C. J. and Parker	do	195 (29 170a) 229a	9510	273	=1 Weir 723	do	do	293 (11; 20); 234 (17)	7440
54	= 2 Weir 22	Wilkinson and Shepherd	do	314 23 (1) 29 (1 52 (3)	7946	297	=1 Weir 55	Collins C. J. and Ayur	do	562 (3)	9741
83	= 2 Weir 100	Collins C. J. and Parker	do	145 (1 33)	7796	993	=2 Weir 714	Ayur and Parker	do	345 (46) 195 (372)	9227
92	=1 Weir 102=2 Weir 73	Collins and Ayur	do	45 (4 31)	185	451	Minors for 12 M. J 493	Collins C. J. and Parker.	do	342 (20) - 104 (7); 419 (1) - 423 (15); 339 (7)	9170
94	(F. B)=1 Weir 73	Kernan, Ayur, and Parker	do	3 (1) 339 (22)	2270	459	=1 Weir 42	Collins C. J. and Ayur.	do	465 (6; 9)	9461
123	= 2 Weir 376	Wilkinson and Collins C. J. and Parker	do	288 (6; 7 - 36 - 37 - 38)	1361	475	=1 Weir 114	Ayur and Shepherd.	do	173; 142 (75; 118 - 119 127; 146; 153); 141 (125)	6181

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18	=2 Weir 11	Collins C. J. and Ayar.	do	94 (9) : 96 (4 : 9 : 10)	2365 343		Collins C. J. and Ayar.	do	404 (13)	1827
21	=2 Weir 610	Collins C. J. and Wilkinson.	do	487 (10)	8620 313	=2 Weir 1	Collins C. J. and Handley.	1890	297 : 308 (287a : 291a : 293)	3248
112	=1 Weir 910 = 2 Weir 327	Collins C. J. and Parker.	do	255 (50)	7004 510	=2 Weir 117	Ayar and Weir.	do	1 (5)	1008
							Ayar and Shepherd.	1889	177 (10) : 188 (15 : 17) : 353 (8)	4331
							Handley and Weir.	1890	439 (6)	11303

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20	=2 Weir 300	Collins C. J. and Weir.	1890	297 : 308 (307) : 418 (10)	1902 354	=1 Weir 211	Ayar and Wilkinson.	1891	112 (204)	9546
121	=2 Weir 7	Handley and Weir.	do	1 (12)	1661		do	do		
331	(F. B.) = 1 M. J. 213 = 2 Weir 537 = 2 Weir 324	Collins C. J. and Ayar, Parker and Shepherd.	1891	253 (16 : 22) : 435 (21) : 436 (28) : 437 (1 : 5) : 28 : 31 : 34 : 439 (127 : 131)	379 308	=1 M. J. 212 = 2 Weir 210 = 2 Weir 631	do	do	108 (5) : 315 (30 : 43)	1889
261	=2 Weir 571	Collins C. J. and Weir.	1890	417 (10) : 423 (92A) : 438 (38) : 439 (217 : 219 : 225) : 449 (7)	9505 399	=2 Weir 683	Shepherd and Handley.	1890	453 (71) : 189 : 216 : 190 (12)	8017
							Ayar and Parker.	do	17 (4) : 523 (47 : 52)	9199

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33	=2 Weir 218	Collins C. J. and Wilkinson.	1891	435 (126) : 478 (33)	8110 123	=2 Weir 36	Ayar and Handley.	1891	10 (6)	9907
79	=2 Weir 255 = 2 Weir 542	Parker and Wilkinson.	do	208 213 (83) : 215 (24) : 436 (28) : 437 (100 : 101)	6171 137	=2 Weir 468	Collins C. J. and Shepherd.	do	110 (2)	620
63	=2 Weir 794	Ayar and Parker.	do	339 (107) : 435 (3)	8461 138	(F. B.) = 2 M. J. 64	Collins C. J. and Ayar, Parker and Shepherd.	do	195 (809) : 476 (82) : 183 (2)	757
87	=2 Weir 326 = 2 Weir 729	Shepherd and Handley.	do	243 (2) : 275 (41 : 52) : 439 : 546 (38)	2551 182	Moment for 132	do	do	10 (6)	
94	=2 Weir 692	Ayar and Parker.	do	17 (8) : 528 (48)	2572 221	=2 M. J. 143 = 2 Weir 174	Parker and Shepherd.	1892	195 (13 : 31 : 78) : 476 (2 : 3)	81
171	=2 Weir 645	Collins C. J. and Parker.	do	1 (18) : 476 (74) : 490 (38)	9863 322	=2 Weir 794 = 2 Weir 153 = 2 Weir 578	Collins C. J. and Wilkinson.	do	193 (7) : 287 (12) : 439 (35 : 73 : 83)	7954

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21	= 2 Weir 232	Handley and Best	do	1 (6); 2 (4); 204 (22); 220 (21 (4)); 488 (23); 33 (283)	121	= 1 Weir 175 = 2 Weir 111	Collins and Parker.	do	1 M 106; 161 (12); 11;	398
22	= 1 Weir 227	Collins and Handley	do	161 (3); 198 (12)	161	= 2 Weir 200	Shepherd and Best	1807	100; 173 (29)	6316
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					168	= 3 M J 227	Collins and Parker	do	195 (233); 157 (31; 30; 62)	8150

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50	= 1 Weir 102	C. A. and J. Parker	do	112 (204)	220	= 2 Weir 91	Best and Sub Ayyar	do		7051
68	= 1 M J 212	do	do	214 (60)	260					
21	= 2 Weir 103	M Ayyar and Best	do	115 (102); 174-153; 129 228 235 267; 1629	457	= 5 M J 215 = 2 Weir 162 = 2 Weir 297	Collins and Parker.	do	155 (294); 167 (4); 176 (20)	9177

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34	= 2 Weir 119	Collins and Parker.	do	170 (9), 139 (122c)	9859	319	= 1 Weir 45	Davies and Buddam.	do	53 (28), 96 (22); 105 (7, 16)	10856 7145
14	= 5 M. J. 210 = 2 Weir 331 = 2 Weir 34	do	do	4 M. (5c), 144 (24), 19 (50), 476 (107)	9565	354	= 2 Weir 468	Collins and Benson.	do	419 (3), 216 (16), 295 (2), 158 (49), 43, 45	9763 9914
20	= 1 Weir 250	Shepherd and Davies.	1896	271 (38), 425 (139), 549 (13)	1306	375	= 6 M. J. 105 = 2 Weir 639	Collins and Benson.	1895	293 (4, 5), 314 (3, 2), 191 (68), 21, 75, 84; 121, 131, 110	1161
23	= 2 Weir 461	Collins and Benson.	do	535 (12), 107 (3)	5050	461	= 2 Weir 621	Collins and Parker.	1896	122 (200); 113 (3, 5), 106 (33)	8403
25	= 2 Weir 725	Collins and Davies.	do	192 (11), 258 (66), 114, 133, 556 (24), 13, 60	5596	461	= 6 M. J. 181 = 1 Weir 217 = 1 Weir 144 M. reprint for 19 Cr. 329 (M.)	Sub. Ayyar and Davies.	1896		..

3	= 2 Weir 658	Sub. Ayyar and Davies	1896	488 (209)	257	283	= 2 Weir 613	Collins and Benson.	1896	1m (5c), 487 (15)	8027
8		do	do	195 (73c), 68 (2)	63	285	= 1 Weir 871	Collins and Shepherd	1897	33 (8), 256 (13)	9192
21	= 2 Weir 83	Sub. Ayyar and Buddam	do		4879	287	= 2 Weir 210	Collins and Shepherd.	1897	155 (3), 200 (46), 202 (2, 32)	4370
27	= 2 Weir 470	Sub. Ayyar and Davies.	do	119 (6)	4172	288	= 2 Weir 251	Subramana Ayyar and Benson.	do	203 (36), 311 (2, 10)	5986
38		Shepherd and Davies.	do	1 m (5c), 65 (5), 88 (209), 386 (229), 435 (230), 429 (21)	10586	444	= 2 Weir 453	Collins and Shepherd	do	29 (3), 35 (100), 203 (17), 297 (9)	9851
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78	=1 Weir 123	Shepherd and Subramania Ayyar	1896	54 (25)	11742	=2 Weir 312	Collins and Hodson	1907	103 (8), 147 (370), 270 (2) - 281 (30) + 156 (55)	199
83	=2 Weir 207=2 Weir 46=2 Weir 374	Collins and Shepherd	1897	103 (9) - 256 (23) - 283 (7) - 297 298 (52) 53 (114 - 112)	7967	=2 Weir 17	Collins and Subramania Ayyar	1893	15 (1) + 16 (8) - 237 (50)	1476
114	=2 Weir 470	Collins and Hodson	do	419 (6-7)	7993	=1 Weir 310	Collins and Shepherd	do	123 (3-5)	9134
						=1 Weir 135=1 Weir 292	Subramania Ayyar and Davies	do	54 (26)	11733

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15	=2 Weir 707=1 Weir 440	Collins and Hodson	1899	164 (20) - 280 (16) - 364 (27) - 389 (33) (11)	493	=2 Weir 625	Collins and Hodson	1898	193 (24) - 67 (140)	9817
17	=2 Weir 470	do	do	12 (65) - 40 (12) - 350 (18)	9199	(N)=2 Weir 624=Cr R No 37 of 1891	Collins and Shepherd	1893	189 (140)	705
119	=2 Weir 126	Subramania Ayyar and Moore	do	169 191 (12) 54 (67)	2634					
124	=1 Weir 724	do	do	623 (171) 515 (13)	9404	=2 Weir 254	Hodson	1899	208 213 (20) + 203 (17) - 400 (10)	6114
126		Subramania Ayyar and Moore	do	419 (1)	11725	=2 Weir 716	do	do	271 (23A) - 287 (10)	5010

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146	=2 Weir 156	do	do	415 (54) 195 (31) (a) (c)	7006		Subramania Ayyar and Hodson	do	429 (20)	11459
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1897	1897 = 1 Weir 161 = 2 Weir 122 = Cr. B. of 721 of 1899	Subram Ayyar and U. Parrell,	1897	1897 = 2 Weir 311 = 2 Weir 700	1897 = 2 Weir 311 = 2 Weir 700
1898	1898 = 1 Weir 161 = 2 Weir 122 = Cr. B. of 721 of 1899	Subram Ayyar and U. Parrell,	1898	1898 = 2 Weir 312 = 2 Weir 701	1898 = 2 Weir 312 = 2 Weir 701

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17	17 = 1 Weir 682	Shoephord and Davies,	1900	1900 = 2 Weir 251	1900 = 2 Weir 251
18	18 = 2 Weir 682	White G. J. and Moore,	1901	1901 = 2 Weir 252	1901 = 2 Weir 252
19	19 = 2 Weir 682	White G. J. and Moore,	1902	1902 = 2 Weir 253	1902 = 2 Weir 253
20	20 = 2 Weir 682	White G. J. and Moore,	1903	1903 = 2 Weir 254	1903 = 2 Weir 254
21	21 = 2 Weir 682	White G. J. and Moore,	1904	1904 = 2 Weir 255	1904 = 2 Weir 255
22	22 = 2 Weir 682	White G. J. and Moore,	1905	1905 = 2 Weir 256	1905 = 2 Weir 256
23	23 = 2 Weir 682	White G. J. and Moore,	1906	1906 = 2 Weir 257	1906 = 2 Weir 257
24	24 = 2 Weir 682	White G. J. and Moore,	1907	1907 = 2 Weir 258	1907 = 2 Weir 258
25	25 = 2 Weir 682	White G. J. and Moore,	1908	1908 = 2 Weir 259	1908 = 2 Weir 259
26	26 = 2 Weir 682	White G. J. and Moore,	1909	1909 = 2 Weir 260	1909 = 2 Weir 260
27	27 = 2 Weir 682	White G. J. and Moore,	1910	1910 = 2 Weir 261	1910 = 2 Weir 261
28	28 = 2 Weir 682	White G. J. and Moore,	1911	1911 = 2 Weir 262	1911 = 2 Weir 262
29	29 = 2 Weir 682	White G. J. and Moore,	1912	1912 = 2 Weir 263	1912 = 2 Weir 263
30	30 = 2 Weir 682	White G. J. and Moore,	1913	1913 = 2 Weir 264	1913 = 2 Weir 264
31	31 = 2 Weir 682	White G. J. and Moore,	1914	1914 = 2 Weir 265	1914 = 2 Weir 265
32	32 = 2 Weir 682	White G. J. and Moore,	1915	1915 = 2 Weir 266	1915 = 2 Weir 266
33	33 = 2 Weir 682	White G. J. and Moore,	1916	1916 = 2 Weir 267	1916 = 2 Weir 267
34	34 = 2 Weir 682	White G. J. and Moore,	1917	1917 = 2 Weir 268	1917 = 2 Weir 268
35	35 = 2 Weir 682	White G. J. and Moore,	1918	1918 = 2 Weir 269	1918 = 2 Weir 269
36	36 = 2 Weir 682	White G. J. and Moore,	1919	1919 = 2 Weir 270	1919 = 2 Weir 270
37	37 = 2 Weir 682	White G. J. and Moore,	1920	1920 = 2 Weir 271	1920 = 2 Weir 271
38	38 = 2 Weir 682	White G. J. and Moore,	1921	1921 = 2 Weir 272	1921 = 2 Weir 272
39	39 = 2 Weir 682	White G. J. and Moore,	1922	1922 = 2 Weir 273	1922 = 2 Weir 273
40	40 = 2 Weir 682	White G. J. and Moore,	1923	1923 = 2 Weir 274	1923 = 2 Weir 274
41	41 = 2 Weir 682	White G. J. and Moore,	1924	1924 = 2 Weir 275	1924 = 2 Weir 275
42	42 = 2 Weir 682	White G. J. and Moore,	1925	1925 = 2 Weir 276	1925 = 2 Weir 276
43	43 = 2 Weir 682	White G. J. and Moore,	1926	1926 = 2 Weir 277	1926 = 2 Weir 277
44	44 = 2 Weir 682	White G. J. and Moore,	1927	1927 = 2 Weir 278	1927 = 2 Weir 278
45	45 = 2 Weir 682	White G. J. and Moore,	1928	1928 = 2 Weir 279	1928 = 2 Weir 279
46	46 = 2 Weir 682	White G. J. and Moore,	1929	1929 = 2 Weir 280	1929 = 2 Weir 280
47	47 = 2 Weir 682	White G. J. and Moore,	1930	1930 = 2 Weir 281	1930 = 2 Weir 281
48	48 = 2 Weir 682	White G. J. and Moore,	1931	1931 = 2 Weir 282	1931 = 2 Weir 282
49	49 = 2 Weir 682	White G. J. and Moore,	1932	1932 = 2 Weir 283	1932 = 2 Weir 283
50	50 = 2 Weir 682	White G. J. and Moore,	1933	1933 = 2 Weir 284	1933 = 2 Weir 284
51	51 = 2 Weir 682	White G. J. and Moore,	1934	1934 = 2 Weir 285	1934 = 2 Weir 285
52	52 = 2 Weir 682	White G. J. and Moore,	1935	1935 = 2 Weir 286	1935 = 2 Weir 286
53	53 = 2 Weir 682	White G. J. and Moore,	1936	1936 = 2 Weir 287	1936 = 2 Weir 287
54	54 = 2 Weir 682	White G. J. and Moore,	1937	1937 = 2 Weir 288	1937 = 2 Weir 288
55	55 = 2 Weir 682	White G. J. and Moore,	1938	1938 = 2 Weir 289	1938 = 2 Weir 289
56	56 = 2 Weir 682	White G. J. and Moore,	1939	1939 = 2 Weir 290	1939 = 2 Weir 290
57	57 = 2 Weir 682	White G. J. and Moore,	1940	1940 = 2 Weir 291	1940 = 2 Weir 291
58	58 = 2 Weir 682	White G. J. and Moore,	1941	1941 = 2 Weir 292	1941 = 2 Weir 292
59	59 = 2 Weir 682	White G. J. and Moore,	1942	1942 = 2 Weir 293	1942 = 2 Weir 293
60	60 = 2 Weir 682	White G. J. and Moore,	1943	1943 = 2 Weir 294	1943 = 2 Weir 294
61	61 = 2 Weir 682	White G. J. and Moore,	1944	1944 = 2 Weir 295	1944 = 2 Weir 295
62	62 = 2 Weir 682	White G. J. and Moore,	1945	1945 = 2 Weir 296	1945 = 2 Weir 296
63	63 = 2 Weir 682	White G. J. and Moore,	1946	1946 = 2 Weir 297	1946 = 2 Weir 297
64	64 = 2 Weir 682	White G. J. and Moore,	1947	1947 = 2 Weir 298	1947 = 2 Weir 298
65	65 = 2 Weir 682	White G. J. and Moore,	1948	1948 = 2 Weir 299	1948 = 2 Weir 299
66	66 = 2 Weir 682	White G. J. and Moore,	1949	1949 = 2 Weir 300	1949 = 2 Weir 300
67	67 = 2 Weir 682	White G. J. and Moore,	1950	1950 = 2 Weir 301	1950 = 2 Weir 301
68	68 = 2 Weir 682	White G. J. and Moore,	1951	1951 = 2 Weir 302	1951 = 2 Weir 302
69	69 = 2 Weir 682	White G. J. and Moore,	1952	1952 = 2 Weir 303	1952 = 2 Weir 303
70	70 = 2 Weir 682	White G. J. and Moore,	1953	1953 = 2 Weir 304	1953 = 2 Weir 304
71	71 = 2 Weir 682	White G. J. and Moore,	1954	1954 = 2 Weir 305	1954 = 2 Weir 305
72	72 = 2 Weir 682	White G. J. and Moore,	1955	1955 = 2 Weir 306	1955 = 2 Weir 306
73	73 = 2 Weir 682	White G. J. and Moore,	1956	1956 = 2 Weir 307	1956 = 2 Weir 307
74	74 = 2 Weir 682	White G. J. and Moore,	1957	1957 = 2 Weir 308	1957 = 2 Weir 308
75	75 = 2 Weir 682	White G. J. and Moore,	1958	1958 = 2 Weir 309	1958 = 2 Weir 309
76	76 = 2 Weir 682	White G. J. and Moore,	1959	1959 = 2 Weir 310	1959 = 2 Weir 310
77	77 = 2 Weir 682	White G. J. and Moore,	1960	1960 = 2 Weir 311	1960 = 2 Weir 311
78	78 = 2 Weir 682	White G. J. and Moore,	1961	1961 = 2 Weir 312	1961 = 2 Weir 312
79	79 = 2 Weir 682	White G. J. and Moore,	1962	1962 = 2 Weir 313	1962 = 2 Weir 313
80	80 = 2 Weir 682	White G. J. and Moore,	1963	1963 = 2 Weir 314	1963 = 2 Weir 314
81	81 = 2 Weir 682	White G. J. and Moore,	1964	1964 = 2 Weir 315	1964 = 2 Weir 315
82	82 = 2 Weir 682	White G. J. and Moore,	1965	1965 = 2 Weir 316	1965 = 2 Weir 316
83	83 = 2 Weir 682	White G. J. and Moore,	1966	1966 = 2 Weir 317	1966 = 2 Weir 317
84	84 = 2 Weir 682	White G. J. and Moore,	1967	1967 = 2 Weir 318	1967 = 2 Weir 318
85	85 = 2 Weir 682	White G. J. and Moore,	1968	1968 = 2 Weir 319	1968 = 2 Weir 319
86	86 = 2 Weir 682	White G. J. and Moore,	1969	1969 = 2 Weir 320	1969 = 2 Weir 320
87	87 = 2 Weir 682	White G. J. and Moore,	1970	1970 = 2 Weir 321	1970 = 2 Weir 321
88	88 = 2 Weir 682	White G. J. and Moore,	1971	1971 = 2 Weir 322	1971 = 2 Weir 322
89	89 = 2 Weir 682	White G. J. and Moore,	1972	1972 = 2 Weir 323	1972 = 2 Weir 323
90	90 = 2 Weir 682	White G. J. and Moore,	1973	1973 = 2 Weir 324	1973 = 2 Weir 324
91	91 = 2 Weir 682	White G. J. and Moore,	1974	1974 = 2 Weir 325	1974 = 2 Weir 325
92	92 = 2 Weir 682	White G. J. and Moore,	1975	1975 = 2 Weir 326	1975 = 2 Weir 326
93	93 = 2 Weir 682	White G. J. and Moore,	1976	1976 = 2 Weir 327	1976 = 2 Weir 327
94	94 = 2 Weir 682	White G. J. and Moore,	1977	1977 = 2 Weir 328	1977 = 2 Weir 328
95	95 = 2 Weir 682	White G. J. and Moore,	1978	1978 = 2 Weir 329	1978 = 2 Weir 329
96	96 = 2 Weir 682	White G. J. and Moore,	1979	1979 = 2 Weir 330	1979 = 2 Weir 330
97	97 = 2 Weir 682	White G. J. and Moore,	1980	1980 = 2 Weir 331	1980 = 2 Weir 331
98	98 = 2 Weir 682	White G. J. and Moore,	1981	1981 = 2 Weir 332	1981 = 2 Weir 332
99	99 = 2 Weir 682	White G. J. and Moore,	1982	1982 = 2 Weir 333	1982 = 2 Weir 333
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						346	= 2 Weir 245	do	do	202 (27); 203 (20); 237 (26)	195
						639	= 2 Weir 299	White C. J. and Benson	do	176 (120)	8184
						667	= 2 Weir 318	Subram Ayyar	do	250 (5; 20);	9592
118		White C. J. and Moore	do	112 (206) 143 (3)	11162	671	= 2 Weir 173	Subram Ayyar and Davies	do	155 (137 (16)	9623

1	= 1 Weir 521	Davies and Benson	1902	257, 208 (225) - 259 7 (102) 166) 417 (1) 121 - 418 (8) 425 667 73 74 113, 537 (171)	9063	125	= 2 Weir 295	White C. J. and Moore	1902	273 (2 - 15 - 20 - 41) - 271 (16) - 118 (13) - 537 (13 - 16; 63) 370 (11)	4899
94	= 2 Weir 733	Benson and Moore	do	1167 (3) 6) 297, 298 (47)	9567	126	Map-print for 29C 126 (P. B)				
11	= 13 M. J. 112 = 2 Weir 274	White C. J., Benson and Moore	1902	1293 (11)	11199	127	= 2 Weir 321 = 2 Weir 415	White C. J. and Davies	do	230 (16 - 70 - 71, 72 - 274) 286 (12) 338 (13)	1739
19	= 12 M. J. 117 = 2 Weir 667	White C. J.	do	347, 325 (61 06 99)	11189	130	= 2 Weir 689	B. Ayyangar	do	523 (48)	7581
23	= 1 Weir 163	Benson, B. Ayyangar and Moore	do	233 (28) 237 (23) 575 (4)	7039	137	= 2 Weir 196	do	do	8 - 9 (2) - 195 (275 - 360) - 183 (78)	8941
94	(P. B) = 2 Weir 570	White C. J.	do	439 (42) 476 (10 - 129 196)	2317	179	= 2 Weir 197 = 2 Weir 377	do	do	195 (231); 435 (98) - 439 (39) - 476 (191) S 433 (32)	1905
116	= 2 Weir 189	Benson and Moore	do	195 (89 - 94 311) - 290 (3)	7112	161	Map-print for 24 M 161			S 193 (6)	
124	= 1 Weir (23)	White C. J.	do	54 (17) 55 (11) - 169 (127 - 177 (43) 183 [1 (1)]	8183	188	= 12 M. J. 391 = 2 Weir 678 = 1 Weir 738	B. Davies and B. Ayyangar,	do	S. 110 (720) - 145 (16) 192 (7); 526 (9); 528 (6)	679
						189	= 11 M. J. 67 = 2 Weir 193	B. Ayyangar,	do	195 (293 - 193; 91 (96)	7030

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193	= 2 Weir 230	Benson and Ayyangar.	1902	195 (212) : 232, 237	6253	471	= 2 Weir 56	White C. J.	1902	S 107 (34) : 36, 2003 : 110 (212), 234 : S 115 (470) : 451, 550	1244
191	= 2 Weir 920	do	do	362 (8)	1907						
191	= 2 Weir 191	Benson and Ayyangar.	do	195 (19) : 94	9859						
211		do	do	S. 115 (33)	"	477	= 2 Weir 512	Subr. Ayyar Davies	do	S 135 (100) : 436 (21) : 253 : 133 (51)	1290
213	= 2 Weir 463 = 1 Weir 355	do	do	233 (15) : 271, 2003 (20) : 270 : 233) : 329 (10) : 113 (7)	7185	478	= 13 M J = 2 Weir 133	White C. J.	do	123 (21) : 5811 : 83	8458
215	(S) = 2 Weir 700 = 1 Weir 112 (anonymous)	Cutler and Parker	1895	337 ()	11183	480	= 2 Weir 201	do	do	195 (23) : 227	1178
217	Memorandum for 376 (Civil)	Jurvis and Benson.	1902	S. 107 (81) : 123, 112 (81) : 114 (52) : 528 (14)	11538	524	(F. B.) = 13 M J. 171 = 1 Weir 270	Subr. Ayyar, Davies and Benson.	1903	S 112 (181) : S 145 (52) S. 147 (14)	9484
311	(F. B.) = 2 Weir 623	Subr. Ayyar Davies and Benson.	do	528 (18)	8636	592	= 2 Weir 297 = 2 Weir 292	Ayyangar and Moore.	1902	195 (27) : 208 13 (17) : 191 : 215 (62) : 74 : 231 (3) : 279 (2) : 11 : 537 (89A)	3160
410		do	do	S. 110 (29) : 22 : 19	7693	596	= 13 M. J. 272	Benson and Ayyangar, White C. J.	1903	17 (10)	92
419	(F. B.) = 1 Weir 126	White C. J., Subr. Ayyar and Davies.	1901	S. 42 (29) : S. 103 (153)	8015	598	= 2 Weir 333	White C. J. and S. Ayyar.	do	297, 708 (372 (1) : 272 (2) : 271 : 309 (19) : 24) : 537 (140)	7662
421	= 2 Weir 143	Subr. Ayyar and Ayyangar	1902	423 (171) : 515 (13)	8828	607	= 1 Weir 13	White, C. J., Davis and Benson.	1903	6 (5) : 23 (2) : 157 (13) : Chap. 33 (4)	193
431	= 2 Weir 206	White C. J. and Moore.	do	189 (3) : 181 (9) : 233 (51) : 279 (20)	1834	649	= 1 Weir 190 = 1 Weir 122	White, C. J. and Subr. Ayyar.	do	48 (1) : 177 (37) : 206 (6) : 131 (2) : 332 (2)	8192
435	= 2 Weir 417	Davies and Benson	do	S. 230 (1) : 391 (2)	5833	656	(F. B.) = 2 Weir 292	White, C. J., Davis and Benson.	do	195 (300) : 493 (1) : 407 (1)	2552
469	= 2 Weir 18	do and Ayyangar	do	S. 106 (15) : 21 : 23 : 26 : 36 : 19) : S. 110 (164)	4412	696	(F. B.) Memorandum for 656 (F. B.)	"		S. 403 (1)	

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13		Benson and Ayyangar.	1903	488 (21 : 77)	5187	61	= 1 Cr. 231 = 2 Weir 236	White, C. J. and Moore.	1903	199 (5, 6) : 278 (14) : 19	1254
51	= 1 Cr. 272 = 2 Weir 227 = 2 Weir 278	do	do	4 (m (61 (61) : 197 (26) : 21 : 197) : 215 (1 : 5) : 236 (19) : 456 (63)	4233	71	Memorandum for 71				
59	= 2 Weir 211	White, C. J. and Subr. Ayyar.	do	276 (19) : 476 (63)	9563	124	= 1 Cr. 422 = 2 Weir 290 = 2 Weir 461 (F. B.) Memorandum for 37M, 125 (F. B.)	B. Ayyangar	do	105 (1304) : 300 : 710 : 318 : 120A) : 107 (1) : 125 (7)	9159

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121	=1 Cr. 42;=1 Weir 199;=2 Weir 119	White, C. J.	1901	151 (8) - 259 (36, 62)	5518	259	(F. B)	Henson, B. Ayyangar and Russell	1903	1 (17) - 452 (17)	9027
223	=14 M. J. 71;=1 Cr. 211;=2 Weir 294;=2 Weir 277	Boddam and Ayyangar.	do	197 (227k - 256 322) 410 (6)	7016	271	=14 M. J. 223;=1 Cr. 611;=2 Weir 803	B. Ayyangar, C. Subram Ayyar, C. J. and Boddam.	do	273 (57) - 292 (503) (99 - 19) - 174 (100) - 200 (1) - 207 (9) (102, 106)	8901
225	=2 Weir 110;=1 Cr. 559	White C. J. and Subram Ayyar	do	259 (23) - 265 (10) 370 (21) 537 (92)	1071	510	=1 Cr. 1087;=1 Weir 787	Subram Ayyar, C. J. and Russell.	do	48 (4) - 71 - 107 (54) - 201 - 114 (14) - 360 (5)	8901
223	=1 Cr. 566;=2 Weir 494	White C. J.	do	255 (6) - 312 (11 - 42 - 51 - 77)	5283	325	=1 Cr. 1000	Henson and Russell	do	123 (6 - 7)	6222

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21		Subram Ayyangar and Sankaran White, C. J., Davis and Benson	1904	439 (6)	9899 A	310	=2 Cr. 763;=2 Weir 325A	White, C. J.	1904	201 (51) - 259 (1 - 10 - 12) - 306 (5) - 437 (7 - 67)	1972
27	(F. B.)=1 Weir 671;=2 Cr. 110	White, C. J., Davis and Benson	do	409 (3) (2) 177 (35)	631	437		Subram Ayyar and Moore.	1905	537 (17) - 151	11453
253	=2 Cr. 72;=2 Weir 317A	Davis and Sankaran Nair	do	297 (59) 253 (17) 403 (119) 437 (3 - 69)	5122	565		Boddam and Moore.	do	110 - 151 (1)	8907
703	=2 Cr. 74	Boddam	do	260 (6)	1346						

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41	(F. B.) Nil; and for 51 (F. B.)	Boddam and Subram Ayyar, C. J. and Benson	1905	177 (51)	9295	101	Statement for 29 M. J. 101	Subram Ayyar, C. J. and Nair	1905	233 (11)	4411
59	=5 Cr. 579	Subram Ayyar, C. J. and Benson	do	474 (54) 164 (13 51 - 119) 479 (29)	9295	117	Statement for 187 M. J. 161	White, C. J., Subram Ayyar, Davis, Benson and Moore	do	250 (81) 195 (247 (1) - 317)	1922
54	(F. B.)=1 Cr. 71	Subram Ayyar, C. J. and Benson	do	297-305 (256, 316 322)	1857	125	(F. B.)=16 M. J. 79 =1 M. T. 31;=3 Cr. 274	S. Ayyar, C. J. and Boddam.	do	48 (6) - 293 (50) - 253 (19) - 219 (10) - 141 - 308 (1 - 2) - 370 (11) - 403 (1 - 37) - 118 - 119 - 437 (7 - 68) - 60	5738
55	=15 M. J. 72;=3 Cr. 31	Subram Ayyar, C. J. and Benson	do	117 (1 - 6 - 39 64 67)	693	119	=3 Cr. 419	S. Ayyar C. J.	do	132 (3) - 193 (185) - 197 (65) - 537 (13 - 120) - 250 (81 - 82) - 422 (10) - 423 (218)	7033
100	=1 Cr. 276	Subram Ayyar, C. J. and Benson	do	476 (95 - 136 - 176 197) 496 (11 - 16) - 497 (11)	2311	187	=3 Cr. 459	S. Ayyar C. J.	do		

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189	Misapplied for 89		do	161 (40)	375	= 1 Cr. 211	White G. J., Benson and Moore.	do	117 (42), 125 (51), 128 (60), 129 (88), 130	400
190	= 1 Cr. 161	Do Khan and Moore.	do	106 (21), 111 (40), 112 (41)	377	= 5 Cr. 191	White G. J., Benson and Moore.	1901	117 (42), 125 (51), 128 (60), 129 (88), 130	400
191	= 1 Cr. 17	S. Nair.	do	121 (41)	378	= 5 Cr. 111	White G. J., Benson and Moore.	1901	117 (42), 125 (51), 128 (60), 129 (88), 130	400
192	= 1 Cr. 24	B Ayyar and G. J.	do	115 (37), 120 (40), 121 (41), 122 (42), 123 (43), 124 (44), 125 (45), 126 (46), 127 (47), 128 (48), 129 (49), 130 (50), 131 (51), 132 (52), 133 (53), 134 (54), 135 (55), 136 (56), 137 (57), 138 (58), 139 (59), 140 (60), 141 (61), 142 (62), 143 (63), 144 (64), 145 (65), 146 (66), 147 (67), 148 (68), 149 (69), 150 (70), 151 (71), 152 (72), 153 (73), 154 (74), 155 (75), 156 (76), 157 (77), 158 (78), 159 (79), 160 (80), 161 (81), 162 (82), 163 (83), 164 (84), 165 (85), 166 (86), 167 (87), 168 (88), 169 (89), 170 (90), 171 (91), 172 (92), 173 (93), 174 (94), 175 (95), 176 (96), 177 (97), 178 (98), 179 (99), 180 (100), 181 (101), 182 (102), 183 (103), 184 (104), 185 (105), 186 (106), 187 (107), 188 (108), 189 (109), 190 (110), 191 (111), 192 (112), 193 (113), 194 (114), 195 (115), 196 (116), 197 (117), 198 (118), 199 (119), 200 (120), 201 (121), 202 (122), 203 (123), 204 (124), 205 (125), 206 (126), 207 (127), 208 (128), 209 (129), 210 (130), 211 (131), 212 (132), 213 (133), 214 (134), 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303	(F. B. =19 M. J. 263 =2 M. T. 259 =6 Cr 102	White C. J., Subr. Ayyar and Miller.	do	195 (222-276 = 202) 135 (45)	6263	169	White C. J., Subr. Ayyar and Miller.	do	295 298 (3, 13)	8983
400	=2 M. T. 314	White C. J. and Miller.	do	133 (271, 272)	2215	518	White C. J. and Miller.	do	114 (76, 110), 115 (94, 115, 121, 116)	1269
10	=1 M. T. 27 =5 Cr 29	Benison and Bodham Miller	1907	257 (18, 259 (27)	5314	277	Benison and Miller.	1908	107 (120), 107 (6), 510 (23)	209
11	=17 M. J. 529=3 M. T. 119=7 Cr 6	do	do	293 (2, 68)	1883	280	Miller, J.	do	137-142 (333, 118)	308
60	=17 M. J. 531=3 M. T. 120=7 Cr 21	Benison and Nair	do	112 (3) 196 (286) 197 (18, 68) 529 (9) 537 (15, 120, 122, 129)	5221	315	White C. J., Benison Bodham, Wallis and Nair	1908	261, 107 (117, 187, 188), 114 (4-9)	1031A
82	=17 M. J. 775=9 M. T. 116=6 Cr 193	Wallis, J	do	115, 170, 216, 22, 116 507, 118 (1)	680	118	Benison and Bodham	do	145 (57, 154, 251, 259, 141, 116)	1289
84	=17 M. J. 825=3 M. T. 121=7 Cr 8	Benison and Nair	do	391 (1) 295 (1)	2541	259	Benison and Wallis and Nair	do	189 (113)	11707
127	=18 M. J. 1003 M. T. 270=5 Cr 325	Benison and Miller	1908	238 (9) 297 308 (6, 17, 19, 2)	8196	116	Munro and Nair.	do	145 (185, 215, 298, 333)	7712
131	=1 Cr 125	Miller and Munro	1907	277 (27) 237 (62)	6185	do	Benison Nair and Aldar	do	154 (4-8), 161 (1)	1999
131	=18 M. J. 77=1 M. T. 280=5 Cr 205	Benison Nair	do	445 (93) 446 (9) 137 (43) 149 (7, 127)	2051	do	Benison Nair and Aldar	do	35 (15, 101), 123 (6, 7)	1078
140	(F. B. =17 M. J. 581 =1 M. T. 59=5 Cr 31	White, C. J. and Wallis and Miller	1903	209 (3) 478 (28, 127, 141, 146, 181, 191)	7046	315	Benison Nair	do	233 (17, 26) 266 (1), 350 (11), 403 (18)	2399
163	=14 M. J. 120=3 M. T. 20=5 Cr 340	Benison and Miller	do	188 (23, 156, 161)	7319	311	Munro and Pringle.	do	123 (183)	5271
251	=1 M. T. 197=3 Cr 121	Wallis and Munro	do	217 (9) (11, 65, 77, 83, 101)	602	517	Aldar Rahim	do	265 (9)	3610
256	=1 M. T. 198=3 Cr 151	Wallis, J	do	217 (126) 217 (110)	2988	519	Munro and Pringle.	do		

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3	= 5 M. T. 1 and 16 = 9 Cr. 108 and 120 = 11 C. 22 and 70	White, C. J. and Miller	1908	44(2) (165M) 129(10) 196 (165) 221 (16) 225 (1) 227 (15) 209. 55; (4-23; 131) 317 9(56)	1973 9193	218	= 5 M. T. 218 = 9 Cr. 140 = 11 C. 51	Miller and S. Nair.	1908	44(2) 3, 221(3, 16) 253 (11) 250(3) 191 526 (31) 259(11) 379	7045
4	= 5 M. T. 161 = 9 Cr. 253	Munro and S. Nair	do	46 70(25) 200(3) 476 (2) 10-14 18 50-63; 73 79A 137 143; 116 113-183; 183 161 194 195; 217) 237-9 (18; 58, 60, 66; 75; 85)	5205	220	(F. B.) = 10 M. T. 177 = 5 M. T. 237 = 9 Cr. 192 = 11 C. 225	Wallis, Munro and S. Nair	1909	41(9) 231(5) 253 (14) 164 231 256(18) 272 (21) 465 (16) 494(8); 435 (1-22-33-34-70 80; 128; 139 (127; 131-274)	6506
5	= 5 M. T. 101 = 9 Cr. 11	White, C. J., Wallis, Miller, S. Nair and Pinley	do	46 70(25) 200(3) 476 (2) 10-14 18 50-63; 73 79A 137 143; 116 113-183; 183 161 194 195; 217) 237-9 (18; 58, 60, 66; 75; 85)	227	225	= 4 M. T. 473 = 9 Cr. 89 = 31 C. 287	Miller.	1908	107(2-5-15)	7044
173	= 9 Cr. 571 = 2 I. O. 353	Wallis and Pinley.	do	423 (73)	4902	228	(F. B.) = 5 M. T. 269 = 9 Cr. 179	Denson, Munro and S. Nair.	1909	45(15); 134(4 8); 250 (5)	9020
179	= 5 M. T. 100 = 9 Cr. 567 = 2 I. C. 297	Munro and Pinley.	do	41(8); 257(20); 437 (53 34)	1609	230	= 10 Cr. 333 = 5 I. C. 885	Munro and S. Nair.	1908	6(4) 10(3) 18(3) 20 (3) 108(6)	2008
214	= 5 M. T. 225 = 10 Cr. 220 = 3 I. C. 183	do	do	41(8); 257(20); 437 (53 34)	9567	234	(S. B.) = 5 M. T. 203 = 9 Cr. 156 = 11 C. 33	Denson, Wallis and S. Nair.	1909	537(70)	6277

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46	= 20 M. J. 1 = 6 M. T. 27 = 3 I. C. 720	Munro and A. Rahim	1909	488 (147)	713	223	= 20 M. J. 84 = 7 M. T. 79 = 11 Cr. 45 = 5 I. C. 145	Wallis and Miller.	1909	401 (9; 10)	10111
48	= 3 M. T. 116 = 9 Cr. 404 = 1 I. C. 867	Benson and S. Nair	do	297-308 (115B-174)	2859	261	(F. B.) = 19 M. J. 765 = 6 M. T. 327 = 10 Cr. 450 = 31 C. 434	Munro and Rahim.	do	423 (85; 95)	11332
18	= 5 M. T. 101 = 9 Cr. 120 = 1 I. C. 107	Benson C. J., Miller, Munro, S. Nair and A. Rahim.	do	423 (167) 439 (12) 476 (1-10; 156; 197)	7016	268	= 8 M. T. 47 = 1 M. N. 167 = 12 Cr. 180 = 6 I. C. 754	Wallis.	1910	491 (13; 19)	7311
25	= 20 M. J. 127 = 6 M. T. 133 = 11 Cr. 102 = 5 I. C. 107	Miller J.	do	107 (55; 212) 110 (227) 119 (1; 2); 437 (9)	2823	113	= 30 M. J. 220 = 7 M. T. 207 = 11 Cr. 58 = 5 I. C. 817	Sobramania Alvar C. J. and O. Farrell	1899	163 (18; 18)	8521
29	= 10 M. J. 120 = 3 M. T. 262 = 9 Cr. 170 = 1 I. C. 79	Wallis and Munro	do	253 (79-81) 422 (3) 423 (216)	335	262	= 7 M. T. 121 = 11 Cr. 254 = 5 I. C. 81	Denson and Abdul Rahim.	1910	275 (2-16; 19; 27) 239 18; 19; 20)	2004
29	= 20 M. J. 103 = 7 M. T. 195 = 11 Cr. 290 = 5 I. O. 881	Denson and Rahim	do	125 (376) 428 (6)	4874	511		Benson and S. Nair.	1910	337-9 (73)	266

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14	=7 M. T. 159=11 Cr 128=11 C 463 =8 M. T. 101=11 Cr 379=61 C 708 =7 M. T. 201=11 Cr 397=61 C 682 =20 M. J. 94=9 M. T. 237=11 M. N. 147=11 C 531=71 C 801 =9 M. T. 97=12 Cr 41=11 C 233	White O. J. Müller J. do Müller and Krishnavarami Ayer Abdur Rahim	1910 do do do do	517-525 (10-51-130) 145 (220) - 147 (28A) 107 (115-121) - 110 (87-89) : 212 (6) 105 (779) 217 (16) 491 (32)	4367 7069 7069 2523 3125	255 343 346 349 345	=21 M. J. 402=91 T 347=(11) M. N. 31=11 Cr 661=81 C 491 (11) M. N. 107=12 Cr 355=121 C 363 =9 M. T. 322=12 Cr 63=(11) 2 M. N. 129 =91 C. 255 (F B)=21 M. J. 281 =8 M. T. 151=11 Cr 476=81 C 178 =8 M. T. 313=11 Cr 531=71 C 801	Sankaran Nair. Miller and Munro White O. J. Munro and S. Nair Rahim, Krishna- swami, Ayer and Munro and Krishnavami	1910 do 1911 1910 do	110 (119 : 172) 22 (1) : 5, 25 : 446 (1) 190-191 (71) : 443 (1) : 16 (1) 103 (19 : 20) 423 (581 : 81 : 91 A)	6235 3196 7141 9065 645

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24	21 M. J. 805=10 M. T. 60=(11) 2 M. N. 107=12 Cr 249=101 C 372 (8 R)=2 M. J. 419=11 M. T. 1=(12) M. N. 207=11 Cr 103=11 C 849 (F B)=12 M. T. 1=(12) M. N. 249=11 Cr 233=111 C 874	Sundara Aiyar and Ayling White O. J., S. Nair and Ayling Tension, Miller, M. Far Rahim and Sundara Ayer	1911 1912 do	121 (61 85-581) 156 (53 127 (4) 161 (7) 162 (1) 237 304 (97 99) 156 (53-157 (4) 161 (9) 162 (1) 237 304 (97 356)	2982 6805 6259	606 701 749	=22 M. J. 155=(11) 2 M. N. 326=10 M. T. 373=12 Cr 360=12 C 350 =(11) 2 M. N. 311=12 Cr 271=101 C 380 =22 M. J. 111=(11) 2 M. N. 50=10 M. T. 518=12 Cr 131=11 C 735	Spencer C. J. Sundara Aiyar and Ayling. Ayling and Spencer	1911 do do	209 (19) : 277 (21) 526 (4-5 : 20 : 22) 529 (103)	9522 4271 9575

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Case No.	Corresponding Reports	Judges	Year of decision.	Section and Note	Table of Names of	Port.	Corresponding Reports.	Judges.	Year of decision.	Section and Note.	Table of Names of
25	=23 M. J. 207=11 M. T. 87=(12) M. N. 101=11 Cr 747=101 C 755 =23 M. J. 207=11 Cr 781=151 C. 111	Sundara Aiyar and Sundara Aiyer	1912 1904	457 (48 129) 429 (29) 476 (89-93 169) 107 (27) : 110 (17 : 39)	6320 4794	134 159	=10 M. T. 278=(11) 2 M. N. 259=12 C 315=121 C 521 =22 M. J. 270=11 M. T. 91=(12) M. N. 135=13 Cr 236=11 C 418	Sundara Aiyer and Spencer.	1911 -	195 (227 : 233 : 277) 288 (17 : 30 : 42)	3888 1170

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210	(F. B.) = 21 M. J. 39 = (12) M. N. 476= 19 Cr. 273=14 I. C. 629	White, C. J., Nair and Aiyang.	1911	290 (529) : 242 (813) : 236 (167) : 528 (57)	7371	321	= 23 M. J. 268=14 M. T. 290=(12) I. M. N. 124=17 M. T. 116= 13 Cr. 778=171 Cr. 419 10 M. T. 563=121 M. N. 3=13 Cr. 39=13	1912	298-13 (6-80 59)	1989
213	= 23 M. J. 109=12 M. T. 489=(12) M. N. N. 134=17 Cr. 733= 17 I. C. 63	Aiyang and Naper.	1912	17594-111 : 416 : 417- 120 : 147 (63) : 148 (11) 43615-201 : 438 (39) 436 (56) : 537 (14)	4336	357	= 10 M. T. 706=(111) 2 M. N. 576=12 Cr 585=12 I. C. 961 (12 M. N. 16=13 Cr 16=13 I. C. 116 = 2 M. J. 357=11 M. T. 253=(12) M. N. 169=13 Cr. 117=15 I. C. 79	1911	177 (37 40) : 205 (513) : 11 29 298 13 (39 101) : 215 (89) : 524 (53) : 531 (7 8) 289 31 : 423 (127) : 128 (8-14)	11 29 215 531 (7 8) 128
214	= 24 M. J. 453=13 M. T. 220=11 Cr. 214= 19 I. C. 310	Sundara Iyer and Aiyang.	1911	237 (28-59) : 237 (1) : 403 (29 12 43, 36-51)	2697	457	= 15 Cr. 197=22 I. C. 981	do	319 (14)	7351
215	= 14 Cr. 570=21 I. C. 158	Sundara Iyer and Phillips.	do.	167 (1) : 235 : 210 : 214- 2701 : 110 (7, 29) : 118 (10) : 145 (477 : 479) : 253 (10) : 103 (34) : 495 (7)	6211	474	= 15 Cr. 197=22 I. C. 981	1912	107 (113-157) : 114 (1)	6141
						585		do	297-308 (8-13A : 104 : 224 : 233-251)	62

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107	= 11 M. T. 291=(12) M. N. 806=19 Cr. 241 =14 I. C. 499	Miller, J.	1912	Addenda S. 195	1198	153	(F. B.) = 25 M. J. 493 = (13) M. N. 696=14 Cr. 574=21 I. C. 374	1913	706 (66) : 423 (188)	9054
110	= 11 M. T. 431=12 Cr 297=14 I. C. 737	Nelson and Sundara Iyer.	do	526 (167)	6264	156	= 26 M. J. 63=(13) = 16 I. C. 313 = 16 Cr. 39=26 I. C. 631	do	514 (41)	9895.
112	= 13 Cr. 493=15 I. C. 736	Nelson, J.	do	94 (1 : 5) : 90 (7)	9326	317	= 14 Cr. 295=20 I. C. 1005=23 M. N. 693 = 14 M. T. 211=5 M. T. 221=23 M. J. 319	1912	476 (71) : 537 (153)	9297.
119	= 15 Cr. 180=22 I. C. 736	Nelson and Sundara Iyer	1913	427 (81) : 430 (52) : 119 : 216 : 223 : 253 : 401 : (50) : 128 (81 : 89 : 165) 125 (2-11)	4349	565		1913	458 (74 : 89, 97 : 183)	4871
125	(F. B.) = 25 M. J. 459 = 14 M. T. 288=(11) M. N. 715=14 Cr. 546 = 21 I. C. 116	White, C. J., Sankar Nair and Tyabjee.	do		4556					

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294	=16 Cr. 489=29 I. C. 229	Ayling.	1913	16(8), 529; 530(11)	9198	639	=16 M. T. 505=(11) M.N. 89=150r 688 =26 I. C. 136	Ayling and Hanman.	1911	179(12)	7711
332		Sadasiva Ayyar and Tyabjee	do	145(316)-376	11317	779	=26 M. J. 243=(14) M. N. 324=15 Cr. 207=24 I. C. 937	Ayling and Ayyar.	do	177(1, 10); 178(3; 4; 8)	5011
199	=16 Cr. 629=20 I. C. 453	Miller and Ayyar.	do	141(9-22-116)	30896		=11 M. N. 867=15 Cr. 549=24 I. C. 937	do	do	15(7)	9829 A
194	=25 M. J. 115	Oldfield	do	356(16, 21) 537(100)	4331	797	=26 M. J. 160=(11) M.N. 291=15 Cr. 226	Miller and Spencer.	do	329(127; 219)	8487
512	633=21 I. C. 681	Oldfield	do	537-9(11)	2766	1028	26 M. J. 466=1 I. W. 381=15 Cr. 271=25 I. C. 477	Wallis and Ayyar.	do	193, 20, 21; 25(a); 37; 130(d); 227; 333; 176 (41)	6155
511		Ayling and Tyabjee	do	318(1)-403(12)	4795	1044	=17 Cr. 432=33 I. C. 268 M. J. 291=17 M. N. 161=1 I. W. 200=16 Cr. 159=27 I. C. 129	Tyabjee.	do	90(3; 4); 92; 501 (1); 577, 13; 261	1151
512	=15 Cr. 188=22 I. C. 791	Miller, J.	1904	109(23) 110(100-233)	8124	1083	=28 M. J. 291=17 M. N. 161=1 I. W. 200=16 Cr. 159=27 I. C. 129	Spencer and Ayyar	1913	250(13; 81; 83); 427 (118; 435 (11); 150 (126)	9-32
555	16 Cr. 631=50 I. C. 133	Nair and Ayling.	1914	109(23) 110(100-233)	4801	1091					
556	(N)=10 Cr. 628=30 I. C. 429	Davis and Nair	do	109(23) 110(100-233)	8303	9103					
583	=27 M. J. 587=10 M. N. 961=(14) M. N. 646=15 Cr. 672=25 I. C. 1001	Ayling and Tyabjee	do	233(11, 13) 253 (2) 319; 350(1-21-25) 437(16)	9103						

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317	Major and J. 977	Spencer and Ayyar	1915	161(3)	567	527	(F B)=29 M. J. 101 =18 M. J. 99=(15) M. N. 501=16 Cr. 291=30 I. C. 115	Oldfield, Ayyar and Napier J. J.	1915	233 (2; 16; 27); 737 (1; 3; 13; 36 63)	4598
318	=10 Cr. 291=24 I. C. 518=28 M. J. 429	Spencer and Ayyar	do	184(23) 479 299 (2) 517 517 517	506	537	=29 M. N. 240=16 Cr. 319=25 I. C. 753	Spencer and Ayyar	do	137, 12 (15; 16; 235); 439 (163)	6594
472	=28 M. J. 181=17 M. N. 316=10 Cr. 428=24 I. C. 142	Trotter	do	184(23) 479 299 (2) 517 517 517	7067	537	=28 M. J. 297=(15) M. N. 291=16 Cr. 300=29 I. C. 327	do	do	106 (11); 107 (231) 118 (14)	203
501	=24 M. J. 92=(15) M. N. 316=10 Cr. 510=25 I. C. 668	Kumaranam Nair	do	217 (3) 229 317 (3)	7722	339	=28 M. J. 297=(15) M. N. 291=16 Cr. 300=29 I. C. 327	Kumaranam and S. Tri.	do	115 (67-71) 135 (22) 439 (107)	1946
503	=24 M. J. 682=(15) M. N. 340=16 Cr. 601=30 I. C. 152	do	do	479 (127 219; 228; 227)	9819	561	=28 M. J. 297=(15) M. N. 291=16 Cr. 300=29 I. C. 327				

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55	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Ollad and Napier.	do	179 (2 : 12)	1861	912	Ayling and Phillips.	1915	255 (10) : 258 (14)	1020
56	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Ayling and Phillips.	do	215 (11) : 123 (183)	1869	916	Ayling and Phillips.	do	145 (13)	1020
57	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	do	do	105 (1) : 20 : 71 : 21	1921	927	do	do	188 (21 : 140)	1021
58	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	do	1912	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
59	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
60	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
61	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
62	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
63	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
64	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
65	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
66	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
67	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
68	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
69	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
70	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
71	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
72	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
73	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
74	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
75	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
76	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
77	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
78	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
79	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
80	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
81	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022
82	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Walsh and Conf. Trustee.	1913	103 (27 : 67) 20 (21 : 21)	1027	927	Ayling and Napier.	1916	161 (3)	1022

101	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Abdur Rahim and Spencer.	1915	473 (11)	427	789	Ayling and Napier.	1917	255 (8)	6302
102	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Ayling and Napier.	1916	206 (28) : 263 (8) : 370 (91)	8293	791	do	do	228 (173)	2513
103	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Sudhakar and Moore.	do	673 (2)	11292	835	do	1916	183 (7) : 225 (18)	2914
104	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	do	do	217 (16) : 101 (191 : 22)	2435	977	do	do	217 (13) : 241 (23)	1286
105	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Ollad and Napier.	do	411 (3)	9315	1024	do	1917	24 (7)	11315
106	= 24 M. T. 17 = 18 M. T. = 13 M. T. 18 = 14 M. T. = 16 Cr. 19 = 21 Cr. 311	Ayling and Napier.	do	253 (4 : 10)	7253	1179	do	do	311 (20)	1291

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9	$\theta = 21^\circ M, T, 22^\circ C = 81. W$ $1^\circ = 30 Cr, 15 = 10$ $1^\circ = 167 J, 15 = 20$ $= 35 M, J, 15 = 20$ $Cr, 75$	1918	517-525 (20)	11102	422	$(P, B) = 26 M, J$ $35 = 15, N, 1, 2^\circ = 90$ $110 M, N, 2^\circ = 29$ $L, W, 31 = 10 Cr, 10$ $= 90, 1 C, 10$	Wallis Ailing and Sault	1918	575 (15)	7025	
61	$\theta = 35 M, J, 15 = 20$ $Cr, 75$	1918	114 (24-124)					Ayer and Napier	1918	1 (p) (6)	701
63		1918	197 (35), 1207 (4), 274 (1), 116 (1), 317 (2)	1533 2671	416	$= 6 M, J, 2^\circ = 75$ $M, 1, 2^\circ = 10 M, N$ $4, 2 = 20 Cr, 4, 2 = 51$ $1 C, 105$					
96	$\theta = 5 M, J, 6^\circ C = 115$ $M, N, 30 = 31 W,$ $24 = 10 Cr, 75 = 15$ $1 C, 60$	Ayer and Napier	1918	195 (305)		510	$(P, B) = 46 M, J, 118$ $= 20 M, J, 6 = 191$ $M, N, 4^\circ = 10 L, W$ $4^\circ = 30 Cr, 91 = 0$ $1 C, 524$	Wallis Ailing and Sault	1919	475 (2)	3091
109	$\theta = 1 M, J, 6^\circ C = 15$ $M, 2 = 10 W,$ $20 = 20 Cr, 4 = 15$ $1 C, 87$	Phillips and Napier.	1918	179 (218)	5009	561	$= 6 M, J, 2^\circ = 75$ $M, T, 3^\circ = 190$ $M, N, 1^\circ = 10 L, W$ $4^\circ = 10 Cr, 37 = 50$ $1 C, 87$		1918	239 (11), 436 (9)	6377
150	$\theta = 36 M, J, 6^\circ C = 115$ $M, N, 25 = 20 Cr$ $15 = 15 M, T, 15$ $= 10, 1 C, 6, 2$	do	1918	195 (2, 165, 17)	9789						

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391	17 M. J. 60=26 M. F. 61=10 M. N. 33=0 W. 20=20 Cr. 43=51 I. C. 493	Aiyar and Spencer.	1919	2 (15a), 526 (11, 15); Chp. XLV (6); 531 (6)	2714	885 (F. B)=37 M. J. 81 =(19) M. N. 663= 20Cr 455=31 I. C. 343	Wallis, Aiyling and Aiyar.	1919	195 (7; 11; 15); 425 (7; 8)	9779

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1	36 M. J. 60=20 Cr 17=19.1. C. 611	Concuta-Trotter.	1918	105 (15; 2-4)	3263	450 =38 M. J. 97=(20) M. N. 798=11 L. W. 231=21 Cr. 354=35 I. C. 722	Alvar and Moore.	1919	110 (121; 102)	4810
146	37 M. J. 91=10	Kunara Sani Sistri.	1919	633 (10) 133-142 (22-23; 142)	10163 402	511 =38 M. J. 370=27 M. T. 178=120 M. N. 590=11 L. W. 435=21 Cr. 402=56 I. C. 36	Wallis, Aiyling and Conita- Trotter.	1920	320 (9; 107; 119)	1050
320	38 M. J. 191=10 L. W. 521=21 Cr.	Spencer and Krisnan.	1919	435 (100); 436 (11; 23)	10506	709 =38 M. J. 210=27 M. T. 12=20 M. N. 231=11 L. W. 35=21 Cr. 348=56 I. C. 681	Rahim and Spencer.	1919	190-191 (7)	9277
361	39 M. J. 62=10 L. W. 378=21 Cr.	Rahim and Burn.	1919	478 (12)	9844					
411	34 M. J. 20=120 M. N. 15=27 M. T. 250=21 Cr. 257=55 I. C. 313	Alvar and Phillips.	1919	235 (16; 25); 256 (10); 257 (10)	5105					

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317	4714	8 C. N. - (1903-04) - <i>Contd.</i> = 1 Cr. 417 S. 106.5, 27, 43, 47, 49, 10)	18	5629	9 C. N. - (1904 05), = 2 Cr. 1 S. 315 (27, 29, 58) = 310, 979	893	0 C. N. - (1904-04) - <i>Contd.</i> = 1 C. J. 610=2 Cr. 574 S. 106 (1); 107 (1, 2); 3, 101, 126, 139 (3); 110 (1, 2); 4, 237 (107); 337 (1, 13, 43)
319	3298	37, 43, 17)	72	5725		900	
323	9142	= 10 Cr. 1050	100	1436	Major part for 190 S. 203 (5) = 2 Cr. 13 S. 88 (28); 145 (18)	974	
328	5925	A, B, D, E=310 Cr.	155	3527		983	
341	29552	= 1 Cr. 437 S. 100 (26, 27), 110 (1, 2), 129, 145; 288 (22, 300)	177	3279	= 2 Cr. J. 112=2 Cr. 15 S. 193 (9 100)	1027	
346	660	= 310, 641=1 Cr. 525	199	4059	2 Cr. 51 S. 100 (7), 290 (17, 60), 902 (3, 23), 203 (12, 14)	1065	
367	9578	= 1 Cr. 517 S. 50 (130)	277	4306	= 310, 351	1079	
369	8204	= 1 Cr. 520 S. 520 (37, 102, 117)	324	7107	= 320, 367	1085	
390	3922	= 1 Cr. 522 S. 145 (62, 117)	372	6163	= 2 Cr. 146 S. 144 (76, 125), 145 (55)	1016	
411	9010	= 1 Cr. 630 S. 50 (83, 105)	478	6356	103 (18), 286 (15)	1045	
412	5200	= 1 Cr. 631 S. 145 (130, 131, 201, 261, 294, 310, 210, 212)	471	11081	= 1 Cr. 163 (1)	1055	
413	7375	= 1 Cr. 632 S. 193 (310)	495	1016	= 1 Cr. 365 S. 517-525 (161)	1075	
715	8318	= 1 Cr. 1007	529	3779	= 2 Cr. 309 S. 439 (100); 517-55 (110, 5, 134)	1085	
717	7357		549	3062	= 2 Cr. 272 S. 107 (31, 260), 145 (140)	1095	
719	4000	= 1 Cr. 710 S. 115 (311, 250, 330, 348, 453)	551	1633	= 2 Cr. 273 S. 517-55, 2, 36, 40 (155)	1105	
729	7577	= 1 Cr. 640 S. 167 (1)	599	6900	= 2 Cr. 275 S. 231 (9, 223 (2)	1115	
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822	3157	= 1 Cr. 645 S. 2, 16, 8)	645	6904	= 2 Cr. 319 S. 236 (68, 102)	1184	
841	3622	= 1 Cr. 646 S. 140 (22)	646	6904	= 2 Cr. 319 S. 236 (68, 102)	1194	
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912	4952		653	6904	= 2 Cr. 319 S. 236 (68, 102)	1264	
913	4952		654	6904	= 2 Cr. 319 S. 236 (68, 102)	1274	
914	4952		655	6904	= 2 Cr. 319 S. 236 (68, 102)	1284	
915	4952		656	6904	= 2 Cr. 319 S. 236 (68, 102)	1294	
916	4952		657	6904	= 2 Cr. 319 S. 236 (68, 102)	1304	
917	4952		658	6904	= 2 Cr. 319 S. 236 (68, 102)	1314	
918	4952		659	6904	= 2 Cr. 319 S. 236 (68, 102)	1324	
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119	=909		304	712	11750	125	=21 Cr 521 C N 772 1-4 (191)	
207	=450 557=19 Cr 305=44 1 C	431		=150 905=20 Cr 475=481 O 657		127	281	2575
207	321					127	=21 Cr 10=23 C N 101	2575
207	=19 Cr 321=44 1 C 237 423 (153)	1310				127	=20 Cr 410=21 C N 772	2575
211	439 (214)					127	=20 Cr 15=27 C N 104	2591
211	=22 O N 576=19 Cr 895=47	7191		29 C J.—(1919).	10667	127	=21 Cr 16	2591
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211	=19 Cr 457=45 1 C 100 107	7712		Cr 112 401 (20) 230 (2 7)	1200	127	=21 Cr 245	2591
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216	=19 C 333=19 Cr 330=44 1 O	1593	30	=23 C N 332=20 Cr 175=19	10587			
216	332			1 O 405				
217	=45 C 823=19 Cr 453=45 1 O 224	10562	317	=23 C N 862=23 1 O 912=20	3574	122		
217	=22 C N 103=19 Cr 525=11	82110		Cr 816		122		
217	1 C 610		212	=20 C 711=23 O N 153=20 Cr	6201	127		
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			357	1 C 805		313		
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53	114 (17) ; 159 ; 141	1819	315		10177	243	(F. B.) = 40 865	2032
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83	227 (29) ; 374	9705	384		1211	309	(F. B.) 50 7	5370
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203	107 (107) ; 110 (1) ; 7 ; 9 ; 250 ; 270 ; 271 ; 312 ; 325 ; 112 (13) ; 123 (20) ; 159 (152)	9035		3 C L—(1878-78)			310 (2) ; 350 (9)	5773
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1	207 208 (208) ; 201 ; 205 ; 209	8556	403N.					
62	= 30 371 ; 145 (277) ; 351-374	{ 2242	406					
89	= 30 621	{ 2641	408					
415	170 (11) ; 170	1456	409					
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1	207 208 (208) ; 201 ; 205 ; 209	8556	403N.					
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89	= 30 621	{ 2641	408					
415	170 (11) ; 170	1456	409					
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1	207 208 (208) ; 201 ; 205 ; 209	8556	403N.					
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149	326 (20)	4051	413	107 (203) 121 (431) 429 (32)	34	34	121 (41)	34
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151	326 (20)	4053	413	107 (203) 121 (431) 429 (32)	36	36	121 (41)	36
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153	326 (20)	4055	413	107 (203) 121 (431) 429 (32)	38	38	121 (41)	38
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157	326 (20)	4059	413	107 (203) 121 (431) 429 (32)	42	42	121 (41)	42
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159	326 (20)	4061	413	107 (203) 121 (431) 429 (32)	44	44	121 (41)	44
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6	293-213 (43)	10700	29	253 (43 ; 13) ; 234 (10) ; 258 (4) ; 535 (5)	9711
10	31 (2)	10317	30	45 (41)	10075
11	188 (72) ; 182	5049	34	258 (21)	
19	31 (3)	11303	1884—P. R.		
20	164 (132) ; 384 (48)	10123	1	350 (1)	10337
21	104 (117) ; 331 (34) (25)	8674	4	4 (6) (4) ; 408 (4)	11508
22	239 (50) ; 537 (36)	10703	6	330 (16)	459
23	30 (14)	11230	7	214 (4 ; 7) ; 350 (15)	3981
26	220 (50)	11236	8	411 (6) (19)	5558
27	4 (9) (4)	11037	14	250 (21) ; 547 (4)	321
30	488 (102) ; 106	10519	15	12 (6) ; 40 (4)	1985
37	177 (3) ; 1514 (46) ; 555 (3)	11240	16	289 (3) ; 439 (217)	10770
40	4m (6) (31) ; 490 (12)	11695	19	145 (302)	8135
45	517-35 (190)		21	198 (15 (e))	6932
1882—P. R.					
1	433 (25 ; 117)	4000	23	257 (10) ; 423 (117 ; 131)	2704
3	34 (2) ; 108 (5)	11394	29	403 (53)	2818
8	163 (6)	11319	31	367-70 (72 ; 79) ; 423 (7)	8587
9	32 (7)	1710	35	439 (139) ; 479 (247)	3278
13	163 (78 (C))	11743	37	107 (248) ; 119 (47) ; 350 (34 (G))	8678
18	230 (56) ; 537 (86)	8302	38	106 (50) ; 55 ; 211 ; 407 (114)	2981
23	198 (5)	10360	39	239 (259) ; 556 (17 ; 43)	10988
25	25 (2)	11061	40	53 (6)	1622
27	23 (2) ; 207 (1) ; 215 (42)	10784	42	103 (7) ; 107 (37) ; 127 (63) ; 370 (16 ; 86 ; 1814)	1814
30	178 (41)	4088	43	403 (88)	8731
32	1547	10547	44	106 (116) ; 477 (111 ; 537 (173))	11208
36	488 (113) ; 1067 ; 556 (60)	10310	1888—P. R.		
38	45 (27 ; 36)		2	439 (92)	33
39			3	33 (9)	33
			5	367-70 (86)	11
			11	250 (7 ; 8)	11
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			17	163 (1 ; 21)	19
			45	45 (23)	21
			21	4m (6c) ; 127 (30) ; 439 (12)	23
			23	110 (228 ; 325) ; 118 (125) ; 123 (30)	28
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51	1887 P. R.	—	5	505 (15) - 200	8578	37	311 (7) - 171 (1)	2825
52	P. R. 190 etc.	2018	6	483 (9) - 129 - 260	{ 8516 5055	39	133-112 (101 - 101a)	11148
53	453 (218)	7411	14	250 (57)	10058	120	341 (4)	14051
54	133-112 (25) - 255 (10)	5812	16	107 (114) - 11 - 20	11589	1	204 (7) - 350 (12)	1721
55	25 (16)	8812	17	133-112 (5 191 - 192 - 200)	11636	2	211 (7) - 243 (3)	1851
56	195 (61)	8812	18	202 (2)	1713	3	104 (12) - 127 (32 - 92)	1005
57	11 (27) - 27-70 (53) - 273 (2)	4637	19	210 (3) - 218 (12) - 250 (11 - 51) - 315 (43 - 40)	8006	4	132-112 (3 - 21 - 211)	10762
58	155 (2)	2075	21	107 (6 - 19 - 44 - 45 - 93 - 136 - 138 - 141 - 139)	8119	5	515 (48)	2051
59	151 (2)	2075	22	177 (17) - 180 (2)	8119	12	483 (172 - 205) - 190 (11) - 515 (32)	3299
60	151 (2)	2075	23	46 (7) (6) - 202 (12)	6137	13	419 (10)	979
61	151 (2)	2075	24	210 (7) - 307 (32)	3451	11	197 (42)	945
62	151 (2)	2075	25	138 (13)	9111	16	45 (7 D) (19) - 4h (7d) (25) - 190 (13 - 23) - 523 (215)	945
63	151 (2)	2075	26	232 (24)	8637	23	485 (172)	945
64	151 (2)	2075	27	232 (24)	881	25	300 (8)	945
65	151 (2)	2075	28	317 (13)	10797	26	107 (42)	945
66	151 (2)	2075	29	435 (11 - 172 - 873) - 190 (11)	7002	27	237 (17)	945
67	151 (2)	2075	30	317-325 (10 - 38)	84	28	75 (8) - 87 (4)	945
68	151 (2)	2075	31	133-112 (191 - 192 - 201)	1125	29	420 (3)	945
69	151 (2)	2075	32	133-112 (192)	11516	30	106 (67) - 110 (270) - 400 (3) - 511 (16)	945
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72	151 (2)	2075	2	250 (384 - 314 (6) - 515 (57)	1007	7	423 (14)	902
73	151 (2)	2075	3	430 (10)	882	8	200 (13)	8341
74	151 (2)	2075	4	41 (1) - 18 (11) - 205 (61)	8908	13	435 (71) - 439 (70)	8311
75	151 (2)	2075	5	131 (10) - 439 (237 - 239 - 245 - 251 - 257)	2067	14	233 (23) - 437 (4 - 3 - 73 - 57)	8383
76	151 (2)	2075	6	45 (16)	316	15	250 (49)	11054
77	151 (2)	2075	7	205 (33)	1194	16	345 (11)	8895
78	151 (2)	2075	8	107 (67) - 188 (15)	6548	17	345 (41 - 29)	8895
79	151 (2)	2075	9	179 (16)	3156	20	182 (1)	8895
80	151 (2)	2075	10	32 (6)	{ 2589 7649	25	437 (4)	8895
81	151 (2)	2075	11	195 (16 (d))	3204	41	437 (4)	8895
82	151 (2)	2075	12	8 - 110 (287) - 121 (13) - 514 (5 - 52)	9683	1	4h (7d) (20)	46
83	151 (2)	2075	13	240 (1) - 239 (32)	1043	2	4h (7d) (20)	33
84	151 (2)	2075	14	239 (1) - 237 (19) - 254 (14 - 17)	417	3	4h (7d) (20)	6055
85	151 (2)	2075	15	314 (40) - 256 (2)	8033	4	219 (23) - 540 (5 - 11)	379
86	151 (2)	2075	16	1888 P. R.	—	1	4h (7d) (20)	46
87	151 (2)	2075	17	252 (5)	—	2	4h (7d) (20)	33
88	151 (2)	2075	18	195 (21 - 290) - 473 (47)	—	3	4h (7d) (20)	6055
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29	1000	1000	29	1908-P. R.	1054	42	1909-P. R.	2207
30	1000	1000	30	1908-P. R.	1054	43	1909-P. R.	2207
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34	1000	1000	34	1908-P. R.	1054	47	1909-P. R.	2207
35	1000	1000	35	1908-P. R.	1054	48	1909-P. R.	2207
36	1000	1000	36	1908-P. R.	1054	49	1909-P. R.	2207
37	1000	1000	37	1908-P. R.	1054	50	1909-P. R.	2207
38	1000	1000	38	1908-P. R.	1054	51	1909-P. R.	2207
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27	2281		15	3200		4	7169		20	88 (14)	1051
28	121 (8)		16	3201		5	7170		21	313 (1)	6366
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27	107 (121) Misprinted as 37 P. R. 1917	7414	5	106 (97)	9500
28	179 (22)		8	185 (342)	9500
29	221 (26)	1496	9	435 (59)	10245
30	101 (329) 192 (2 : 3) : 526 (159)	4740	12	235 (16) - 537 (18)	6073
32	133-142 (61 : 123 : 125)	9020	11	490 (11)	3031
34	4m (54) : 478 (66)	262	16	155 (1 : 11) : 161 (10 : 70) : 172 (65)	3529
36	87 (17A) : 512 (3)	8537	17	309 (7)	6970
37	298 (5 : 35 : 36)	7275	23	35 (5 : 6)	7622
38	39 (8)	11550	23	35 (5 : 6)	7622
39	80 (5 : 8 : 9) : 537 (44)	5520	24	339 (72)	9502
40	145 (1 : 55 : 190 : 220 : 265 : 370 : 417)	4218	25	8 : 417 (7)	6103
43	417 (3)	682	26	555 (3)	503
44	233 (16) : 234 (15)	3846	29	379 (70)	4978
46	35 (37)	9053	35	345 (41)	3117
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			4	197 (15)	3874
			5	198 (23) : 204 (10) : 215 (1)	8901
			6	239 (18)	1853
			7	439 (3 : 215)	1668
			8	431 (31 : 439 (231)	2194
			12	438 (360)	1688
			14	423 (181 : 182) : 517-525 (182)	6053
			15	250 (7)	8714
			16	517-525 (98)	3367
			17	288 (38)	8854
			18	[Misprinted as 8 P. R. 1919]—S 192 (130)	1101
			23	145 (448) : 455 (122)	4826
			27	499 (231)	709
			29	344 (33)	9301
			30	337-9 (6) : 383 (2)	281
			31	S. 220 (3) Arani Singh	6132
			32	87 (13) : 80 (9)	
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			149	339 (61)	10897
			156	= 5 P. R. 1901	11171
			167	= 60 P. R. 1901	10168
			223	179 (3)	11358
			265	439 (119 : 186)	11091
			527	133-142 (123)	10897
			568	237-9 (40)	10603
			630	439 (180)	
			P. L. (1902)		
			29	= 33 P. R. 1901	1920
			52	339 (110) : 345 (2) : 404 (3)	2161
			100	343 (2 : 404 (3))	6285
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17	439 (73)	2671	17	439 (73)	
31	= 2 P. R. 1900	10444	32	Misprinted for 32 P. L. 1900—253 (22) :	
32	437 (4 : 15 : 23)	6874	37	437 (5 : 23)	
33	437 (6) : 423 (166) : 437 (5 : 33)	10404	50	437 (43)	10161
37	= 14 P. R. 1900	10005	52	(F. B. = 4 P. R. 1901 (F. B. = Bhagwan	6182
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52	263 (13)	10162	65	250 (69)	10168
53	= 13 P. R. 1900	10355	67	179 (2)	5535
54	103 (13)	10311	83	233 (14)	5535
55	103 (13)	10311	87	179 (2)	5535
56	103 (13)	10311	88	233 (14)	5535
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227	1. 119 (15) : (1-q) 406 (10)	6510	13	514 (15) : Nga Tbeni Ga		5	23 (27) : (1-q) 299 (15 : 33) : 537 (55) :	
228	1. 119 (13)	6511	17	5-6 (25)		7	11-q : 57 (62)	
247	391 (3)	910	31	110 (250) : 511 (15) : (1-q) 107 (150) :	5653		(4 q) 359 (5 : 61 : 72 : 88)	
291	392 (3)			106 (72)				
292	528 (11)		39	(1-q) 488 (240)	5810			
300	445 (39)			U. B. - (1904)				
16	107 (126-133) : 161 (32)		1	(1-P C) 103 (27)	2771	13	(4-q) 476 (123)	4782
			2	(1-q) 537 (55)	5759	15	403 (9)	6660
			4	(1 q) 106 (5 : 21, 40)	5813			4598
			6	(1-q) 200 (69)				6641
275	107 (231)		7	403 (1 (a)) : 576 (16) : XI Shwe Nyon				
			10	438 (17) : 500 (23) : (1-q) 438 (108)				
			13	511 (53) : (1-q) 537 (13)	5776			
1	3-q) 40 (3) : 295 (23) : 776 (138)	6312	15	(1 q) 523 (31)	5821	3	161 (50 : 55)	6751
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R v. H. H. H. H. H.	8 Cox 97	333 (5)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	21 Q. H. D. 425	403 (1)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	2 Barr 10-10	435 (5)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	3 Cox 556	309 (101; 115)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	(1793) 1 P. P. 60	179 (8)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	10 F. R. 63	403 (16A)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	6 Cox C 549	221 (64)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	(183) 2 K. B. 67	179 (8; 13; 17)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	4 St. Tr. N. 8) 497	297-303 (245)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	1 Mood 45	297-303 (245)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	8 C and P 91	221 (12)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	9 A and E 689	221 (12)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	(1837) 9 A and E 682	106 A (6)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	20 St. Tr. 129	221 (16)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	11 Cox C 142	276 (4)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)
R v. H. H. H. H. H.	3 Mand 24=37 E R 60	435 (6; 53)	R v. Spauldon	(14) 11 B. O. 671	179 (11); 180 (6)

